



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-00318
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

06/10/2022

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**Decision**

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COACHER, Robert E., Administrative Judge:

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

**History of the Case**

On June 4, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct. The DOD acted 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.

On June 21, 2021 Applicant answered the SOR. A notice of hearing was sent to Applicant on October 29, 2021, setting the hearing for January 11, 2022. This hearing was convened as scheduled using video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Department Counsel’s exhibit list and discovery letter were marked as hearing exhibits (HE) I-II. Applicant testified at the hearing, and offered exhibits (AE) A-M, which were

admitted without objection. Applicant exhibit index was marked as HE III. The record closed at the conclusion of the hearing. The Defense Office of Hearings and Appeals (DOHA) received the hearing transcript (Tr.) on January 20, 2022.

### **Findings of Fact**

In his SOR answer, Applicant admitted all six SOR allegations with explanations. (SOR ¶¶ 1.a-1.f) However, he denied intentionally falsifying information on his August 2019 security clearance application (SCA), which essentially constitutes a denial of SOR ¶ 1.a and will be treated as such. His admissions are incorporated as a finding of facts. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 36-year-old employee of a federal contractor. He began working at his present job in August 2019. He is currently a senior engineer. He has an associate degree and is a few hours shy of obtaining his bachelor's degree. He enlisted in the Marine Corps in 2005 and served on active duty until 2017 when he separated with an honorable discharge. In 2019, he was placed on the Marine Corps permanent disability retired list with a disability rating of 30 percent. He served two combat deployments as a tank crewman to Iraq in 2007, and Afghanistan in 2011. He was also disciplined twice for violations under the Uniform Code of Military Justice (UCMJ) when he accepted nonjudicial punishment (NJP) from his commander in 2010 and 2015 (the 2010 NJP is not alleged in the SOR and I will not consider that information for disqualification purposes, however, I may consider it to assess Applicant's credibility, in determining the applicability of any mitigating conditions, and in considering the whole-person factors). (Tr. 21-22, 25-26, 32-33, 38-39, 44-45; GE 1-3, AE B, D, M)

Applicant has been married for 12 years and he has three minor children, ages 10, 7, and 5. His wife is a currently a student. Applicant's current income is approximately \$98,000 yearly. He receives a Department of Veterans Affairs (VA) disability pension of approximately \$2,400 monthly based upon a 90 percent disability rating. Applicant testified that his disability rating is based upon his diagnosed post-traumatic stress disorder (PTSD). He did not produce medical records indicating that he was diagnosed with PTSD. (Tr. 22-23, 34-35, 66; AE M)

The SOR alleged that Applicant: (1) deliberately failed to disclose that he had a security clearance revoked in 2008 when completing his August 2019 SCA; (2) was fired from his position at a state probation agency in April 2019 for having sexual relations with a female coworker while in a training status; (3) lied to his wife about the reason he was fired from his state probation position (see (2) above), falsely telling her it was because he got drunk and belligerent during the April 2019 training; (4) was fired from his position at a state department of correctional services in June 2018 for giving a fellow student a test answer during training; (5) received NJP in February 2015 on the charges of failing to obey an order or regulation, making false official statements, and committing adultery; and (6) lied to his wife and command and created fraudulent documents in an attempt to conceal his adulterous relationship with another Marine, for which he received NJP as described in (5) above. (SOR ¶¶ 1.a – 1.f).

**SOR ¶ 1.a:** In August 2019, Applicant completed an SCA. In section 25 of the document he was asked if he ever had a background investigation and/or been granted a security clearance. He answered “yes.” Later in the SCA, under the same section, he was asked, “Have you **EVER** had a security clearance eligibility/access authorization denied, suspended, or revoked.” (emphasis in the original) Applicant answered “no” to this question. The Government’s evidence included documents showing that in January 2008, Applicant was issued a letter of intent to revoke his security clearance and a final revocation letter was issued to Applicant in June 2008. Applicant testified that he was aware of the 2008 revocation at the time he completed his August 2019 SCA. His explanation for answering “no” to the question was he thought the question was only asking him about whether he had a revocation within the last ten years. When he was specifically asked about the word “EVER” in the question, he responded that he must have skipped over the word when he was reading the question. I do not find Applicant’s explanation credible, given the plain language of the question and Applicant’s experience and background. (Tr. 25-26, 40, 42-43; GE 1-2, 4-5)

During his background interview in November 2019, he was again asked by the investigator about whether he had previously had his security clearance revoked and he again denied it. He was then confronted with the previous revocation information and he claimed he did not recall the incident. (the November 2019 false statement to the investigator is not alleged in the SOR and I will not consider that information for disqualification purposes, however, I may consider it to assess Applicant’s credibility, in determining the applicability of any mitigating conditions, and in considering the whole-person factors) (Tr. 25-26, 40, 42-43; GE 1-2, 4-5)

**SOR ¶ 1.b:** In 2019, Applicant was employed by a state agency as a drug technician. In April 2019, he attended an out-of-town three-day training opportunity with other coworkers. They stayed at a hotel while attending the training. At the hotel, Applicant was given a room with a male roommate. On one of the days after the training session, Applicant went out for drinks with a female coworker. They eventually went to Applicant’s room where they engaged in sexual relations. Applicant’s roommate was present when this occurred. Applicant’s actions came to the attention of his superiors and he admitted his conduct. He was fired from his position. (Tr. 27-28, 54-55, 70; GE 1-2)

**SOR ¶ 1.c:** Applicant admitted that he lied to his wife about the reason for his April 2019 firing. He told his wife that he was fired because during the training he got drunk and belligerent. He continued with the lie until February 2021 when he claimed that he told her the truth about why he was fired. He waited so long to tell the truth because he was afraid he would lose his family if he did so. His wife provided an affidavit in support of him. His current supervisors are unaware of this incident. (Tr. 28, 55, 58, 62; GE 2; AE J)

**SOR ¶ 1.d:** In June 2018, Applicant was working as an intern at a state agency. As part of his training he and other employees took a knowledge test. During the test, another employee/intern asked Applicant for help and Applicant gave the person the answer to a test question. The supervisory chain of command became aware of the

incident and questioned Applicant who admitted to giving the answer to the other person. Because he was an intern, he was fired for his action. (Tr. 32, 53; GE 1-2)

**SOR ¶¶ 1.e and 1.f:** Both these allegations arise out of the same underlying conduct. Therefore, I will find in favor of Applicant concerning SOR ¶ 1.e because it described the administrative consequences that Applicant received as a result of the underlying actions described by SOR ¶ 1.f. In 2015, when Applicant was still enlisted in the Marine Corps, he had a two-month adulterous affair with another Marine. He was physically separated from his wife at the time. In order to deceive both his command and his wife, he created false medical records to show that he was hospitalized over a certain timeframe. In actuality, he was spending that time with the Marine with whom he was having an affair. Applicant's deceitful action was discovered and he was confronted by his command about it on two occasions. He continued to deny any wrongdoing. He finally admitted his deceitful and illegal actions when he accepted NJP from his command in February 2015. (Tr. 45-46, 49; SOR answer)

Applicant testified that after his 2015 adulterous affair, he and his wife attended couples' therapy for about a year. He stated that he told his wife about the affair after they started the therapy. He also testified that he had some individual therapy in 2017 for about one year. He became aware of his PTSD in 2018. (Tr. 50-51, 63-64)

Applicant testified that he and his wife starting attending a couples' therapy workshop in October 2021. He presented documentation showing the virtual sessions with a VA Chaplain. He claimed that he and his wife are continuing with these workshops. He also testified that he began attending individual therapy through the VA in February 2021. He has weekly sessions with a therapist and talks with a psychiatrist every few months to regulate his medication for PTSD. He related that his PTSD arises from several events he witnessed during his combat deployments. These events included witnessing death and injury to fellow Marines and local children. He claimed that because of this recent therapy and being on medication, he is a changed person and he will not engage in similar bad behavior in the future. He also has better communication lines with his wife. (Tr. 28-30,36-37, 66, 72; AE C)

Applicant received numerous awards and decorations for his Marine Corps service, including a Navy and Marine Corps Achievement Medal, two Good Conduct Medals, and a Combat Action Ribbon. His 2021 work appraisal indicated that he "meets expectations" in all categories. He has received acknowledgments by his employer for his contributions to the company's overall mission. (AE E-H)

### **Policies**

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 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(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 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.

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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 personal conduct security concern:

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 in this case. 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;

(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 person may not properly safeguard protected 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 other government protected information;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; 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 's explanation that he answered "no" to the question about whether he ever had a security clearance revoked because he missed the word ever and thought it was asking only about the last 10 years is not credible given his age, experience, and the plain language of the question. AG ¶ 16(a) applies to SOR ¶ 1.a.

The established facts concerning the remaining allegations all demonstrate Applicant's questionable judgment, unreliability, lack of candor, and an unwillingness to comply with rules and regulations. In 2015 he lied and deceived his wife and the Marine Corps about having an affair with another Marine. In 2018 he failed to follow his employer's rules and compromised a test-taking situation that resulted in his termination. In April 2019, he once again showed poor judgment by having sex with a coworker during a training conference, which resulted in his termination. He then lied to his wife as to the reason for his firing and continued to conceal the truth from her for almost two years. His current chain of command is unaware of his past deceitful conduct. AG ¶ 16(c) is not perfectly applicable because Appellant's conduct as to SOR ¶ 1.f is sufficient for an adverse determination under the criminal conduct guideline. However, the general concerns about questionable judgment and an unwillingness to comply with rules and regulations contained in AG ¶¶ 15 and 16(c) are established. Applicant's multiple incidents of failing to follow his employer's rules (e.g., the Marine Corps and two state agencies) and his numerous occasions of lying and engaging in deceitful conduct make both AG ¶¶ 16(d) and 16(e) applicable.

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

(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

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

Applicant actions were not minor nor infrequent. Insufficient time has passed to determine if Applicant has changed his behavior. While there is some evidence that Applicant acknowledged his bad behavior and has received some counseling, there is insufficient evidence to determine that the circumstances contributing to his untrustworthy and unreliable behavior no longer exist, or that such behavior is unlikely to recur. This is particularly true since there are no treatment records to document his clinical progress related to PTSD. AG ¶¶ 17(c) and 17(d) do not apply. While Applicant

finally told his wife the truth concerning both the 2015 adultery and the 2019 adultery and firing, his prolonged delay in each case placed him in a position of vulnerability. AG ¶ 17(e) has minimal application.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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.

I considered Applicant's military service, including his multiple combat deployments, his awards and decorations, his VA disability rating, his civilian job appraisal and other recognition, and his family situation. However, I also considered that he lied, deceived, and failed to follow established rules on multiple occasions. He also engaged in attempts to cover-up his actions. Additionally, he deliberately falsified material information on his 2019 SCA.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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
Subparagraphs: 1.a – 1.d:	Against Applicant
Subparagraph: 1.e:	For Applicant



Subparagraph: 1.f:

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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge