



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-01846
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

February 15, 2023

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On March 29, 2016, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 3.) On April 6, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline E, Personal Conduct. The action was taken under Executive Order 10865 (EO), *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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on April 25, 2022. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) On July 28, 2022, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing four Items, was mailed to Applicant and received by him on August 29, 2022. The FORM notified

Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no response to the FORM. Applicant did not object to Government Items 1 through 4, and they are admitted into evidence, referenced hereinafter as Government Exhibits 1 through 4.

### **Findings of Fact**

Applicant is 30 years old. He is not married and has no children. He has a high school diploma and some on-line college courses. He holds the position of Security Specialist. He is seeking to obtain a security clearance in connection with his employment.

#### **Guideline E – Personal Conduct**

The Government alleged that Applicant is ineligible for a clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information.

The SOR alleges that Applicant engaged in multiple instances of workplace misconduct between 2011 and 2017, and that he deliberately falsified his security clearance application dated March 2016, to conceal this misconduct. Applicant admits each of the allegations set forth in the SOR.

In October 2015, during his probationary period, Applicant was terminated from his employment at the Department of Defense. Applicant was terminated for deliberately falsifying his time card and abusing his telework agreement. He is not eligible for rehire.

On numerous other occasions, Applicant has violated company policies and procedures in various ways. From 2011 to 2017, Applicant received both written and verbal warnings on eight different occasions from four different employers for disregarding time and attendance policies and for not staying at his assigned workplace.

In June 2017, Applicant received a written warning from his employer at the Pentagon for not informing his supervisor that he was taking leave.

In June 2017, Applicant received a verbal warning from his employment at the Pentagon for committing a security violation, (which he did not self-report) when he failed to escort a visitor back to the visitor's center security desk.

1.e. Applicant completed a security clearance application dated March 29, 2016. In response to Section 13A, Employment Activities, Employer Reason 3 for Leaving Question stated "For this employment have any of the following happened to you in the last seven years?" Received Discipline or Warning. For this employment, **in the last**

**seven years**; received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?” Applicant answered, “NO.” He deliberately failed to disclose the information set forth above.

1.f. Section 13A, of the same security clearance application, under Employment Activities, Employer 4 at Defense Pentagon Reason for Leaving Question stated, “For this employment have any of the following happened to you in the last seven years?” Fired from a Job? Quit after being told you would be fired? Have you left a job by mutual agreement notice of unsatisfactory performance? And/or Received Discipline or Warning. For this employment, **in the last seven years**; received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?” Applicant answered, “NO.” He deliberately failed to disclose the information set forth above.

1.g. Section 13A, of the same security clearance application, under Employment Activities, Employer 5 at Defense Pentagon Reason for Leaving Question stated, “For this employment have any of the following happened to you in the last seven years?” Fired from a Job? Quit after being told you would be fired? Have you left a job by mutual agreement notice of unsatisfactory performance? And/or Received Discipline or Warning. For this employment, **in the last seven years**; received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?” Applicant answered, “NO.” He deliberately failed to disclose the information set forth above.

1.h. Section 13A, of the same security clearance application, under Employment Activities, Employer 6 Reason for Leaving Question stated, “For this employment have any of the following happened to you in the last seven years?” Fired from a Job? Quit after being told you would be fired? Have you left a job by mutual agreement notice of unsatisfactory performance? And/or Received Discipline or Warning. For this employment, **in the last seven years**; received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?” Applicant answered, “NO.” He deliberately failed to disclose the information set forth above.

1.i. Section 13A, of the same security clearance application, under Employment Activities, Employer 7 Reason for Leaving Question stated, “For this employment have any of the following happened to you in the last seven years?” Fired from a Job? Quit after being told you would be fired? Have you left a job by mutual agreement notice of unsatisfactory performance? And/or Received Discipline or Warning. For this employment, **in the last seven years**; received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?” Applicant answered, “NO.” He deliberately failed to disclose the information set forth above.

Applicant explained that he mishandled his security clearance when he was younger, and he took advantage of it in the wrong way. He realizes that he should not

have lied on the security clearance application. He believes that he has matured and grown since this behavior last occurred. He admits that he engaged in a pattern of irresponsible, unreliable, and untrustworthy behavior. He admits that he violated company policies and procedures. This misconduct was documented by several of his past employers and shows Applicant's unreliability. Applicant stated that he has struggled with immaturity, lack of integrity, and poor judgment.

Letters of recommendation submitted on Applicant's behalf attest to his recognized talent, character, and leadership abilities. He is described by those who know him as professional, confident, great motivator, team player, and leader. He is known to strive hard to deliver excellence at the highest level. He is highly recommended for any position available to him. (Attachments to Applicant's Answer to SOR.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

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

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. 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 clearance 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 as to 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 relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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 guideline notes several conditions that could raise security concerns under AG ¶ 16. Three are potentially applicable in this case:

(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 while-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; 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:

(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) a pattern of dishonesty or rule violations;

(3) evidence of significant misuse of Government or other employer's time or resources;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment.

Applicant has a history of violating company policies and procedures in the workplace. His misconduct demonstrates a pattern of immaturity, dishonesty, and rule violations. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

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

(b) the refusal or failure to cooperate, omission or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

(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.

Although some of the information in the record is quite dated and may have changed, the Applicant's history of misconduct that occurred at his previous places of employment remains factual, relevant, and most concerning. None of the mitigating conditions apply. A security clearance is a privilege and not a right. To be found eligible, it must be clearly consistent with the national interests to grant or continue a security clearance. The decision must be made in accordance with the DoD Directive and its guidelines. Based upon the information presented, from 2011 to at least 2017, while possessing a security clearance, Applicant established a pattern of violating company policies and procedures, and ignored security rules and regulations at various places of employment. While on probation working for the Department of Defense, he was terminated for this misconduct. Furthermore, in 2016, he deliberately lied to the Government on his security clearance application in an effort to conceal his misconduct. His character and integrity remains highly questionable. His pattern of misconduct was egregious and shows poor judgment, unreliability, immaturity, and untrustworthiness, which prevents him from being eligible for access to classified information. The Personal Conduct guideline is found against Applicant.

### **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 considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.e.	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge