



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



In the matter of: )  
)  
) ISCR Case No. 19-01081  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

08/20/2020

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**Decision**

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MURPHY, Braden M., Administrative Judge:

Applicant admitted to multiple falsifications on a November 2017 security clearance application (SCA) and to falsifying an earlier Government application form. Applicant did not provide sufficient information to mitigate the resulting personal conduct security concerns. The cross-allegation under the financial considerations security concern is not established. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on November 4, 2017. On October 31 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E (personal conduct) and Guideline F, (financial considerations). The DOD CAF issued the SOR under Executive Order 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 National Security Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 6, 2019 and elected to have his case decided by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record, in lieu of a hearing. On March 17, 2020, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 5. Applicant received the FORM on May 27, 2020. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. After receiving an extension, Applicant submitted a response to the FORM on July 6, 2020, which I have marked as Item A. Applicant did not note any objections to the Government's evidence. Department Counsel did not object to admission of Item A.

The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 5 are admitted into evidence without objection, as is Item A. The case was assigned to me on July 28, 2020.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted SOR ¶¶ 1.a through 1.e. He provided no explanations and provided no documents with his Answer. He did not answer the cross-allegation at SOR ¶ 2.a, so I consider that he denied the allegation. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is a 23-year-old employee of a defense contractor. He graduated from high school in 2015, and then attended college for the next two years, until July 2017. He did not earn a degree. (Items 2, 4) In his FORM response, he said he is again taking college classes in pursuit of his bachelor's degree. (Item A)

From February 2015 to about May 2016, Applicant had a job working the night shift at a local supermarket. (Item 2 at 14) From May 2016 until March 2017, he worked as a warehouse clerk on a U.S. Air Force base. (Item 2 at 13) Applicant left that position to take his current job with a defense contractor. After a three-month trial period, Applicant was hired for a permanent position in August 2017. (Items 2, 4)

In connection with the earlier job on the Air Force base, Applicant submitted a declaration for federal employment (DFE) in May 2016. (Item 3) In connection with his current job with the defense contractor, he submitted an SCA in November 2017. (Item 2) The personal conduct allegations largely concern Applicant's failure to disclose certain negative information on those documents.

SOR ¶¶ 1.a and 1.b concern Applicant's disclosures on his DFE and SCA, respectively, about his departure from the supermarket job. Applicant explained during his security clearance background interview that he was fired from the job after failing to

appear for work one day. On his DFE, he did not report the termination, and on his SCA, he did not give a fully candid explanation of what happened.

Applicant's May 2016 DFE (Item 3) included the following question (quoted in pertinent part):

12. During the last 5 years, have you been fired from a job for any reason; did you quit after being told that you would be fired; did you leave any job by mutual agreement because of specific problems . . .

Applicant answered "No." In answering the SOR, he admitted SOR ¶ 1.a, which alleged that he falsified this answer.

Applicant reported the supermarket job on his SCA. He explained the circumstances in two places. First, he reported that "I quit because I received a better job opportunity up on [the Air Force base.]" (Item 2 at 14) On the same page, he checked "Yes" in answer to the question asking him to report if he was fired, quit after being told he would be fired, or left by mutual agreement following allegations of misconduct or unsatisfactory performance. (Item 2 at 14) He then noted that he had "Quit [the] job after being told you would be fired." He explained that "[t]here was a miscommunication with my available PTO." (Item 2 at 15) (I interpret the phrase "PTO" here as meaning "Personal Time Off.")

SOR ¶ 1.b alleged that this answer was false, in that he reported that he quit after being told he would be fired, when in fact he was fired "for violation of [his] employer's attendance policy." (Item 1) Applicant admitted SOR ¶ 1.b in his Answer.

The first line of the interview summary notes that the interview "was conducted to discuss employment misconduct at [the supermarket.]" (Item 4 at 1) Applicant explained to the interviewing agent that he asked his team lead at the supermarket if he could take a day off. He said, "[s]he approved the absence so [Applicant] did not go to work that day." When Applicant reported to work the next day, he was called into the office and told that his absence the day before was treated as a "no-call, no-show," and he was terminated. Applicant said he attempted to explain to human resources that his team lead had approved his absence, but he was taken to his locker and escorted off the property. (Item 4 at 2) In responding to the FORM, Applicant said he had taken a couple of days off and called in on the day he was supposed to return to work. (Item A)

According to the interview summary, Applicant acknowledged to the interviewer that he had, in fact, been fired from his position at the supermarket. He acknowledged to the interviewer that he was afraid the termination could affect his chances of a better job and his security clearance. He "admitted that he intentionally falsified this information in an attempt to make his termination appear more favorable." He also noted that he was embarrassed by the matter. (Item 4 at 2)

Applicant also revealed during his background interview that he tried marijuana in January 2016 while at a gathering at a friend's house. He took a single puff from a marijuana cigarette and began choking and coughing. He did not try marijuana any other time, and does not intend to use it or any other illegal drug in the future. (Item 4 at 2-3; Item A)

Applicant did not disclose this single instance of marijuana use on his November 2017 SCA, in answer to a question asking, "[i]n the last seven (7) years, have you illegally used drugs or controlled substances?" Applicant answered "No," and thereby failed to disclose his single use of marijuana. (Item 2 at 29) Applicant admitted SOR ¶ 1.c, which alleged that he deliberately falsified his answer.

Applicant acknowledged to the interviewing agent that he intentionally failed to disclose his marijuana use on his application because he did not want it to affect his future. He noted his regret for failing to list it on his application, and said he wanted to go back and change his answer before his interview but was not able to. (Item 4 at 3)

In his FORM Response, Applicant acknowledged the falsification and said, "I wasn't aware of how serious this was and I'm fully aware now that it's much better to be honest and upfront from the beginning." (Item A)

In 2017, Applicant purchased a car. When he registered the vehicle with the state, he falsified the purchase price in order to avoid paying sales tax on the vehicle. This is alleged in SOR ¶ 1.e, which Applicant admitted.

Applicant's November 2017 SCA (Item 2 at 31) included the following financial question:

**Taxes: In the last seven (7) years, have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?**

Applicant answered "No." In answering the SOR, he admitted SOR ¶ 1.d, which alleged in part, that he falsified this answer in failing to disclose that he failed to pay the state tax on the car. (SOR ¶ 1.d) (The text of SOR ¶ 1.d also alleges that Applicant "failed to disclose" that he "falsified the sale price" of the car in order to avoid paying sales tax on the car; and that this activity was discovered, resulting in the \$1,787 tax lien issued against Applicant by the state. This portion of the allegation alleges a "failure to disclose" information that goes beyond the text of the question at issue, which merely asks if applicant has failed to pay taxes when required.)

In responding to the FORM, Applicant acknowledged that "[i]n 2017 I had lied about the price of the vehicle I had just recently purchased to get out of paying the full amount of taxes that I was originally supposed to pay. I knew that I had done that and still decided to answer 'no.'" (Item A)

Applicant's November 2017 credit report reflects that the resulting tax lien was issued in November 2017 (the same month as the credit report and the same month Applicant prepared his SCA). (Item 5 at 2; Item 2 at 1) Other than this reference, there is nothing in the record to document SOR ¶ 1.e, concerning Applicant's failure to disclose the full sales tax of the car when he registered it.

Applicant began making \$100 payments towards the tax lien in October 2018, and noted in his background interview that he intended to have the debt paid off by April 2019. (Item 4 at 2) (The \$1,787 tax lien itself is not alleged under Guideline F, though Applicant's failure to report the sales tax when he registered the car is alleged as part of SOR ¶ 2.a).

In responding to the FORM, Applicant apologized for his lack of honesty on his SCA, calling it "dumb and unprofessional." He wants to stay at his current employer for the rest of his career. Applicant openly admitted falsifying his responses and expressed regret for having done so.

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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(a), 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 access to classified information 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. Under Directive ¶ E3.1.15, 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.

## **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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are 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; and

(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: . . . (3) a pattern of dishonesty or rule violations.

Applicant was fired from the supermarket job in about May or June 2016, after he failed to appear for work one day. Though he attempted to dispute the matter with the supermarket's HR department at the time, he knew he had been fired. Shortly thereafter, he prepared a DFE in connection with his next job, on the Air Force base. He failed to disclose his termination on that form in response to a direct question that asked for its disclosure. AG ¶ 16(a) applies to SOR ¶ 1.a, since the DFE is a form "used to determine employment qualifications."

In November 2017, Applicant submitted an SCA in connection with his current job. This time, he reported the termination, but reported that he had “quit [the] job after being told [he] would be fired.” This, too, was a falsification, as Applicant admitted during his background interview that he knew he had been fired, yet still underreported what had happened because he feared it might impact his eligibility for a clearance. AG ¶ 16(a) applies to SOR ¶ 1.b.

Applicant also deliberately failed to disclose his single use of marijuana on his SCA, which he acknowledged withholding for the same reason. AG ¶ 16(a) applies to SOR ¶ 1.c.

When Applicant purchased a car at some point in 2017, he deliberately falsified the registration paperwork by underreporting (or failing to report) the sales tax owed. This was an act of questionable judgment, lack of candor, and dishonesty, under the general personal conduct security concern set forth in AG ¶ 15. When combined with the established instances of falsification (SOR ¶¶ 1.a-1.c, 1.e), AG ¶ 16(d)(3) is also established as a pattern of dishonesty.

Applicant also failed to disclose on his SCA that he had failed to pay the required sales tax on the car, in answer to the question, “[i]n the last seven (7) years, have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?” He acknowledged that his answer to this question, too, was false. AG ¶ 16(a) applies to SOR ¶ 1.e.

AG ¶ 17 sets forth the applicable mitigating conditions under Guideline E:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken 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.

There is insufficient evidence that Applicant made prompt good-faith efforts to correct his multiple deliberate omissions before being confronted about them in his background interview. AG ¶ 17(a) does not apply.

Applicant’s actions constitute a series of instances of poor judgment and lack of candor. He deliberately failed to fully disclose information about a recent job termination, a recent instance of marijuana use, and a recent deliberate underreporting of a sales tax

obligation. Only one of these instances (the under-reporting of the sales tax obligation) was alleged as an independent security concern. Applicant's false statements about those instances, however, were repeated and multiple. As a result, AG ¶¶ 17(c) and (d) do not fully apply, though Applicant admitted his behavior, expressed his regret, indicated he has learned from his mistakes and indicated he will not repeat them.

## **Guideline F, Financial Considerations**

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.<sup>1</sup>

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations;
- (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 financial breaches of trust; and
- (g) . . . failure to pay annual Federal, state or local income tax as required.

SOR ¶ 2.a cross-alleges, as a separate financial considerations security concern, "That information set forth in subparagraphs 1.d and 1.e, above." Both SOR ¶¶ 1.d and 1.e cite, and relate to, Applicant's falsification of the state registration documents by underreporting (or failing to report) the true sales tax on his newly purchased vehicle.

SOR ¶ 1.d, however, alleges *Applicant's falsification* about that act on his SCA – *not the act itself*. Falsification of an SCA, even falsification of an answer to a financial

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<sup>1</sup> See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).



question on an SCA, is a personal conduct security concern, and not a financial one. It is more properly, and in this case was, alleged under Guideline E. No Guideline F disqualifying conditions apply to SOR ¶ 1.d, as cross-alleged in SOR ¶ 2.a.

This leaves SOR ¶ 1.e, as cross-alleged in SOR ¶ 2.a. In the Government's FORM, Department Counsel cites AG ¶ 19(d) as applicable, but does not explain why. I conclude that Applicant's falsification of vehicle registration documents in order to avoid paying sales tax on his newly purchased vehicle, while a deliberate attempt to avoid paying sales tax, does not constitute an "intentional financial breach of trust" like those acts listed in AG ¶ 19(d) or otherwise contemplated by it.

AG ¶ 19(g) might otherwise be potentially applicable, but the text of the disqualifying condition addressed only income tax, not sales tax. Thus, AG ¶ 19(g) does not technically apply. Lastly, the fact of the debt itself (the unpaid \$1,787 state sales tax, which led to a state tax lien), is not alleged under Guideline F. Thus, regardless of the size of the debt, which here is relatively small, AG ¶¶ 19(a) and 19(c) do not apply.

Since no disqualifying conditions under Guideline F apply, I need not address applicability of any mitigating conditions, under AG ¶ 20.

### **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(a), 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 Guidelines E and F in my whole-person analysis.

Applicant made several false statements on his security clearance application and made a false statement on an earlier government form in an effort to paint himself in a better light. He acknowledged what he did and regrets his actions. But, the fact that this

case involves multiple falsifications and instances of poor judgment is difficult to overcome. I also did not have the opportunity to assess Applicant's demeanor and weigh his credibility since this case is decided on the written record. Applicant is a young man, who now perhaps has a better understanding of the need to be fully candid with the Government in the security clearance application process. However he needs more maturity and growth before he can establish himself as a stronger candidate for eligibility for access to classified information. He has failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that while financial considerations security concerns are not established, Applicant did not provide sufficient information to mitigate personal conduct security concerns.

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

### **Conclusion**

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

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Braden M. Murphy  
Administrative Judge