



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



In the matter of: )  
)  
) ISCR Case No. 17-04130  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Benjamin Dorsey, Esq., Department Counsel  
For Applicant: Leon J. Schachter, Esq.

03/07/2019

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant did not deliberately falsify the hours he worked. He was sloppy in his timekeeping practices and he has acknowledged his mistakes. He has taken corrective action, and credibly promised to properly report his work hours. He has established a strong professional reputation that weighs in his favor. He was candid and forthcoming during the clearance process. Clearance is granted.

**Statement of the Case**

Applicant submitted his most recent security clearance application (SCA) on October 10, 2016, seeking to continue the clearance he has held since about 2001. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued him a Statement of Reasons (SOR) on December 21, 2017, alleging security concerns under Guideline E (personal conduct) and Guideline F (financial considerations). Applicant answered the SOR on January 22, 2018, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on July 20, 2018, and issued a notice of hearing on November 5, 2018, setting the hearing for December 13, 2018. At the hearing, the

Government offered three exhibits (GE 1 through 3). Applicant testified, presented the testimony of two witnesses, and submitted three exhibits (AE 1 through 3). AE 1 is comprised of ten documents. All exhibits were admitted without objection, except for GE 2. Applicant objected to me considering GE 2 (another federal agency's clearance decision statement). Consistent with Appeal Board precedent, I overruled his objection. (See, ISCR Case No. 08-06997 (App. Bd. Mar. 1, 2011) (marked and admitted as Hearing Exhibit (HE) 1). DOHA received the hearing transcript (Tr.) on January 2, 2019.

### **Findings of Fact**

In his Answer, Applicant denied that he deliberately falsified the number of hours he worked. Both SOR ¶¶ 1.a and 2.b alleged the same facts under the personal conduct guideline (¶ 1.a), and under the financial considerations guideline (¶ 2.a cross-alleged ¶ 1.a). After a thorough review of the record evidence, including his testimony and demeanor while testifying, I make the following findings of fact:

Applicant is a 42-year-old information technology auditor working with a federal contractor. He received a bachelor's degree in 2000 and a master's degree in 2001, both in accounting and information systems. He married his spouse in 2004, and they have three children, ages 11, 9, and 6.

Applicant started working for federal contractors immediately after receiving his bachelor's degree. He worked for his first employer between 2001 and February 2016. He has held a top-secret clearance continuously since 2003. In February 2016, Applicant's current employer, a federal contractor, hired him. There is no evidence of any security violations, except for the two SOR allegations.

In his October 2016 SCA, Applicant disclosed that he was denied eligibility for access to sensitive compartmented information (SCI) by another federal agency (Agency) in December 2015. Applicant's background investigation addressed the denial of his SCI eligibility that is documented in the Agency's Clearance Decision Statement (CDS; GE 2).

The CDS was based on statements made by Applicant during a polygraph assisted interview in June 2015. In its pertinent parts, the summary of the interview prepared by the Agency interviewer states:

Applicant stated that he does not document his [work] time in an accurate manner. He rounds off time because he is "so busy," and he felt like he never has the time to accurately document the amount of time he works on each contract since he began his employment . . . I just don't have the time to do that [accurately document time]. I just don't care, and should I be more accurate . . . yeah, probably.

For example, he might work 30 minutes on a contract and document that he worked one hour. He stated that he has worked one hour and

documented two-and-a-half hours because his expertise oftentimes allows to complete a task much more quickly than someone else would have been able to do the same thing. [Applicant] has also documented time worked when he is taking a lunch break . . . approximately once or twice per week, with the last time being the Monday prior to his interview . . . . He stated he attempts to document his hours more carefully if he is working on time and materials contracts . . . . because the government would be billed according to the amount of hours worked; however, he is more “verbose,” or less careful with the fixed-price contracts because he is judged by customers based on his outcome, and is awarded contracts based on his numbers. He is only benefiting internally because his hours are collected for internal reporting matrices only . . . .

Applicant repeatedly denied that he deliberately cheated on his time cards or that he deliberately falsified the number of hours he worked. He believes that he reported his hours in good faith and in accordance with government and his company’s standards. He averred that his statements to the Agency investigator were reported out of context. He attributed his sloppy timekeeping to his very busy schedule and not having the right tools to do the timekeeping.

The chief operating officer (COO) for Applicant’s current company testified on his behalf. The COO is the person who recruited and hired Applicant in 2016. He was recruited because of his outstanding reputation. Applicant is now a partner in the company. In the COO’s opinion, Applicant has an impeccable record and a great reputation for his trustworthiness, honesty, and reliability. Applicant’s reputation stands by itself within the marketplace; he is considered to be an honorable and dependable man. Since he was hired in 2016, Applicant’s performance has been stellar and superb. He follows the letter of the law and provides leadership and oversight to a diverse team of employees. Applicant made the COO aware of the SOR and its allegations. The COO believes that the concerns are the result of miscommunications and that the allegations do not reflect on Applicant’s integrity. He strongly recommends the continuation of his clearance. Applicant is a great father and is involved in his children’s sporting events. (Tr. 30-33, AE B)

Two executive vice presidents, a vice president, and a senior partner of Applicant’s company all echoed the above glowing remarks about Applicant’s character, performance, and willingness to comply with rules and regulations. They strongly recommend the continuation of his clearance.

According to Applicant’s second witness (P), Applicant’s prior employer (at the time of the allegations) conducted annual training to teach employees how to record time worked. The time was supposed to be charged on a daily basis, but never later than by mid-day the next working day. There was no time punching, and it was up to the individuals to have their own time tracking mechanisms. All time sheets were approved by the individual’s supervisors. In the case of time and materials contracts with the government, the time sheets were also reviewed by government officials. P has never

had a reason to question Applicant's honesty, integrity, ethics, or trustworthiness. P was in charge of monitoring the time charged to clients in different projects. During the four years that he monitored Applicant's time sheets, he never noticed any issues or discrepancies with the time he charged to government clients.

A third reference noted that he was in charge of reviewing all charged hours and budgets that Applicant had documented for his clients during the period between 2012 and 2016. He reviewed the charged hours for appropriateness and could not identify any instances where Applicant falsified any hours he worked. The reference considers Applicant to be the perfect example of a true professional, always leading by example, and well-liked by peers and clients alike. He considers Applicant to be trustworthy, honest, reliable, and a law-abiding person who follows rules and regulations. He endorsed Applicant's eligibility for a clearance.

Applicant's first employer is a well-known large accounting firm. Because of his good performance, between 2001 and 2016, Applicant was promoted quickly and achieved a managing director position before he was recruited by his current employer. The time worked was reported in 15 minute increments, wherein any work less than 15 minutes was reported as 15 minutes of work.

Applicant claimed that he did not have a tool to help him remember the time he worked in a particular contract during the day, and his time reporting was complicated because he would have six or more clients he would work with during any particular day. He would use his email, calendar, meeting requests, and other documents to recreate his time reporting. Applicant admitted that he sometimes would round up his hours or sometimes he would guess the time worked on a client because of his poor time keeping habits.

A supervisor always had to review and approve Applicant's time sheets. He was more careful when dealing in time and materials contracts because there was an additional level of review by a government agent that would review and approve the invoices submitted. He denied ever rounding up or guessing any work-time for time and materials contracts because he was more careful recording his time with those contracts.

Applicant did not recall telling the Agency interviewer that he did not care about accurately keeping his time. He admitted that he told the interviewer that he was much more careful recording his time for time and materials contracts because they directly impacted the government billings. Applicant admitted to documenting time work during a lunch break once or twice a week. He explained that it was regular practice to have working lunches to discuss client related issues, training, new business opportunities, or to answer a client's call. He claimed he only billed for that part of his lunch time where he was working.

Applicant also denied telling the interviewer that he would work only 30 minutes and round up his time to charge one full hour on a particular contract. He claimed he

was talking to the interviewer about charging for training time or other administrative functions, but not contracts. He explained that if he was able to complete the training in two hours because of his experience, but the average employee would take three hours to complete the training, he would also charge the three hours.

Applicant noted that his timekeeping practices, time sheets, or invoices had never been challenged or questioned by any of his supervisors, customers, or clients throughout his career. After the Agency interviews in 2015, he completely changed his practice of documenting his time - he stopped rounding off worked hours and he stopped guessing the hours worked. In 2018, Applicant took a one-day government timekeeping class at a university to ensure his timekeeping practices were according to government standards. Since implementing his new practices, he believes he is now more meticulous and accurate in his time keeping.

Applicant believes that he has learned a difficult lesson as a result of the Agency interviews and the concerns raised by his past timekeeping practices. He credibly stated that he takes these concerns very seriously because this is his career. Applicant noted that even after the Agency's interviews, there was never an investigation opened against him concerning his timekeeping practices by any of his employers, nor were there any complaints filed by his customers, or by the government.

### **Policies**

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), implemented by the DOD on June 8, 2017.

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, § 2. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Guideline E: Personal Conduct**

AG ¶ 15 sets forth the security concern as follows:

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 or sensitive information . . . .

The SOR alleged that Applicant deliberately falsified the number of hours he worked between 2001 and 2015. Applicant admitted that he sometimes rounded off the hours he worked and that sometimes he guessed the time he charged any particular client. However, he repeatedly denied that he deliberately falsified or misrepresented the number of hours he worked.

If true, Applicant's behavior would raise the following disqualifying conditions under AG ¶ 16:

(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, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources; deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

The record does not establish the above disqualifying condition. But even if it did, I would consider it mitigated under the following mitigating conditions set forth by AG ¶ 17:

- (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;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (f) the information was unsubstantiated of from a source of questionable reliability.

Applicant repeatedly denied that he deliberately falsified or misrepresented the hours he worked. He admitted that he sometimes rounded off his hours, and that sometimes he guessed the time he charged to any particular client or contract. He attributed his sloppy timekeeping to his very busy schedule and not having the right tools to do the timekeeping. Applicant credibly testified that most of his negligent timekeeping was done while working on fixed-price contracts or reporting training or

other administrative functions. He specifically noted that he was more careful with his timekeeping while working on time and materials contracts because he did not want to overcharge the client, and he knew there was more timekeeping oversight by his employer and the government on those contracts.

Considering the evidence as a whole, I find that Applicant did not deliberately falsify the number of hours he worked. His actions were more likely the result of negligent or sloppy timekeeping practices. I do not find that he had the deliberate intent to deceive or misrepresent information to the government or his employer. Applicant has consistently received positive performance feedback. Since 2001, he has built a strong professional reputation. He is generally known by his coworkers, supervisors, and clients for his professional skills, dedication, honesty, reliability, and dependability. I note that even after concerns were raised about his timekeeping practices, there were no investigations, complaints, or disciplinary actions taken against Applicant or his then employer for improper timekeeping practices in government contracts.

Applicant has held a clearance since about 2001, with no issues or security concerns, except for the current SOR allegations. He has been forthcoming during the security clearance process. He disclosed the Agency's denial of his SCI eligibility in his 2016 SCA, and he was candid and forthcoming at his hearing. Applicant acknowledged his timekeeping mistakes and credibly promised not to repeat his questionable behavior. He participated in a government timekeeping class, and seems to be genuinely remorseful for his past negligent practices. I find that Applicant is unlikely to continue his negligent or sloppy timekeeping practices. It has been over three years since Applicant was confronted with his poor timekeeping practices during the Agency interviews. There is no evidence of any additional questionable behavior or timekeeping practices. Applicant's past timekeeping practice do not cast doubt in his current reliability, trustworthiness, or good judgment.

## **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Under Guideline F, the SOR cross-alleges in ¶ 2.a the same factual concerns alleged in ¶ 1.a. Because those concerns were fully addressed under Guideline E, for



the sake of brevity my findings, analysis, and conclusions under those guidelines will be incorporated herein without repeating them.

The SOR alleged that Applicant deliberately falsified the number of hours he worked between 2001 and 2015. Applicant admitted that he sometimes rounded off the hours he worked and that sometimes he guessed the time he charged any particular client or contract. He denied that he deliberately falsified or misrepresented the number of hours he worked.

AG ¶ 19 provides a disqualifying condition that could raise a security concern and may be disqualifying in this case: “(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional breaches of trust.”

Consistent with my findings and conclusion under Guideline E, incorporated herein, I find that the record does not establish the above disqualifying condition. Even if the above disqualifying condition was raised by the facts of the case, I find it mitigated under the following mitigating conditions under AG ¶ 20:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment; and

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control.

I find that Applicant is unlikely to continue his negligent or sloppy timekeeping practices. It has been over three years since Applicant was confronted with his poor timekeeping practices during the Agency interviews. There is no evidence of any additional questionable behavior of security concerns, or of continuing bad timekeeping practices. Applicant’s past timekeeping practices do not cast doubt in his current reliability, trustworthiness, or good judgment.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guidelines E and F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant is a 42-year-old employee of a federal contractor. He has worked for federal contractors since 2001, and has held a clearance during employment without any issues or concerns, except for SOR current allegations.

Applicant has established a strong professional reputation. He is generally known by his coworkers, supervisors, and clients for his professional skills, dedication, honesty, reliability, and dependability. His excellent reputation weighs in his favor. Applicant is fully aware of the security concerns raised by his negligent or poor timekeeping practices. He credibly promised to maintain proper timekeeping practices to avoid any future concerns. The personal conduct and financial considerations security concerns are mitigated.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest of the United States to grant eligibility for a security clearance to Applicant. Clearance is granted.

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JUAN J. RIVERA  
Administrative Judge