



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



In the matter of:)	
)	
)	ISCR Case No. 23-00273
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

12/19/2023

Decision

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 22, 2023, 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 11, 2023, and requested a hearing before an administrative judge. The case was assigned to me on September 12, 2023. The hearing convened as scheduled on October 25, 2023. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence.

Findings of Fact

As a preface, I did not find Applicant credible. I accept little of his testimony as true unless it has been verified by an independent source. Some facts cannot be verified because he told multiple versions of facts and events.

Applicant is a 38-year-old prospective employee of a defense contractor sponsoring him for a security clearance. He was born in a foreign country. He worked for a defense contractor in Iraq before he immigrated to the United States in 2008. Since then, he has worked for several defense contractors, sometimes overseas. He became a U.S. citizen in 2015. He held a security clearance in the past, but it lapsed when he was no longer employed by his sponsor. He has attended several colleges and universities, earning an associate degree from one of the colleges in about 2015. He married in about 2018 and divorced in about 2020 or 2021. He has one child. (Transcript (Tr.) at 18, 31, 48, 58-64, 75-76; Applicant's response to SOR; GE 1-3)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in February 2018. He reported that he attended three colleges or universities between 2010 and 2015, and that he received an associate degree from the last university in November 2015. When he was interviewed for his background investigation in November 2018, he reported that he married a foreign citizen in a foreign country a few weeks earlier. (GE 2, 3)

Applicant worked for a defense contractor (DC1) from July 2017 to September 2017. He was rehired by DC1 in February 2020, and he resigned for personal reasons in March 2020. He was rehired again in November 2020. (Tr. at 16; GE 6)

DC1 reported that Applicant traveled to a foreign country for about five days in February 2021 while he was on COVID-exposure quarantine. He then returned to work the day after he arrived back in the United States, "which was a violation of [DC1] Attestation policy." DC1 security representatives discovered that Applicant did not report foreign family members and foreign travel on his pre-screening questionnaire (PSQ) that he submitted in December 2020. They conducted a travel debrief with him. He stated that his recent foreign travel was related to a request by a "distant cousin" to sign a medical release form so that she could undergo a medical procedure. During his background interview in November 2022, Applicant stated that he went to the foreign country to give his divorce papers to his ex-wife. (Tr. at 17-26, 30; GE 3, 4)

Applicant testified that he had to go to the foreign country for a "family emergency" because his cousin, who he referred to as his sister, required surgery, and he also had to serve divorce papers on his ex-wife. He stated he did not know that, as a clearance holder, he had to inform his employer that he was traveling to another country. He was on COVID hold during that period, and he was not reporting to work. He stated that he thought it was acceptable to report the foreign travel upon his return, which is what he did. (Tr. at 18-26)

Applicant was on a leave of absence from DC1 from March 2021 to the beginning of June 2021. He worked in Afghanistan for another defense contractor (DC2) from about March 2021 to June 2021. He worked for DC2 in Africa for about two weeks in September 2021. DC1 security representatives interviewed him upon his return to work in June 2021. He was asked if he had any foreign travel since his last trip in February 2021. He said he could not remember, and he was not sure, before he denied any additional foreign travel. (Tr. at 26-28; GE 4)

DC1 became aware that Applicant traveled out of the country while he was on the leave of absence. He was interviewed again later in June 2021. He admitted that he worked for DC2 in Afghanistan in March 2021. He stated that DC1 was not paying him, and he needed to make money to pay his bills. He stated that he did not feel that he had to report the travel because he was working for the U.S. military and the federal government, and he considered it "official travel." DC1 terminated his employment in July 2021 for misconduct for "numerous incidents of unreported foreign travel. Several of which were to high threat countries," and for failure to cooperate with investigators by deliberately providing false information about his foreign travel. (Tr. at 17, 26-33; GE 4, 5)

Applicant submitted another SF 86 in May 2022. He denied intentionally falsifying any question on the SF 86. He pointed out multiple mistakes on innocuous questions as proof that "[a]ll of these omissions happened because [he] did not correct the information the computer entered in error for [him]." (Tr. at 64-75, 79-81; Applicant's response to SOR; GE 1) He testified:

Most of these things are based on pure negligence, mistakes, carelessness on my part and not knowing or understanding the question -- what the question is asking. And honestly, this job was -- I was rushing through it. I had somewhere to go and I wanted just to leave because this lady was on the phone -- my security lady was rushing me to finish and send it over to her. So I didn't have the time to finally go back and look at some of these questions. (Tr. at 64)

Applicant reported on the SF 86 that he was born in a foreign country, came to the United States in 2008, and became a U.S. citizen in 2015. He inaccurately answered "No" to the question that asked: "Have you **EVER** been issued a passport (or identity card for travel) by a country other than the U.S.?" He denied that the answer was intentionally false. He stated that he did not think about his expired passport when answering the question. He testified that his mother has renewed his foreign passport without his knowledge, but he did not learn that fact until after he submitted the SF 86. (Tr. at 45-54, 68-69; Applicant's response to SOR; GE 1)

Applicant reported on the SF 86 that he attended five colleges or universities between 2010 and 2022. He reported that he earned five associate degrees, including from two colleges in August 2012 and December 2012. He testified that was a mistake, and he did not have degrees from those colleges. He stated that he completed the SF 86 in a rush, and he did not look back at his answers. (Tr. at 57-59; Applicant's response to SOR; GE 1)

On the SF 86, under Section 13A – Employment Activities, Applicant failed to report his work for DC2 from about March 2021 to June 2021 and again in September 2021. He reported the job with DC1. He falsely reported the reason for leaving the DC1 job was "work ended due to COVID-19." (Tr. at 41; GE 1) He also provided false information when he answered "no" to the following question:

For this employment have any of the following happened to you **in the last seven (7) years?**

- Fired
- Quit after being told you would be fired
- Left by mutual agreement following charges or allegations of misconduct
- Left by mutual agreement following notice of unsatisfactory performance¹

Section 13C – Employment Record of the SF 86 asked similar questions to the above, except it asked: “Have any of the following happened to you **in the last seven (7) years at employment activities that you have not previously listed?** (If ‘Yes’, you will be required to add an additional employment in Section 13A.” (italized emphasis added) Since any issues that would have required a positive response occurred at DC1, which Applicant previously listed, he correctly answered “No” to this specific question. (GE 1)

Applicant stated that he reported that his “work [for DC1] ended due to COVID-19” because he was on hold due to COVID at the time. He stated that he “mistakenly focused on the root cause of [his] termination from [DC1] which was because of COVID-19 instead of just admitting that [he] was terminated.” (Tr. at 33-36, 40-41; Applicant’s response to SOR)

Applicant testified that he did not report his work for DC2 because he thought he did not have to report that work because he “was doing a government service.” He also indicated that “it was a short amount of time and [he] thought it wasn’t important.” (Tr. at 42-44) In his response to interrogatories, he wrote the following as the reason he did not report his job with DC2:

No I did not list these employments because reason (1) I totally forgot due to the fact that they [were] both too short especially the employment in Africa wasn’t a good fit for me[.] I was only there for two weeks. I might have just confuse[d] them to be international travel for work, which is not required to report or listed since it’s work related travel. (GE 3)

Under Section 17 – Marital/Relationship Status, Applicant failed to report his ex-wife, and he falsely wrote that he had “[n]ever entered into a civil marriage, legally recognized civil union, or legally recognized domestic partnership.” He stated that he did not report his marriage because he was divorced, and he did not realize he had to report previous marriages. He added, “We didn’t get married in the church or mosques, so maybe that’s probably why. It was just family arrangement. It’s a civil - - I don’t know.” He later added, “And then the marriage part, it was just because I knew the lady

¹ The SOR did not allege that Applicant falsified these questions. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be used to assess Applicant’s credibility, in the application of mitigating conditions, and in the whole-person analysis.

was never going to come here.” (Tr. at 59-61, 72-73; Applicant’s response to SOR; GE 1, 3)

Under Section 20C – Applicant reported several foreign trips, including his trip in February 2021. He did not report his work in Afghanistan and Africa for DC2 in 2021. He testified that he did not report those trips because they were work-related trips for the DoD. (Tr. at 36-40; Applicant’s response to SOR; GE 1)

Applicant was interviewed for his background investigation in November 2022. He reported most of the information addressed in this decision. He denied being dishonest with DC1 personnel, and he denied intentionally providing false information on the SF 86. (GE 3)

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security clearance investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(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 . . . a pattern of dishonesty or rule violations; 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 . . . engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The SOR alleges Applicant's termination from DC1 (SOR ¶ 1.a) and multiple allegations that he falsified his 2022 SF 86 (SOR ¶¶ 1.b to 1.j). As addressed previously. I did not find Applicant credible. Most of his explanations were illogical, counter to common sense, and against the plain reading of the questions. Individual allegations are discussed below.

SOR ¶ 1.a

SOR ¶ 1.a alleges that Applicant was "terminated from [his] employment at [DC1] in about July 2021 for failure to cooperate with investigations and deliberately providing false information regarding [his] foreign travel." His conduct reflects questionable judgment, lack of candor, and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(b), 16(d), and 16(e) are applicable.

SOR ¶ 1.b

SOR ¶ 2.b alleges that Applicant intentionally falsified the 2022 SF 86 when he failed to report the travel to Afghanistan in 2021 when he was working for DC2. I am not convinced by substantial evidence that Applicant intentionally falsified his answer to this

question. AG ¶ 16(a) is not applicable to that matter. SOR ¶ 1.b is concluded for Applicant.

SOR ¶ 1.c

SOR ¶ 1.c alleges that Applicant intentionally falsified the 2022 SF 86 when he falsely reported the reason for leaving his employment with DC1 as “work ended due to COVID-19,” when in fact, he had been terminated from that job. His explanation that he answered that way because he was on hold due to COVID-19 is nonsensical. This was not a mistake nor an unintentional omission, it was a deliberately false statement. AG ¶ 16(a) is applicable.

SOR ¶¶ 1.d and 1.e

The SOR alleges that Applicant intentionally failed to report on the SF 86 his employment with DC2 in March 2021 (SOR ¶ 1.d) and (again in September 2021 (SOR ¶ 1.e), He provided inconsistent reasons for the answer. He stated he forgot about the employment, and he thought he did not have to report that employment because he “was doing a government service.” He also indicated that “it was a short amount of time and [he] thought it wasn’t important.” His explanations are not credible. I find he intentionally falsified the question. AG ¶ 16(a) is applicable.

Applicant did not divulge either employment with DC2, which is why there are two SOR allegations, but he only falsified one question. I am consolidating the two allegations into SOR ¶ 1.d by adding the following language to SOR ¶ 1.d: “and from on or about September 1, 2021 to on or about September 15, 2021.” I am therefore concluding SOR ¶ 1.e for Applicant, since it is now covered in SOR ¶ 1.d.

SOR ¶ 1.f

SOR ¶ 1.f alleged that Applicant intentionally falsified Section 13C of the SF 86. The SOR alleged the wrong question. Any adverse information about his employment with DC1 was required to be placed in Section 13A, not 13C. His answer to 13C was correct. SOR ¶ 1.f is concluded for Applicant.

SOR ¶ 1.g

SOR ¶ 1.g alleges that Applicant intentionally falsified the 2022 SF 86 when he failed to report that he had a been issued a foreign passport in 2011. I am not convinced by substantial evidence that Applicant intentionally falsified this question by failing to report his expired passport. AG ¶ 16(a) is not applicable to that matter. SOR ¶ 1.g is concluded for Applicant.

Applicant testified that his mother has renewed his foreign passport without his knowledge, but he did not learn that fact until after he submitted the SF 86. There is no evidence to counter that testimony, and the SOR only alleged the failure to report the 2011 passport.

SOR ¶¶ 1.h and 1.i

The SOR alleges that Applicant intentionally falsified the 2022 SF 86 when he falsely reported that he had earned associate degrees from colleges in August 2012 (SOR ¶ 1.h) and December 2012 (SOR ¶ 1.i). He testified that he made a mistake; he completed the SF 86 in a rush; and he did not look back at his answers. His explanations are not credible. This was not a matter of glossing over a question or clicking the wrong button. He had to physically type the information in. I find he intentionally falsified the question. AG ¶ 16(a) is applicable.

SOR ¶ 1.j

SOR ¶ 1.j alleges that Applicant intentionally failed to report his marriage from 2018 to 2020 on the 2022 SF 86. He stated that he did not report his marriage because he was divorced, and he did not realize he had to report previous marriages. He added, "We didn't get married in the church or mosques, so maybe that's probably why. It was just family arrangement. It's a civil - - I don't know." He later added, "And then the marriage part, it was just because I knew the lady was never going to come here." I am convinced by substantial evidence that Applicant intentionally falsified this question. AG ¶ 16(a) is applicable.

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

- (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;
- (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 was dishonest to his employer and on his SF 86. Additionally, having determined that he intentionally provided false information in an attempt to mislead the government, I have also determined that his testimony about those statements was also false. It would be inconsistent to find his conduct mitigated.²

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 my whole-person analysis. Most importantly, Applicant cannot be trusted to tell the truth.

² See ISCR Case 03-22819 at 4 (App. Bd. Mar. 20, 2006), in which the Appeal Board reversed the Administrative Judge's decision to grant Applicant's security clearance:

Once the Administrative Judge found that Applicant deliberately falsified a security clearance application in September 2002, the Judge could not render a favorable security clearance decision without articulating a rational basis for why it would be clearly consistent with the national interest to grant or continue a security clearance for Applicant despite the falsification. Here, the Judge gives reasons as to why he considers the falsification mitigated under a "whole person" analysis, namely that Applicant has matured, has held a position of responsibility, recognizes how important it is to be candid in relation to matters relating to her security clearance, and has changed her behavior so that there is little likelihood of recurrence. However, the Judge's conclusion runs contrary to the Judge's rejection of Applicant's explanations for the security clearance application falsification. At the hearing (after earlier admitting the falsification in her March 2003 written statement to a security investigator), Applicant testified that she had not intentionally falsified her application. Given the Judge's rejection of this explanation as not being credible, it follows that the Judge could not have concluded Applicant now recognizes the importance of candor and has changed her behavior.

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
Subparagraph 1.d:	Against Applicant (with the additional language "and from on or about September 1, 2021 to on or about September 15, 2021"
Subparagraph 1.e:	For Applicant (consolidated into subparagraph 1.d)
Subparagraphs 1.f-1.g:	For Applicant
Subparagraphs 1.h-1.j:	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.

Edward W. Loughran
Administrative Judge