



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 17-03264  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mary M. Foreman, Esq., Department Counsel  
For Applicant: *Pro se*

02/14/2019

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 13, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on June 26, 2018, and requested a hearing before an administrative judge. The case was assigned to me on December 11, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on the same day. I convened the hearing as scheduled on January 18, 2019. The Government offered

exhibits (GE) 1 through 7. There were no objections to any exhibits offered, and all were admitted into evidence. Applicant testified and did not offer any exhibits. DOHA received the hearing transcript on January 31, 2019.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR with explanations. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 62 years old. He has never married and has no children. He attended a trade school for four years and attended college for two years, but did not earn a degree. He enlisted in the military, but after a short period he was honorably discharged due to medical reasons. He has worked for government contractors at different times in the past.<sup>1</sup>

Applicant disagreed with the hiring practices of his employer (Employer #1). In approximately September 2016, he believed he was asked to do a job he was not hired for. He went to the personnel office and complained. He claimed that personnel at the company did not like him criticizing them for what he believed were inappropriate work practices. He explained a manager had asked him if he liked working there and Applicant responded that it was acceptable. Applicant stated:

And at that time, the black guy walked up, and I guess he thought I was talking about him. And they marched off, and that's when, I guess, that-- when he decided to fire me. But I didn't -- like I said, they didn't like me having meetings with them and expressing what I felt. It seems like a lot of managers, they're job scared, and they want cheap, Bosnians or Indians or Africans working for them, because they can pay them \$3-or \$400 every two weeks or whatever. And they don't bitch and they don't bellyache; they will not challenge you.<sup>2</sup>

\* \* \*

And that's what really stuck in their craw is whenever I had meetings with them about this. You know, I hired in to do a specific job. Our soldiers deserve English-speaking, licensed American craftsman.<sup>3</sup>

Applicant testified that he was accused of insubordination by the manager. He denied it. He stated he received a letter "something about behavior" and verbal harassment. He said the managers can make up any reason to fire you. He said if you

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<sup>1</sup> Tr. 16-18.

<sup>2</sup> Tr. 23.

<sup>3</sup> Tr. 23.

disagree with them they get angry. The letter notified him of his termination.<sup>4</sup> Applicant's termination letter from Employer #1 stated:

Your employment is terminated because you violated several discipline policies including failure to comply with [employer's] Code of Ethics and Business Conduct. You violated [employer's] Harassment-Free Workplace policy by engaging in verbal harassment or other abusive conduct, including bullying, tormenting, aggressive, and/or tyrannizing behavior. You violated [employer's] Workplace Security by not maintaining a safe and respectful workplace by engaging in threatening, frightening, coercive, and/or violent behavior. You also violated employment addendum, Section 24.2, by not complying with all [employer's] standards of business conduct, ethics, security, and health and safety rules and directives.<sup>5</sup>

During Applicant's January 2017 background interview, he told the government investigator that he was told by his manager that he was sent home from his employment for being a bully. No further amplification about his conduct was provided by Applicant.<sup>6</sup>

Applicant was terminated from employment in October 2004 by Employer #2 for engaging in a physical altercation with another employee, in violation of company policy.<sup>7</sup> Applicant testified he disagreed with another employee's work product and engaged in a physical altercation with the employee. He explained that his concerns were about safety. He was asked by his manager if he knew why he was being fired, and Applicant stated it was because of his concerns about safety. He then said the manager told him he was fired for fighting.<sup>8</sup>

Applicant testified that he was rehired by Employer #2 several years later. As part of the hiring practice, the employer asked him to provide a resume. Applicant failed to list on his resume his previous employment with Employer #2. He testified that he did not have an explanation for why the resume did not include his previous employment with Employer #2.<sup>9</sup>

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<sup>4</sup> Tr. 20-26; GE 3, 4.

<sup>5</sup> GE 4.

<sup>6</sup> GE 3.

<sup>7</sup> GE 5.

<sup>8</sup> Tr. 26-33.

<sup>9</sup> Tr. 52-59; GE 6.

Applicant completed a security clearance application (SCA) in October 2010. In it he failed to disclose, as was required, he had been fired by Employer #2 for fighting.<sup>10</sup> He explained “Well, you know, I feel like I got screwed over on those jobs, and I judge—I don’t know. I just put finished, done with it, you know.”<sup>11</sup> He further explained “I was fired, but the reason why I got fired, I feel like, were unjust.”<sup>12</sup>

Applicant completed another SCA in February 2016. In response to questions in Section 13A about his employment history, he stated he left his job with Employer #2 in December 2005 because the job was finished, which was not true. He was fired by Employer #2 in October 2004 for a physical altercation.<sup>13</sup>

Applicant’s provided the following explanation for providing false information on his 2016 SCA.

I put down, [f]inished, instead of fight. I was finished because whenever I think about the situation and how I was trying to defend my integrity—a lot of soldiers were getting electrocuted back in the—when they was taking showers . . . .”<sup>14</sup>

He then stated: “I don’t know what it was. Fired, quit, finished, resigned. I don’t remember what it was. But, yes, I was fired.”<sup>15</sup> He further explained:

Well, I was thinking about it, and I was hacked off because I got screwed over, trying to do the right thing. I could have got—that was a \$100,000 a year job. Okay? When it comes to integrity or doing something funny, you can’t be bought. Some people mostly get bought. They’re job scared or house note or family or whatever. Integrity’s integrity, period.<sup>16</sup>

During Applicant’s January 2017 interview with a government investigator he was questioned about his employment with Employer #2. Applicant stated that he did not know why he did not disclose that he was fired and indicated that maybe it was because he

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<sup>10</sup> Tr. 50GE 2. Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes, but may be considered when applying mitigating conditions, when making a credibility determination, and in the whole-person analysis.

<sup>11</sup> Tr. 50.

<sup>12</sup> Tr. 50.

<sup>13</sup> GE 1.

<sup>14</sup> Tr. 46.

<sup>15</sup> Tr. 48.

<sup>16</sup> Tr. 48.

misread the question.<sup>17</sup> I find Applicant deliberately provided false information on his 2016 SCA when he stated that he left his employment with Employer #2 in December 2005 because the job had finished, when in fact he was terminated in 2004 for fighting.

In April 2015, Applicant was charged with assault after he hit a salesman at a car dealership because he believed the engine in the used van he purchased was bad. Applicant explained that he decided to purchase a used van. He test drove it and had his mechanic examine it. His mechanic told him it “had a slight miss.”<sup>18</sup> Applicant then purchased the vehicle. He then took it back to the mechanic and it was determined that there was a problem with a cylinder, which was an expensive repair. Applicant claimed a person at the dealership agreed to share the cost of the repair and then did not. He confronted the salesman and asked “Where’s my money.” Applicant then hit the salesman in the face. Applicant was charged with assault. He said he received a letter from the district attorney that the charge was dismissed because witnesses would not cooperate.<sup>19</sup>

Applicant filed a suit in small claims court against the car dealership. He said: “I explained to the Judge, a verbal agreement made in good faith is just as binding as a signed contract, period.”<sup>20</sup> The Judge disagreed with Applicant’s interpretation of the law and ruled in favor of the dealership. Applicant was unhappy and frustrated. He testified at his security clearance hearing as follows:

Administrative Judge: You hit the guy?

Applicant: Yes. I slapped him. Yes.

Administrative Judge: And that’s okay?

Applicant: When somebody lies to you—

Administrative Judge: You get to hit them?

Applicant: Well, we’re not computers. We are –

Administrative Judge: I am asking you. We’re also civilized human beings, so you hit this person.

Applicant: I will protect my home.

Administrative Judge: Okay. This wasn’t your home.

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<sup>17</sup> GE 3.

<sup>18</sup> Tr. 33.

<sup>19</sup> GE 7; Tr. 33-40.

<sup>20</sup> Tr. 36.

Applicant: I will protect my integrity. I will protect whatever—you know, I'm not—

Administrative Judge: And the way you choose to do that is by assaulting somebody?

Applicant: Well, whenever somebody lies to me or tries to cheat me.

Administrative Judge: Okay. So but—

Applicant: People don't —there's a lot of bad people out there. There are a lot of bad people.

Administrative Judge: I agree.

Applicant: And if nobody respects you, you know, then you have to ---it's all about respect.

Administrative Judge: Okay. And so—

Applicant: It's about being civil.

Administrative Judge: And being civil is assaulting someone because you disagree with them.

Applicant: I didn't disagree with them. I was cheated.

Administrative Judge: Okay. You went to court, and you lost.

Applicant: Huh?

Administrative Judge: You went to court and you lost.

Applicant: Well, that's beside the ---well, the point is, I was cheated.

Administrative Judge: All right.

Applicant: I know I was cheated. Nobody else was there except me. I have to preserve— it's just the same thing as electrical or whatever. I have to preserve an integrity.

Administrative Judge: Okay.

Applicant: Boundaries, respect. It's about about—that's what all of this is about.

Administrative Judge: And do you respect the law?

Applicant: Yes. I didn't break the law. The point is—

Administrative Judge: Well—

Applicant: Well, the point—I understand what you—

Administrative Judge: No, no. Assaulting people is breaking the law.

Applicant: There's reasons for—there are reasons for---

Administrative Judge: No reason justifies you assaulting someone because you disagree with them.

Applicant: No. If somebody comes into my house, do you think I'm going to just sit there and let somebody—if somebody comes and and –

Administrative Judge: I didn't say that.

Applicant: steals something.

Administrative Judge: Okay. Go ahead. Finish what you want to tell me. Go ahead.

Applicant: I already forgot what I was even talking –

Administrative Judge: Well, you were cheated, and you—

Applicant: Yes.

Administrative Judge: decided that you needed to assault him, because you were-

Applicant: No. I decided to provide—

Administrative Judge: protecting your integrity.

Applicant: motivation for them to keep—to be honest.

Administrative Judge: Okay. And the motivation is hitting them?

Applicant: Because they didn't pay me.

Administrative Judge: Okay.<sup>21</sup>

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating

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<sup>21</sup> Tr. 33-45.

conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).



## Analysis

### Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwilling to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, considerations of: . . . (2) any disruptive, violent, or other inappropriate behavior; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant was terminated from his job by Employer #2 in 2004 for fighting. He deliberately provided false information on his SCA when he stated he left the job in December 2005 because the job was finished. Applicant was fired from his job by Employer #1 in about September 2016 for violating his employer's workplace harassment-free workplace policy when he engaged in verbal harassment or other abusive conduct. He violated his employer's security policy by not maintaining a safe and respectful workplace. In 2015, Applicant assaulted a salesman by hitting him in the face. The evidence is sufficient to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant's testimony lacked candor and was not believable. He failed to make a prompt, good-faith effort to correct his false statement on his 2016 SCA and disclose he had been fired from his job in 2004. His justifications for why he did not disclose the truth raise serious concerns about his trustworthiness, reliability, and judgment. AG ¶ 17(a) does not apply.

Applicant repeatedly acted out aggressively or violently in the workplace and when he was unhappy as a consumer. Fighting in the workplace, exhibiting aggressive or offensive conduct towards coworkers, and hitting someone in the face when he was unhappy and frustrated with a purchase are not minor and show a pattern of questionable self-control and conduct. Applicant failed to take responsibility for any of his actions. I cannot find that similar conduct is unlikely to recur. I find his conduct casts doubt on his reliability, trustworthiness, and good judgment. I find AG ¶ 17(c) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation

and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 62 years old. He has a history of acting aggressively and inappropriately in the workplace. He believes he is entitled to use violence to motivate people to act as he believes is appropriate. He repeatedly justifies his actions because he is defending his integrity. Applicant's misguided interpretation of appropriate conduct, both physical and verbal; his deliberate falsification on his 2016 SCA; his failure to disclose his termination from his job on his 2010 SCA; and his failure to disclose on his resume a period of employment that might have been detrimental to his hiring, show a pattern of deception, dishonesty, and questionable judgment. His conduct casts doubt on his reliability, trustworthiness, and good judgment. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline E, personal conduct.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a-1.d:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge