



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



In the matter of: )  
)  
) ISCR Case No. 20-01378  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

08/10/2021

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 17, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct. Applicant responded to the SOR on April 26, 2021, and requested a hearing before an administrative judge. The case was assigned to me on July 21, 2021. The hearing was convened as scheduled on July 26, 2021.

**Procedural and Evidentiary Rulings**

**Evidence**

Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection.

## **Motion to Amend SOR**

Department Counsel's motion to amend the SOR by adding an allegation under Guideline E was granted over Applicant's objection. The new allegation is as follows:

h. From about 2015 to 2016, you provided more than \$100,000 to a woman for a business venture, without due diligence, business documentation, or accounting.

### **Findings of Fact**

Applicant is a 48-year-old employee of a defense contractor. He has worked for his current employer since 2017. He served on active duty in the U.S. military from 1994 until he was honorably discharged in 1996. He has a bachelor's degree that was awarded in 1999 and a master's degree that he earned in 2007. He has never married, and he has no children. (Transcript (Tr.) at 15, 17, 38-39; Applicant's response to SOR; GE 1; AE B)

Applicant has a problematic history, primarily related to the workplace. He also had legal and financial issues. He worked for a state government in information technology (IT) from 2002 through 2008. He was placed on administrative leave from about December 2007 until he was terminated in about February 2008. Applicant felt that he was wrongfully terminated. He stated that he was sexually harassed by a supervisor, and that his suspension and termination could have been related to his rebuffs of his supervisor. Applicant retained an attorney to file a wrongful termination case, but he decided not to pursue it after he was hired at another job. (Tr.at 18-21; Applicant's response to SOR; GE 1, 2) He wrote in his Questionnaire for National Security Positions (SF 86):

The issue of wrongful termination stemmed from a day I was out sick and the supervisor gave an office, which he promised to give to me on multiple occasions, to a person who had only been with us a month or so, I moved my stuff into the office and put her stuff into my old office. The following Monday I was told to move my stuff back or else, so I complied with the request. Some things were said and the next thing I know I am getting an administrative leave letter which does not even state why I am being put on leave.

Applicant worked for a defense contracting company from 2009 until he was terminated in 2015. He received a verbal warning in April 2014 for his attendance and unprofessional behavior. He received a written warning in June 2014 for continued attendance issues and for a verbal disagreement that resulted in the customer's request to have Applicant temporarily removed from the facility. The written warning also stated that Applicant openly criticized management, used profanity, and made inappropriate comments. (Tr. at 22; Applicant's response to SOR; GE 1-3)

Applicant received a final written warning in July 2014. He had an inappropriate dialogue with the company's customer by criticizing their decision about his training. He was terminated in March 2015 after he sent an inappropriate email to a military service member using his military email account, in which he asked the service member for a date. (Tr. at 22-27; Applicant's response to SOR; GE 1-3)

Applicant stated that he worked for the company for six years, and he had a good record at the company for five years, until he received a new manager who was not very professional. Applicant stated that there were "personality conflicts" with the new manager. He stated that his attendance was always good. He admitted sending the email to the service member, but he stated that he just asked her to lunch, and there was nothing rude or inappropriate about the email. (Tr. at 22-27; Applicant's response to SOR; GE 1, 2)

Applicant worked for a company from about June 2016 to August 2016. He received a written warning in July 2016 for a misconfigured production server. Applicant stated that his supervisor did not provide him with guidance on the correct configuration of the server. Applicant was arrested for driving while intoxicated (DWI) in August 2016. He was still a probationary employee, and he was terminated after he reported the DWI to his employer. He stated that he stopped drinking after the DWI. (Tr. at 27-28, 38; Applicant's response to SOR; GE 1, 2)

Applicant met a woman in 2015. She suggested they be just friends and go into business together selling items that were manufactured in China. He still had feelings for her and agreed. He signed an agreement, but she did not. He withdrew funds from his 401(k) retirement account and gave her money. She convinced him that she needed to move to a larger metropolitan area to sell her goods. He paid her rent \$3,600-per-month rent and also paid for a trip to Europe for her to sell her goods. Applicant finally realized that she was a con artist, and he had been scammed of about \$100,000. (Tr. at 30-37; GE 2)

Applicant did not pay the IRS and his state all the taxes owed when he withdrew the funds from his 401(k). For tax year 2015, he owed \$41,315 in federal taxes, and his withholding was \$9,665, leaving a balance in excess of \$31,000. The IRS applied \$3,904 from his 2016 refund and \$2,528 from his 2017 refund to the amount owed for 2015. The IRS accepted Applicant's offer in compromise. He paid \$19,000 in January 2017, and the IRS wrote off the balance of \$8,821 in June 2018. (Tr. at 37-40; GE 1, 2)

Applicant also accrued more than \$35,000 in credit card and other debt. He filed a Chapter 7 bankruptcy case in January 2017, and his debts were discharged in April 2017. He stated that his finances are currently in good shape. (Tr. at 35-37; GE 1, 2)

Applicant does not believe he is a security risk. He asserted that his security clearance should not be denied "based solely on a few bad bosses." He stated that he has always been diligent about protecting sensitive information, and he is highly regarded by his current employer, where he has worked for four years. (Tr. at 48-50; Applicant's response to SOR; GE 2)

Applicant submitted submitted documents and letters from high school, his time in the military, when he worked for the employers that terminated him in 2008 and 2015, and at his current employment. He is praised for his excellent work performance, moral character, friendly and calm demeanor, courtesy, dedication, work ethic, and professionalism. He was described by his supervisor in 2013 as “an ideal employee.” (AE A)

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, 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(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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

The security concern for personal conduct is set out in AG ¶ 15, 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 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. The following disqualifying conditions are potentially applicable:

(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, unwillingness 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, consideration 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 three jobs, all related to some type of inappropriate conduct. His conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG §§ 16(d) and 16(e) are applicable to the workplace misconduct. AG § 16(c) also has some applicability to the job he lost because of the DWI, because the DWI could have been alleged under the alcohol consumption and criminal conduct guidelines.

SOR § 1.b alleges that Applicant received a written warning for a misconfigured production server. Applicant stated that his supervisor did not provide him with guidance on the correct configuration of the server. There is insufficient evidence that the warning was related to Applicant's misconduct as opposed to his competence to do his job, at least in that specific instance. Being incompetent at one's job may be a problem for an employer, but it is not enough to raise a personal conduct security concern. SOR § 1.b is concluded for Applicant.

SOR §§ 1.d, 1.e, and 1.g allege that Applicant was placed on administrative leave or received a written warning for inappropriate conduct in the workplace. SOR §§ 1.c and 1.f allege that Applicant was fired because of inappropriate conduct. The allegations that he was fired include the underlying conduct alleged in the other allegations. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR §§ 1.d, 1.e, and 1.g are concluded for Applicant.

The essence of SOR § 1.h is that Applicant was scammed by a woman out of more than \$100,000. Being a victim of a con means that a person may be gullible, but it would not ordinarily raise personal conduct security concerns. However, Applicant's actions to fund the enterprise raise concerns. He was so enamored with the woman that he was willing to ignore his fundamental requirement to pay his taxes. He also overextended himself financially to the point that he had to file a bankruptcy case in 2017. He showed questionable judgment and an unwillingness to comply with rules and regulations, and it is strong evidence that he is vulnerable to exploitation, manipulation, and duress. AG §§ 16(d) and 16(e) are applicable to the conduct alleged in SOR § 1.h.

AG § 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant stated that there were “personality conflicts” at work; he was a good employee; and that his security clearance should not be denied “based solely on a few bad bosses.” He also admitted that he moved a coworker’s belongings out of an office and moved into the office without permission, and then “[s]ome things were said”; he sent an inappropriate email to a military service member using his military email after two written warnings about his conduct; and he was terminated because of his poor decision to drive after drinking. Finally, Applicant showed that he can be manipulated into violating a fundamental legal requirement to pay his taxes. Applicant is vulnerable to coercion, exploitation, and duress. His behavior continues to cast doubt on his reliability, trustworthiness, and good judgment. The above mitigating conditions are not applicable.

### **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 relevant 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 have incorporated my comments under Guideline E in my whole-person analysis. I also considered Applicant’s honorable military service and favorable character evidence, but those factors were outweighed by Applicant’s multiple incidents of poor judgment.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge