



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



In the matter of: )  
)  
) ISCR Case No. 23-00262  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

12/06/2023

**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 March 1, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct. On April 21, 2023, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on July 28, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded thirty days from receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on August 4, 2023, but did not respond to the FORM. The case was assigned to me on November 9, 2023. The Government exhibits included in the FORM (Items 1-7) are admitted in evidence without objection.

## Findings of Fact

Applicant is a 32-year-old employee of a defense contractor for whom he has worked since December 2021. He earned a bachelor's degree in May 2019. He has never married and has no children. (Items 4, 5)

In November 2021, Applicant was terminated from his employment at an auto-parts store because a co-worker reported in writing that Applicant brought a firearm into the store. He is not eligible for rehire. He acknowledged that he had a firearm in a case in his car because homeless people in the area caused problems but denied that he ever brought it into the store. He claimed he was fired without being permitted to relay his side of the story, yet he was terminated after a meeting with a representative from the auto-parts store while another individual was on speaker phone. He opined that his co-worker may have mistaken his diabetes kit for a firearm. (Items 4-6)

In Applicant's 2022 Electronic Questionnaires for Investigations Processing (SF 86), he listed the termination, but claimed that he was not given a reason for being fired. He did not reference the firearm. During his May 2022 security interview that he authenticated, he acknowledged that his supervisor told him that he was being terminated for bringing a firearm into the store, but he denied that he received a written reason for being terminated. A written record from his employer read that he was terminated for "Policy Violation-Rules." In his Response to the SOR, he denied that he had been terminated from the auto-parts store for bringing a firearm in to the store and claimed that no "written" confirmation was ever provided to him regarding his termination. (Items 4-6)

In about April 2022, after Applicant certified the SF 86, but before his first security interview, Applicant was arrested and charged with felony menacing with a deadly weapon. He was also the subject of a protective order related to this incident. The alleged victim reported that, while their cars were stopped close to one another in a parking lot, she saw Applicant reach behind his car seat to retrieve something and got out of his car with a black, semi-automatic style handgun by his side while staring at her. She and her two children were inside their car. She claimed that she was so afraid after seeing the gun that she "blacked out" and was in fear for her life. She backed her car up and drove away from the scene. She told police that she was 100 percent sure that Applicant was the individual holding the handgun. When the alleged victim's spouse confronted Applicant about the incident, Applicant denied brandishing a weapon, but commented that he considered everyone in the area a threat. The alleged victim's spouse did not witness Applicant holding a gun. (Items 5, 7)

Applicant claimed that the alleged victim had nearly caused an accident involving both their vehicles and that he had gotten out of his car, stood beside it, put his hands up, displayed his middle finger, got back in his car, and went on his way. He denied that he brandished a firearm. He claimed that he had a firearm in a case in his car, but he left it there. He claimed that his phone was in his hand when he got out of the car and the alleged victim must have mistaken his phone for a firearm. When the alleged victim provided her statement to police, the description of the firearm that she provided was

consistent with the unloaded firearm that police later found in his car in a hardcase behind his driver's seat. The case containing the weapon was placed on top of other items. Applicant matched the description that the alleged victim provided to police. She also picked him out of a police lineup. When Applicant was arrested, he spent part of a weekend in jail, but claimed that he was released the next business day without having to post bail. In June 2022, these charges were dismissed because, based upon recently obtained evidence/witness testimony, there was no longer a reasonable likelihood of success at trial. In June 2022, the court vacated the protective order. (Items 5, 7)

Applicant did not divulge this arrest during his May 2022 security interview despite the investigator asking him about any issues involving the police that were required to be listed. The Government did not allege this failure to disclose in the SOR. Any adverse information not alleged in the SOR will not be used for disqualification purposes, however it may be considered in assessing an applicant's credibility; in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; in considering whether the applicant has demonstrated successful rehabilitation; and in applying the whole-person concept. (ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)).

During a November 2022 security interview, when an investigator asked Applicant why he did not divulge the April 2022 arrest during his May 2022 security interview, he provided several reasons. First, contrary to the report of the May 2022 subject interview that he certified, he claimed that the first investigator did not ask about incidents involving the police. He claimed that he would have reported the arrest if he had been asked. He also claimed that he thought the incident was outside of the scope of the investigation because it happened after he submitted his SF 86. Finally, he claimed that he did not report it because he did not think it affected his ability to do his job. (Items 5, 7)

Applicant had two separate incidents where he was alleged to have had possession of a firearm where it was inappropriate for him to do so. On both occasions, he acknowledged that he had access to a firearm that he kept in his car. On one of these occasions a witness corroborated the actual location from which he collected the firearm and the type of firearm that he acknowledged owning. On both occasions, he used the same explanation that the people who saw the firearm must have mistaken it for something else he had in his hand. He was less than candid about the reasons for his employment termination in his SF 86 and about his felony arrest during his May 2022 security interview. During his November 2022 security interview, his explanations for not divulging his felony arrest during his earlier interview were either inconsistent with the evidence or illogical. I find it implausible that on two separate occasions, he was unfortunate enough to be seen holding a firearm to which he had ready access. Given these considerations, I find the evidence supports that he brought a firearm into his workplace, and that he brandished a firearm during the April 2022 incident where he was arrested. (Items 4-7)

Applicant listed his supervisor as the only person with knowledge of his termination. He listed one other person as having knowledge of his 2022 arrest. He has

not told his current co-workers, his current supervisor, or his current security officer about either his 2021 termination or his 2022 arrest. (Items 4-7)

## **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:

(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; 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) any disruptive, violent, or other inappropriate behavior; and

(3) a pattern of dishonesty or rule violations.

Applicant's incidents involving bringing a firearm into his workplace in 2021 and brandishing a firearm during a dispute in 2022 reflect questionable judgment, unreliability, and an unwillingness to comply with rules and regulations. AG ¶¶ 16(c) and 16(d) are not perfectly applicable to his 2022 arrest because the underlying conduct is explicitly covered under the criminal conduct guideline and may be sufficient for an adverse determination thereunder. However, the general concerns about questionable judgment and an unwillingness to comply with rules and regulations contained in AG ¶¶ 15, 16(c) and 16(d) are established by that conduct. For these reasons, his employment termination for bringing a firearm into his workplace in 2021 also establishes AG ¶¶ 15, 16(c), and 16(d).

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

- (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.

Twice in the last two years, Applicant has shown poor judgment by possessing or brandishing a firearm inappropriately. The most recent time was only about a year-and-a-half ago, and I cannot find that it is unlikely to recur. Being careless or reckless with a firearm is not a minor incident as it can result in serious injury or death. He has not provided evidence that he has undergone counseling or taken other positive steps to alleviate the causes of this unreliable and inappropriate behavior. As very few people know about these incidents, and no one from his current workplace does, he has not provided sufficient evidence that he has reduced vulnerability to exploitation, manipulation, or duress. While he claims that he did not engage in the underlying activity that led to his termination and arrest, for the aforementioned reasons, I believe the information related thereto is both substantiated and reliable. None of the Guideline E mitigating factors 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. I found that corroborating evidence, his unlikely explanations, and his lack of candor during the clearance process provided evidence of disqualification and undermined his efforts at mitigation.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude he 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
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Subparagraphs 1.a-1.b:	Against Applicant
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### **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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Benjamin R. Dorsey  
Administrative Judge