



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-00418
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

06/06/2023

\_\_\_\_\_

**Decision**

\_\_\_\_\_

DORSEY, Benjamin R., Administrative Judge:

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

**Statement of the Case**

On April 1, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E (personal conduct). Applicant provided responses to the SOR (Answer) on April 30, 2022 and May 25, 2022, and requested a hearing before an administrative judge. The case was assigned to me on March 14, 2023.

The hearing was convened as scheduled on May 18, 2023. I admitted Government Exhibits (GE) 1 through 3 without objection. At the hearing, Applicant testified but did not provide documentary evidence. I received a transcript (Tr.) of the hearing on May 25, 2023.

## Findings of Fact

Applicant is a 67-year-old employee of a government contractor for whom he has worked since August 2020. He married in 1980 but divorced in 1999. However, he has lived with his ex-wife as a co-habitant since 2000. He has an adult child and an adult stepchild. He earned an associate degree in 1988 and has also earned technical certifications. He served on active duty with the Army from 1975 until 1978 and on active duty with the Navy from 1980 until 1988. He earned an honorable discharge from both branches. (Tr. 26-31, 34; GE 1, 2)

Applicant has a long and consistent history of failing to abide by established laws, rules, and regulations. In April 1975, he was driving while intoxicated. He was arrested and convicted of driving under the influence of alcohol (DUI). In November 1985, he was charged with resisting arrest. A court dismissed this charge. Despite being required to do so, he did not divulge the 1975 DUI arrest on the Questionnaire for National Security Positions (SF 86) he submitted in July 2020. He did not volunteer the 1975 DUI arrest before the DOD investigator confronted him with it during his August 2020 security interview. (Tr. 30-40; Answer; GE 1-3)

In July 1986, Applicant was arrested and charged with aggravated assault. A court convicted him of the lesser charge of reckless conduct. The court sentenced him to six months of probation. In December 1987, he was arrested and charged with aggravated assault and resisting officer-evading arrest. The court convicted him of both charges and sentenced him to 12 months of probation. Applicant claimed that the July 1986 and December 1987 arrests listed on his FBI criminal history sheet are inaccurate. He claimed that he was only arrested in July 1986, and that the charges listed from his 1986 and 1987 arrests stem from the same incident. He claimed that, during the July 1986 incident, he merely shut the door to his home not realizing that a police officer was right behind him. He claimed that someone called the police because he and his wife were having an argument. He denied that he was arrested or that he committed a crime in December 1987. (Tr. 30-34, 40-43; Answer; GE 1-3)

Contrary to Applicant's claim of not being arrested in December 1987, during his cross-examination, he acknowledged that arrest. He claimed that he and his brother-in-law fought one another, the police arrested him for public intoxication, and then beat him when he put his watch back on so he could see what time it was. Also, during his testimony, he claimed that he could not remember these incidents because it was so long ago. I find his explanations about these arrests to be inconsistent at best and dishonest at worst. (Tr. 30-34, 40-43; Answer; GE 1-3)

In July 1996, Applicant was involved in a bar fight. He claimed that a person that he was playing pool with became angry about the outcome of their game and started a fight. Applicant claimed that he hit his alleged assailant in self-defense. He hit him while holding a knife in his hand but claimed that he did not stab him. Applicant was arrested and charged with assault with a deadly weapon other than a firearm and exhibiting a deadly weapon other than a firearm. A court found him guilty of these charges and sentenced him to 180 days in jail and 3 years of probation. (Tr. 43, 45; Answer; GE 1-3)

In May 2008 Applicant was driving while intoxicated. Police arrested him and charged him with DUI. He pleaded no contest to the charge. The court convicted him of DUI and sentenced him to 14 days in jail. Despite being required to do so, he did not divulge this arrest on his SF 86. He did not volunteer this arrest before the DOD investigator confronted him with it during his August 2020 security interview. (Tr. 35-40, 45-46; Answer; GE 1-3)

In September 2014, Applicant was driving while intoxicated. Police arrested him and charged him with DUI. He claimed that police gave him a breathalyzer test when he was arrested, and that the result of the test was a .08 blood alcohol content (BAC). A court convicted him of DUI, sentenced him to one year in jail (part of which was suspended and part of which he served on work-release), placed him on probation for two years, and ordered him to perform 96 hours of community service. The court also ordered him to install an ignition interlock device on his vehicle and to take an eight-week alcohol education class. He claimed that he took the class, but he could not remember the title of the class or where it was located. He also claimed that he took a year of court-mandated alcohol-related counseling and was subject to urinalysis. He claimed that he has not consumed any alcohol since he was arrested for this DUI. Despite being required to do so, he did not divulge this arrest on his SF 86. He volunteered this arrest to the DOD investigator during his August 2020 security interview before he was confronted. (Tr. 35-40, 46-47, 51-52; Answer; GE 1-3)

In about September 2015, Applicant's employment was terminated by Company A because of his 2014 DUI. He did not divulge this termination on his SF 86, despite being required to do so. Instead, on his SF 86, he claimed that he had retired from Company A. Applicant did not volunteer this termination before the DOD investigator confronted him with it during his August 2020 security interview. He claimed that he did not list this termination due to oversight. He sued Company A for wrongful termination, lost his claim in arbitration, and then lost again on appeal to a court of competent jurisdiction. Given his lawsuit acknowledging that he had been terminated, I find that he was being intentionally untruthful when he claimed on his SF 86 that he had retired from Company A. (Tr. 35-36, 49-51; GE 1, 2)

In December 2019 and February 2020, Applicant's then-employer (Company B) disciplined him for violations of their workplace policy. One of these violations, which involved not securing a tool, was alleged to have caused an accident. He also failed to properly undergo required training. In March 2020, Company B terminated him for these workplace violations. During his testimony, he claimed he is not sure why he was fired because Company B did not give him "the paper." Despite being required to do so, he did not divulge this employment termination on his SF 86. He did not volunteer this employment termination before the DOD investigator confronted him with it during his August 2020 security interview. Instead, on his SF 86, he wrote that he left this employment with Company B because his contract ended. He also told the DOD investigator that he failed to list this termination because of oversight. During his cross-examination, he testified that he did not list this termination on his SF 86 because he had also been fired by two additional employers, and he did not divulge those

terminations, either. This makes no sense and I find that he was being intentionally untruthful when he claimed on his SF 86 that he left employment with Company B because his contract ended. (Tr. 47-48; Answer; GE 1, 2)

As a result of this termination, Applicant was required to surrender his site badge that allowed him access to the airport where he worked for Company B. Instead of surrendering his badge, in about March 2020, he improperly used it to attempt to gain entry to a restricted area in the same airport to attend a job interview for another employer. Airport security denied him entry and attempted to confiscate his site badge, but Applicant refused to surrender it because he thought he had to surrender it to another individual. During cross-examination, he claimed that he did not realize that his badge was no longer valid and that he was not aware of the policy that required him to turn in his site badge once he had been terminated. (Tr. 48-49; Answer; GE 2)

Applicant claimed that he filled out his SF 86 to the best of his ability and that it took him a week to complete. He also claimed that he contacted his employer's security officer for advice on properly completing it. (Tr. 35-38)

In the SOR, the Government alleged Applicant's aforementioned arrests and convictions (SOR ¶¶ 1.a through 1.g) and his termination from Company B for workplace violations (SOR ¶ 1.h). It also alleged his failure to surrender his invalid site badge when he was terminated by Company B, and his use of this invalid badge to attempt to access a restricted area (SOR ¶ 1.i). It alleged his failures to divulge his termination from Company B and Company A on his SF 86 (SOR ¶¶ 1.j and 1.k). Finally, it alleged his failure to divulge his 1975, 2008, and 2014 DUI arrests and convictions on his SF 86 (SOR ¶ 1.l).

### **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:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(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.

Applicant engaged in many instances of criminal behavior over a sustained period of time. He has also been fired from a job for violations of its policies, and he attempted to use an invalid badge to gain access to a secured area. AG ¶ 16(c) is established.

Applicant did not divulge several of his arrests and terminations from employment on his SF 86 despite being required to do so. His explanations and excuses for not divulging this information are inconsistent and defy logic. He deliberately omitted this information from his SF 86. AG ¶ 16(a) is established with respect to his omissions.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

(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;

(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 has a long and sustained history of not abiding by established laws, rules, and regulations. That history is properly substantiated by his admissions and an

FBI criminal history sheet. He deliberately omitted derogatory information from his SF 86, and he also listed inaccurate information with respect to why two employers terminated him. I found his excuses and explanations for his actions to be inconsistent, to defy logic, and to be untruthful. He has not been candid or forthcoming throughout his clearance application process, including during his hearing. The only mitigating factor that applies is AG ¶ 17(a), and that only applies to his volunteering his 2014 DUI before being confronted by the DOD investigator during his security interview. Given his overall conduct, this instance of correcting one of his omissions does not provide sufficient evidence of mitigation. None of the Guideline E mitigating factors fully apply.

### **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 have also considered Applicant's military service.

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-1.i:	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.

---

Benjamin R. Dorsey  
Administrative Judge