



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-00022
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: *Pro Se*

01/30/2024

**Decision**

PRICE, Eric C., Administrative Judge:

Applicant mitigated personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on June 29, 2020. On March 21, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on May 5, 2022, and requested a hearing before an administrative judge. (Answer) The case was assigned to me on May 8, 2023. On May 15, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing via video teleconference. I convened the hearing as scheduled on

June 20, 2023. During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 7. Applicant testified but offered no documentary evidence. The record was held open until July 7, 2023, to permit Applicant to submit documentary evidence. She timely submitted Applicant Exhibits (AE) A through H. There were no objections to the proffered exhibits. GE 1 through 7 and AE A through H are admitted in evidence. DOHA received the hearing transcript (Tr.) on June 30, 2023.

### **Findings of Fact**

Applicant is a 47-year-old executive assistant (EA) employed by a defense contractor since September 2021. She has worked in various administrative positions for 13 different federal contractors since 2004. She has held a security clearance since about 2004. She attended college but has not earned a degree. She married in 1996 and has three children, ages 29, 27 and 26. (GE 1; AE A-H; Tr. 13, 29, 54-55, 79-81)

The SOR alleges that in about March 2020, Company A refunded approximately \$3,380 to the government due to a 56.75 hour discrepancy between Applicant's reported time and government badge swipe records, and that in about March 2020 she was terminated by Company B or resigned in lieu of termination due to timecard discrepancies (SOR ¶¶ 1.a-1.b). She denied both allegations with explanations. (Answer)

From July 2015 to March 2020 Applicant worked for various contractors in direct support of the same defense agency (Agency). She was employed as an EA for Company A from August 2016 to October 2019 when she resigned to pursue a better job with Company B. She was employed as a strategic analyst for Company B from October 2019 to February 2020. While employed by Companies A and B, Applicant worked in different buildings in the same four-building, campus-like complex on a military installation. Each building had multiple access points and accessible parking areas. There was no perimeter fence or designated access control point. In early 2020, Agency compared some contractor timecards with building badge swipe records to identify potential timecard fraud. (GE 1, 4-5; Tr. 27-34, 80-83, 87)

On February 28, 2020, Agency notified Company A that building badge swipe records from April 2019 through September 2019 reflected a 52-hour discrepancy between the 973 hours billed for Applicant's services and the amount of time she was "badged into" an Agency complex. (GE 2 at 1) Agency requested Company A provide evidence to rebut the apparent mischarging or reimburse the government for the discrepancy plus a fee. In March 2020, Company A confirmed a discrepancy between Agency internal badging records and company records and found that "977 hours were billed and 56.75 hours were not allocable to the contract . . . with an actual cost of \$3,219.28 and fee of \$160.96, for a total of \$3,380.24 due to the Government." (GE 3) Company A reimbursed the Government for the discrepant hours. (GE 2-5; Tr. 107-108)

Company A's Director of Security and Facility Security Officer (FSO) explained:

[Agency] began running timecard checks based on individuals badging in and out of the building. This was a flawed process which [Company A chose] not to appeal, and paid back any difference found. The flaw comes when an Admin Assistant leaves the building and makes a delivery or pick up related to their job. [Agency's] position was that an individual could not have worked the total hours claimed if they were not in the building for that number of hours. Administrative Assistants are often asked to "run errands" for their job. . . . Since [we] could not adjudicate whether the time was fraudulently entered or not, we decided to simply pay back this amount. It was my judgement this was not sufficient evidence to enter an incident report on the individual. (GE 4)

Applicant denied the SOR allegation regarding Company A and identified problems with the badging system in the building where she worked. (SOR ¶ 1.b; Answer). She explained that "I had no idea there was an investigation nor was I given a chance to refute the findings." (Answer) Notably, Company A's assessment of Applicant's original and corrected timesheets from April 15, 2019 through September 2019 showed no difference in her hours worked except two periods were "corrected" to show more hours than originally claimed (100.50 to 105.50, and 88 to 89.25 hours). (GE 5 at 23, 26) Company A identified 63 hours Applicant worked as "Unbillable Labor." (GE 5 at 1)

On Friday, February 28, 2020, Applicant's supervisor at Company B informed her that Agency identified an estimated 39-hour discrepancy between her timesheets and Agency access card swipe logs from October 2019 to December 2019. On Monday, March 2, 2020, at 1:41 PM, Applicant's supervisor sent her an email identifying nine dates from October 2019 through December 2019 with more than an hour discrepancy between hours reported on her timesheet and Agency badging records. (GE 6) He also asked if she had been able to corroborate that she had been approved to work some hours from home and said he needed her information by the end of the workday so he could timely respond to Agency. (GE 6-7; Tr. 25-29, 37-39, 87-88, 94-97) Applicant's response later that day included:

[Company B] has already started the ball removing me as an employee. No matter what I have found the bottom line is, will it change anything? Along with the undercharged time there is overcharged time reflected. The word has already been put out at [Agency] that I am not returning. Seems to me [Company B] had no intention to let me clear my name; all I want is my security clearance intact. . . . I am officially resigning from the company effective Friday, February 28, 2020. (GE 6)

In her SCA of June 29, 2020, Applicant reported she had resigned from Company B because:

I was suspended due to discrepancies in time card entries. I was asked to account for hours and entries that did not match. I was informed on Friday 28 February and given until Friday 6 March to help explain the discrepancy. I was contacted on Monday 2 March and asked if I had completed my research. I had not, as it was a weekend, so I tendered my resignation. I did not feel I was given enough time and felt pressure to get this done when I need time to compare my calendars. I want to save my clearance and name, so I resigned. I filed for unemployment, was denied and in the hearing I found out the company had received the inquiry weeks earlier than when I was notified. They also stressed the fact that I left preempting the investigation, they at the time had no intention of firing me. I jumped the gun and now understand I was too emotional. (GE 1 at 14)

Applicant's testimony at hearing, statements to a government investigator during a December 2020 background interview, and explanations in her Answer to the SOR were generally consistent. She denied falsifying timecards at any time she worked as a federal contractor. She said that on Friday, February 28, 2020, her supervisor at Company B invited her to an offsite location where he informed her that Agency had identified an estimated 39-hour discrepancy between her timesheets and Agency access card swipe logs from October 1, 2019 to December 1, 2019. She denied that she falsified her time sheet and asked if she could obtain emails and personal records including notes about her daily duties to prepare her response. Her supervisor said that he would try to get someone to send it to her. He retrieved her Agency access badge, provided her a copy of the audit, said she had until Friday, March 6, 2020, to explain the discrepancies, and he sent her home. (Answer; GE 6-7; Tr. 25-29, 37-53, 66-70, 83-84, 87, 94-101)

Applicant was unable to return to her agency workspace to access her computer or her notes or to otherwise research records to document her work hours before receiving the email from her supervisor on Monday, March 2, 2020. After receiving the email from her supervisor, she requested a coworker retrieve her notes and other information. The coworker informed Applicant that she could not retrieve the notebook because Applicant's belongings were being packed up for delivery to Company B. Applicant had seen other employees treated in a similar manner and believed she had no viable recourse to research or resolve the time discrepancies. She believed she was about to be terminated; she felt that she was being treated unfairly; and she was frustrated and angry. She was also aware that being fired could affect her security clearance, so she immediately resigned via email. She stated her belief that if she had been given access to her office and more time that she could have provided a logical response and evidence to explain the discrepancies. She received her personal belongings including her notebooks about two weeks later. She said that she later learned that Company B had no intention to fire her and that she reacted too emotionally by resigning. (GE 1, 6-7; AE B; Tr. 25-27, 40-50, 61-63, 83-89, 90-101)

Applicant said Agency swipe log records were inaccurate, that the Agency badging system was often down and transitioning from access badges to common access cards, and that security personnel would often have to manually open turn styles at building

access points. She denied improperly reporting time when she was not at work and said she only left her desk when required to go to other buildings in the Agency complex or other buildings on the base, and when she was on break or at lunch. She acknowledged that she sometimes returned late from lunch but said she was never more than 30 minutes late. She said her job responsibilities required her to walk to other buildings, that she often used an entrance without badge swipe access and that security personnel would visually inspect badges and allow entry or exit. She said workers were not required to access the Agency building via a specified access point, and that there was no way for Agency to accurately audit time spent in the building through card swipe records due to turn style issues and an entrance that did not have a turn style. (Answer; GE 7; Tr. 27-29, 34-37, 58-62, 80-83, 102-104)

Applicant testified that the only time she entered inaccurate information into her timecard was at the direction of her program manager and supervisor during a six-month period not alleged in the SOR. She said Company A employees were sometimes required to work more than eight hours by Agency, but could not request overtime and were prohibited from claiming more than 40 hours per week. She said Company A employees were directed to submit timesheets showing no more than 40 hours worked per week, that Company A tracked and treated any excess hours worked as compensatory time off, and that Agency was aware of the practice. (Tr. 63-71; GE 5-6)

An Agency executive that Applicant supported as an EA while employed by Company A noted her responsibilities included handling classified information, administrative matters, and customer interaction. (AE H; Tr. 77-78) He praised her organizational skills, reliability, dependability, self-discipline, and dedication to her job and the team. He also provided his "highest recommendation." (AE H) Six current or former Agency executives commented favorably on her conscientiousness, work ethic, integrity, commitment to people and mission, and reliability. (AE A, G) Two long-term colleagues and friends praised her outstanding dedication, trustworthiness, moral fiber, integrity, dependability, timeliness, commitment to people and mission, and noted she had earned the trust of senior executives. (AE C, E) A former Parent Teacher Organization (PTO) president commented favorably on her performance as PTO treasurer including her diligence, problem-solving ability, and professionalism, and provided her unqualified recommendation. (AE F) Applicant's pastor of 20 years and a man who has known her since her birth praised her loyalty, honesty, dependability, and significant contributions to her church including service as a youth advisor. (AE D)

## **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

## Analysis

### Personal Conduct

The concern under this guideline 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 relevant disqualifying conditions under AG ¶ 16 are:

(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 . . . .

(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[.]

Record evidence including Applicant's statements show discrepancies existed between her employee time sheets and Agency badge swipe records, that Company A refunded approximately \$3,380 to the government because of those discrepancies, and that she resigned from Company B after being informed of discrepancies and because she believed she was about to be terminated. This conduct raises the above disqualifying conditions.

Conditions that could mitigate the personal conduct security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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;

(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.

The accuracy of the time worked information is important both to federal contractors and government agencies that contract with them. Intentional falsification of time keeping records reflects questionable judgment, untrustworthiness, unreliability, and an unwillingness to comply with rules and regulations. However, the SOR does not allege intentional falsification or fraudulent submission of timekeeping records. It alleges Company A refunded approximately \$3,380 to the government due to discrepancies between Applicant's reported time and government badge swipe records, and that Applicant resigned from Company B in lieu of termination due to timecard discrepancies.

The SOR allegations were derived from comparison of contractor timecards with Agency badge swipe records to identify potential timecard fraud in 2019 and early 2020. Company A concluded this "was a flawed process" because it failed to recognize administrative personnel are often required to leave their assigned work area to perform tasks. (GE 4) Company A's FSO determined this comparison was so unreliable that it was insufficient to warrant a security incident report. And there is no evidence Company B investigated the alleged discrepancies or determined that the discrepancies were attributable to intentional falsification. Although this could be attributable, in part, to Applicant's speedy resignation, she has claimed she later learned that Company B did not intend to terminate her employment.

Applicant consistently claimed that her duties required her to go to different buildings both inside and outside of the Agency complex. She detailed various issues with the Agency badge swiping system that raise additional questions about the reliability of this system as a time worked measure. She has also consistently claimed she was first notified of the discrepancies between her Company B time keeping records and Agency records on a Friday, told she had one-week to review records and produce evidence addressing them, prohibited from accessing her workspace or records, and that she requested her supervisor provide her personal records so she could prepare her response. The next work-day afternoon her supervisor requested she submit her explanation and evidence regarding discrepancies that same day. Unable to access her work computer or review her notes, Applicant contacted a coworker for assistance and was informed her belongings were being packed up. She has acknowledged that she felt that she was being treated unfairly and was frustrated, and that she acted too emotionally when she resigned from Company B because she believed her termination was imminent.

AG ¶¶ 17(c), (e), and (f) are established. The evidence that Applicant may have intentionally falsified timecards or engaged in a pattern of dishonesty is unsubstantiated. Her disclosures in her SCA, December 2020 background interview, Answer to the SOR and testimony are consistent, credible, and corroborated in significant part by evidence submitted by the Government. The conduct alleged occurred over three years ago under



circumstances unlikely to recur, and does not cast doubt on her current reliability, trustworthiness, or judgment.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's work history, security clearance history, character evidence, and that she has openly and consistently disclosed the reasons that she resigned from Company B.

I found Applicant's responses and demeanor at the hearing to be credible and consistent with someone who was reliably telling the truth. After reviewing the entire record, I find that her hearing testimony is corroborated by documentary evidence submitted by the government and her own exhibits.

After weighing the disqualifying and mitigating conditions under Guideline E and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her personal conduct.

### **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: FOR APPLICANT

Subparagraphs 1.a – 1.b: For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Eric C. Price  
Administrative Judge