



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



In the matter of: )  
)  
) ISCR Case No. 20-02097  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esquire, Department Counsel  
For Applicant: Christopher Snowden, Esquire, Applicant’s Counsel

03/22/2024

**Decision Upon Remand**

CEFOLA, Richard A., Administrative Judge:

On October 25, 2018, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On March 22, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines I and E. The DCSA CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective June 8, 2017.

Applicant answered the SOR in writing on May 24, 2023, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request on August 1, 2023. I received the case assignment on August 1, 2023. DOHA issued a Notice of Hearing on August 10, 2023, and I convened the hearing as scheduled on September 26, 2023. The Government offered Exhibits (GXs) 1 through 6, which were received without objection. Applicant testified and

submitted Exhibits (AppXs) A through EEE, which were admitted without objection. He also asked that the record be kept open until October 10, 2023, for the receipt of additional documentation. Applicant offered no additional Exhibits. DOHA received the transcript of the hearing (TR) on October 12, 2023.

On November 16, 2023, the undersigned issued a Decision denying Applicant's eligibility for access to classified information. On February 13, 2024, the Appeal Board remanded this case with the following instructions as to Guideline I – Psychological Conditions:

“the conclusion that there was substantial evidence under [disqualifying condition] AG ¶ 28(b) is uncontroverted and supported by the facts. The analysis, however, does not end there. A judge also must consider facts that may mitigate this concern.” (Remand Decision at page 4, Paragraph 1 the two sentences before the last sentence.)

As to mitigating condition AG ¶ 29(e), the Appeal Board avers, “Although this was an integral part of Applicant's mitigating presentation, the Judge did not discuss this important aspect of the case in his decision, which is problematic.” (Remand Decision at page 4, Paragraph 2 the last sentence.)

“In this case the Judge's failure to discuss or even mention Applicant's mitigating evidence leaves his analysis incomplete and constitutes error.” (Remand Decision at page 4, Paragraph 3 the last sentence.)

### **Findings of Fact**

In his Answer to the SOR Applicant initially denied the factual allegations in all the Paragraphs of the SOR, with explanations He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 58 years old, unmarried, and has no children. He has a Bachelor of Science degree. He has worked for a defense contractor since October of 2018. (TR at page 169 line 11 to page 110 line 20.) Applicant was honorably discharged from the U.S. Navy as an Engineman Second Class in June of 1989. (TR at page 124 lines 11~25, and AppX X.)

### **Guideline I – Psychological Conditions**

1.a. Applicant was evaluated by a duly qualified mental health professional (as stipulated to by Applicant's Counsel) on June 30, 2022, with a brief follow-up interview on July 26, 2022. (GX 4.) This psychologist, who testified at length at Applicant's hearing, determined that Applicant met the criteria for Other Specified Personality Disorder, Mixed Personality Features. (TR at page 36 line 13 to page 39 line 17.) The psychologist noted that Applicant exhibited a lack of candor regarding his personal history, with a high level of defensiveness, and an exaggerated response to perceived

threats throughout his evaluation process. (TR at page 14 line 22 to page 44 line 23, and at page 96 line 4 to page 98 line 11.) He also noted that he was unable to complete the second interview due to Applicant's defensive, redundant, and non-responsive statements. (TR at page 33 line 15 to page 35 line 25, and at page 55 lines 13~19.) The psychologist opined that this conduct indicated a deficit in Applicant's judgment that may impair his ability to safeguard classified information. (TR at page 39 line 18 to page 42 line 15, at page 58 line 11 to page 61 line 11, and at page 105 line 15 to page 107 line 25.)

## **Guideline E – Personal Conduct**

2.a. Applicant denies that he knew he was “fired” from his employment in May of 2018 for conduct identified as “Poor Judgment/Policy Violation.” His employer's Human Resources (HR) department “explained” to Applicant, as reiterated by his then lawyer, that no “reason” was given, just that he departed his former employment by “mutual agreement.” (TR at page 110 line 22 to page 112 line 10, and at page 117 lines 1~25.) Only most recently, with the submission of the Government's exhibits, was Applicant made aware that his termination was categorized as “fired.” (GX 2 at pages 28~32, and GX 3.)

2.b. Applicant did not willfully falsify his October 2018 e-QIP when he answered, “No,” to Section 13A – Employment Activities, as to his being “fired” in the last seven years. (GX 1 at pages 15~16.) As noted above, Applicant thought he left his former employment by mutual agreement. (TR at page 112 line 11 to page 113 line 8, and at page 118 line 1 to page 120 line 15.)

2.c. Applicant did not willfully falsify his October 2018 e-QIP when he answered, “No,” to Section 22 – Police Record (EVER)” which asked whether he had “EVER been charged with an offense involving alcohol or drugs.” In January of 1993, Applicant was pulled over on a Naval Base for a possible DUI (driving under the influence of alcohol). (GX 6.) The allegation was dropped at a “Captain's Mast” (an Article 15 proceeding under the Uniform Code of Military Justice (UCMJ)), as Applicant's blood/alcohol ratio was within legal limits. Applicant had forgotten about this incident, that occurred more than 25 years prior to him executing his e-QIP, until he was questioned about the incident at his psychological evaluation in June of 2022. (TR at page 120 line 18 to page 121 line 20, at page 160 line 20 to page 163 line 2, and at page 172 line 22 to page 173 line 18.)

2.d. Applicant did not willfully falsify material facts at his January 2019 Office of Personnel Management (OPM) interview regarding him being pulled over on a Naval Base for a possible DUI. (GX 6.) Again, the allegation was dropped at a “Captain's Mast” as Applicant's blood/alcohol ratio was within legal limits. Applicant had forgotten about this incident, that occurred more than 26 years prior to his interview, until he was questioned about the incident at his psychological evaluation in June of 2022. (TR at page 121 line 21 to page 123 line 1, at page 123 lines 14~18, and at page 172 line 22 to page 173 line 18.)

2.e. Applicant did not willfully falsify material facts at his January 2019 Office of Personnel Management (OPM) interview regarding the circumstances surrounding him leaving his employment in May of 2018. As noted above, under the findings as to Subparagraph 2.a., only recently, with the submission of the Government's exhibits, was Applicant made aware that his termination was categorized as "fired." (TR at page 123 lines 2~13, GX 2 at pages 28~32, and GX 3.)

2.f. Applicant did not willfully falsify material facts at his June 2022 psychological evaluation regarding the circumstances surrounding him leaving his employment in May of 2018. As noted above, under the findings as to Subparagraph 2.a., only recently, with the submission of the Government's exhibits, was Applicant made aware that his termination was categorized as "fired."

2.g. Applicant did not willfully falsify material facts at his June 2022 psychological evaluation regarding him being pulled over on a Naval Base in January of 1993, for a possible DUI. (GX 6.) The allegation was dropped at a "Captain's Mast" as Applicant's blood/alcohol ratio was within legal limits. Applicant had forgotten about this incident, that occurred more than 29 years prior to his evaluation, until he was questioned about the incident at his psychological evaluation.

### **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 useful 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. According to AG ¶ 2(a), 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, an "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, and has the ultimate burden of persuasion as to obtaining 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 protect or 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 Executive Order 10865 provides that 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 I – Psychological Conditions**

The security concern relating to the guideline for Psychological Conditions is set forth at AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g. clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline at AG ¶ 28 contains five conditions that could raise a security concern and may be disqualifying. One condition was established:

(b) opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness.

Applicant has been so evaluated by a duly qualified mental health professional.

The guideline at AG ¶ 29 contains five conditions that could mitigate security concerns:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and
- (e) there is no indication of a current problem.

I have considered AppXs A–FF, to include Applicant's 2023 Bravo Award, (AppX I), his 2023 – Mid-Year Performance Review (AppX M), his commendable mid-year and full-year review (AppX QQ), his letters of recommendation (AppX RR), his awards and ceremonies (AppX SS), his Honorable Discharge from the U.S. Navy (AppX TT), his performance evaluation (AppX UU), and his certificates and training (AppX VV). However, at his hearing, Applicant's unfavorable mental health evaluation was reaffirmed in no uncertain terms. Applicant presented no expert witness testimony or any mental health evaluations to rebut the personality disorder diagnosis or the evaluating psychologist's opinion based thereon. The evidence tending to show periods of good workplace judgment does not establish that there is no indication of a current problem in light of the contrary, recent professional opinion of a duly qualified mental health professional that his personality disorder may impair his judgment and ability to safeguard classified information. I cannot overlook this most important fact. Therefore, Psychological Conditions is found against Applicant.

### **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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Two 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; and

(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

Neither of these apply. Applicant did not make any willful falsifications on his e-QIP, during his interview, or at his psychological evaluation. Personal Conduct is found for 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 an applicant's conduct and all the 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.

AG ¶ 2(b) requires each case must be judged on its own merits. 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. Applicant is a mature individual who was recently evaluated by a Government approved, duly qualified mental health professional to have a disqualifying personality disorder. The evidence concerning positive aspects of his workplace performance is commendable, but insufficient to mitigate the resulting security concerns or establish rehabilitation. The record evidence indicates that this personality disorder and the resulting risks are likely to continue. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For this reason, I conclude Applicant failed to mitigate the security concerns arising from his Psychological Conditions.

### **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 I:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 1.a~g:	For 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 Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

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Richard A. Cefola  
Administrative Judge