



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00534
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

09/27/2024

**Decision**

MURPHY, Braden M., Administrative Judge:

Following various reprimands, Applicant resigned his position as a police officer in October 2019, during an ongoing internal investigation into his conduct. He was not fully candid about these aspects of his employment history on a May 2022 security clearance application. He did not provide sufficient evidence to mitigate the resulting personal conduct security concerns. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted security clearance applications (SCA) in September 2020 and May 2022. On May 12, 2023, following a background investigation, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DSCA CAS) issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline E, personal conduct. The CAS issued the SOR under Executive Order (Exec. Or.) 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 *National Security Adjudicative Guidelines* (AG), which became effective on June 8, 2017.

Applicant answered the SOR on May 18, 2023, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on March 5, 2024. On March 25, 2024, DOHA issued a notice scheduling the hearing for April 17, 2024, by video-teleconference through an online platform.

Applicant's hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 3, all admitted without objection. Applicant and three witnesses testified. He did not submit any exhibits during his case, but I held the record open after the hearing to allow him the opportunity to do so. He subsequently submitted four annual performance appraisals, from 2020 through 2023 (Applicant Exhibits (AE) A through D) as well as 17 documents regarding training, education, security briefings, responsibilities, and qualifications for his job as an assistant facility security officer (AFSO) for his employer. These documents are marked together as AE E. All of Applicant's post-hearing exhibits are admitted without objection. DOHA received the hearing transcript (Tr.) on April 3, 2024. The record closed on April 24, 2024.

### **Amendment to the SOR**

As originally written, SOR ¶¶ 1.a, 1.b, and 1.c all concerned Applicant's October 2019 resignation from the police department of City A during an ongoing internal investigation into his conduct (1.a, 1.b, and 1.c), due to alleged unsatisfactory performance (1.b) and neglect of duty (1.c).

The parties agreed that only one resignation was involved. Therefore, on my own motion, I amended the SOR at the start of the hearing to delete SOR ¶¶ 1.a and 1.b, and to amend SOR ¶ 1.c. The amendment was accepted without objection. (Tr. 11-15) SOR ¶ 1.c now reads as follows:

1.c: In about October 2019, you resigned from your employment with [the City A police department] during an ongoing Internal Affairs Bureau (IAB) investigation regarding your unsatisfactory performance and neglect of duty for failing to turn in about 42 reports and failing to turn in evidence.

### **Findings of Fact**

In his Answer to the original SOR allegations, Applicant admitted SOR ¶¶ 1.a-1.f with narrative explanations. However, I consider that he did not actually "admit" or "deny" SOR ¶¶ 1.e and 1.f as to whether he received written reprimands. I therefore construe his answers to those allegations as denials. Applicant admitted SOR ¶¶ 1.g and 1.h, but with explanations I construe as denials that his answers to questions on his

May 2022 SCA were deliberately false. I incorporate his admissions into the findings of fact. Additional findings follow.

Applicant is 30 years old. He graduated from high school in 2012 and attended college for about three years but did not earn a degree. He and his wife married in November 2019 and they now have an infant child. From August 2017 to October 2019, Applicant worked as a police officer for the City A police department (PD). (GE 1, GE 2; Tr. 52-53, 68-69, 89-90)

In October 2018, Applicant responded to a police call from a large retail store. A store patron had found \$250 and turned in the money. Applicant began preparing the police report but put the money in the trunk of his squad car when he got another call. He then said he forgot about it, so the \$250 remained there for 8-12 months. When he later found the money, he decided to keep it, instead of turning it in. He said this was because no one had asked about it. He later spent the money. (GE 3 at 6)

In October 2019, Applicant was questioned by IAB about various incidents involving missing reports and missing evidence, including this incident. He admitted spending the money and not filing the required paperwork. He said he was placed on probation and that his police equipment was confiscated. He resigned from the PD about a week and a half later by submitting a letter to the police chief. (GE 3 at 6)

After that, Applicant was unemployed until February 2020, when took a job with store. He worked there until August or September 2020, when he began working for his current employer, a defense contractor. (GE 1, GE 2) Applicant began with his current employer as a painter. He moved into the security office about 18 months ago and is now a project manager and AFSO. (Tr. 25-26) He handles all FSO duties in the FSO's absence. (Tr. 40-42) He has regular access to classified material and the employer's classified facility (SCIF). (Tr. 115-116)

Applicant submitted an SCA in September 2020. In discussing his departure from the PD and his resulting unemployment, he stated that:

I was not satisfied with my current job. Police work was not what I wanted to pursue as a career after I was in for two years. I was already in the works of looking for another opportunity. I did not have the resumé necessary to jump into another profession. . . . (GE 2 at 14)

Applicant noted further that he left the job "to pursue another career opportunity." (GE 2 at 15) He gave no indication of having left the job while under investigation by IAB. In answer to a question under the "Received Discipline or Warning," heading, Applicant answered "Yes," and reported that in about May 2019, he had been "warned due to the lack of completing paperwork." (GE 2 at 16; Tr. 107-108)

Applicant had a background interview in October 2020. He authenticated the interview summary in April 2023. He discussed his answers on his SCA and provided

more information about his employment with and departure from the PD. (GE 3 at 6) He stated in the interview that he received a written reprimand from a supervisor for failing to complete paperwork. He said he would start filling out police reports but would not complete them because he was too busy. He said he was not otherwise suspended or disciplined as a result. (GE 3 at 6; 108-109) (SOR ¶ 1.e)

Applicant also said that he was uncertain if he was eligible for rehire by the PD, because when he left the job, he was under investigation by internal affairs (IAB). He said when police officials “looked into” his incomplete paperwork, they found another instance in which he had failed to submit a report or evidence following a police call. (GE 3 at 6)

Applicant explained in this interview that he resigned from the PD because he was unhappy in the job. Since the IAB investigation was ongoing, he did not know the outcome when he resigned, and did not know if he would have been fired. This was why he did not list his departure on his SCA (in answer to the “Reason for Leaving” question on GE 2). He had no further contact with anyone from the City A PD after he left. (GE 3 at 6) Applicant testified that he disclosed the matter in his background interview before being confronted about it. (Tr. 77-78)

Applicant’s first application, for a secret clearance, was later granted. He later took a position in his employer’s facility security office, for which he needs a top-secret clearance. (Tr. 69-70) He therefore submitted a second SCA, in May 2022. (GE 1) His explanation for leaving the PD (“To pursue another career opportunity”) and his narrative explanation for his resulting unemployment were unchanged, word for word, from what he had reported on GE 2. (GE 1 at 12, 13, GE 2 at 14, 15)

Applicant answered “No” to the following question on his May 2022 SCA about his employment with the PD:

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 performance

SOR ¶ 1.g alleges that, in answer to this question on the 2022 SCA (GE 1), Applicant deliberately failed to disclose his resignation from the PD (SOR ¶¶ 1.a, 1.b, and 1.c, as originally alleged). SOR ¶ 1.g also alleges that Applicant failed to disclose certain oral and written reprimands. (SOR ¶¶ 1.d, 1.e, and 1.f). However, as discussed below, since the IAB investigation was ongoing when he left the PD, his answer of “No” to this question was true. Further, the reprimands alleged in the SOR were not reportable in answer to this question.

The next question (“Received Discipline or Warning”) (GE 1 at 15) asked:

For this employment, in the last seven (7) years, have you received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace such as a violation of security policy?

SOR ¶ 1.h alleges that in answer to the “Received Discipline or Warning” question on his May 2022 SCA, Applicant deliberately failed to disclose his two written reprimands, in April and May 2019 (SOR ¶¶ 1.e and 1.f) (SOR ¶ 1.d, concerning an oral reprimand, was not included).

In answering “No” to this question on his May 2022 SCA, Applicant also gave no indication that in May 2019, he had been “warned due to the lack of completing paperwork,” – as he had reported on his first SCA. (GE 1 at 13; GE 2 at 16; Tr. 107-108) Applicant denied deleting or removing this language from his May 2022 SCA. (Tr. 113-114)

Applicant had a second background interview in June 2022 and a third interview in September 2022. According to his authenticated June 2022 interview summary, he volunteered that, while he was employed with the City A PD, he was investigated by IAB. The investigation was ongoing when he left. He verified his listed reason for leaving the job. He was being investigated for not turning in reports and “for there being no resolution to a call for some found money being turned in that [Applicant] had picked up.” He said he was not disciplined, was not terminated, and did not leave following charges or allegations of misconduct or after receiving notice of unsatisfactory performance. The incident was fully discussed in his earlier interview and there were no subsequent updates. (GE 3 at 13; Tr. 79)

In Applicant’s third interview, in September 2022, he was confronted about receiving an oral reprimand and a written reprimand, both in April 2019, from his supervisor, Sgt. M, for failing to turn in reports. (GE 3 at 15) (SOR ¶¶ 1.d, 1.f) He denied receiving these reprimands, or receiving another written reprimand, in May 2019. (SOR ¶ 1.e) (GE 3 at 17-18; GE 2 at 16) During his hearing testimony, however, he did not dispute receiving these reprimands, as alleged. (Tr. 53-54) Documentation of the written reprimands themselves are not in the record here. (Tr. 85)

Applicant was also confronted in his third interview about numerous other allegations of conduct against policy and neglect of duty, including: (1) failing to report calls; (2) failing to complete or turn in about 42 reports; (3) failing to turn in evidence; and (4) instances of destruction of evidence and property. These allegations are detailed in the September 2022 background interview summary and are not repeated here. They were being investigated by IAB at the time Applicant resigned, in October 2019. He was confronted in the interview about not being eligible for rehire by the City A PD. (GE 3 at 15-17)

Several instances of Applicant's failure to turn in evidence were discussed at length. In June 2018, he was called to a retail store after an employee had found a bag of marijuana and called police to turn it in. Applicant called the incident in to headquarters, but did not finish the report, and later threw the marijuana away. He said he did so to save time and because no offender was involved. (GE 3 at 15) He was never aware of or read a specific "verbatim" policy prohibiting this, but said if there were, his actions violated it. (Tr. 125-126) The second incident (discussed above), concerned the \$250 turned in by the store patron, money that Applicant took possession of, stored in his squad car, forgot about for months, and then spent it when he found it, instead of turning it in. He acknowledged being "selfish," violating his fiduciary duty as a police officer, and committing a crime in doing so. (GE 3 at 16; Tr. 99-102, 119-124)

In this third interview, Applicant also acknowledged throwing away a shell casing after an incident involving "shots fired." No additional details on this incident were provided. (GE 3 at 16) During his testimony, Applicant said "I was asked about that situation, because it had happened," but he did not recall or offer any details during his hearing. (Tr. 106)

Applicant agreed with the information he was confronted about. He said he would forget to start reports due to the workload, and admitted that he would not turn them in. He said he understood that rules and regulations must be followed. He said he had issues with maturity when he was a police officer and has learned from his mistakes. (GE 3 at 16-17)

Applicant reiterated during the September 2022 interview that he resigned from employment with the City A PD because he was unhappy and left to pursue other career opportunities. He was aware of the IAB investigation for the 42 missing or unfiled reports, but said he was not fired and said he did not leave because he was under investigation. (GE 3 at 17) He said he knew that failing to complete or turn in reports was against department policy. He said he did not list the IAB investigation or the missing reports on his SCA because he was not reprimanded for any of the issues. He denied having been placed on probation or having his police equipment confiscated after it was discovered that he failed to turn in (and then spent) the \$250. (GE 3 at 17)

In his Answer to the SOR, Applicant admitted resigning from the PD while under investigation by IAB but said he did so because he was unhappy and no longer wanted to work there. He acknowledged failing to turn in 42 reports over a two-year period, and said this was because he was young, irresponsible, and overworked. He acknowledged throwing evidence in the trash, because "I had discretion over misdemeanor possessions of substances therefore I just threw it away. I never used or gained from the evidence that was not turned in." He was counseled for failing to turn in reports and signed an acknowledgement. (Answer, SOR ¶¶ 1.a-1.c, 1.e, 1.f)

Applicant admitted receiving an oral reprimand in April 2019 for failing to activate his body camera and to turn in a report. He forgot to turn his body camera on when

answering a call. It was not intentional. He had to learn to turn the camera on. (Answer, SOR ¶ 1.d)

Applicant said in his Answer that when he filled out his first SCA he did not know how to report the data needed, and he disclosed all the information to the investigators for both of his interviews. (Answer, SOR ¶¶ 1.e, 1.f, 1.g, 1.h)

Applicant admitted both SOR ¶¶ 1.e and 1.f, regarding written reprimands in April 2019 and May 2019, when asked about them during his testimony. However, he also said he did not recall receiving written reprimands and recalled only that he interacted with his supervisor and sergeant. (Tr. 82-87) Yet he acknowledged an April 2019 written reprimand for failing to turn in reports, as alleged and as referenced in GE 3. (Tr. 106-107; GE 3 at 15)

Applicant said in his Answer that when he filled out his second SCA (GE 1), he used the previous questionnaire and “assumed it was ok to use the existing information and that all that was disclosed for my Secret clearance would automatically be in my file. I thought that disclosing the information to the investigators would suffice.” He did not intend to withhold information. He did not know the specific reprimands or the dates they were given. He was counseled by his direct supervisor. He was told he could explain the information to the investigators, which he did. (Answer, SOR ¶¶ 1.g, 1.h)

Applicant began his testimony by acknowledging that he left the police department “in a way that was not necessarily honorable. . . they were definitely unsatisfied.” He also asserted that “a lot of this was disclosed” when he submitted his first SCA. He said “I didn’t answer it in the original paperwork because of how it was asked. . . I wasn’t charged with anything at the time. They were still in the investigation process. However, I did leave because I was myself unsatisfied,” looking for another job, and “in a bad mental state.” (Tr. 46-47)

Applicant acknowledged being under investigation by IAB for failing to complete reports and to turn in evidence. He acknowledged not turning in 42 reports, as alleged. The reports concerned matters such as interactions with citizens, crimes, and possible crimes. He said he never discarded any reports, he just failed to complete them, usually due to forgetfulness and being overwhelmed by the paperwork as a young police officer. He acknowledged throwing evidence away, when he determined not to file charges against an individual, such as for juveniles smoking marijuana. It was easier to call their parents than to take them into custody, which was at his discretion. He acknowledged that it was against policy to discard evidence and said he did so out of convenience. He denied any “malicious intent.” He said he did this because it would have involved “a lot of time-consuming paperwork” and it was easier to discard” the evidence in such cases. He said he was supposed to finish his reports by the end of his shift. However, he acknowledged the need for proper documentation. (Tr. 46-48, 54-59, 60-63, 91-93, 102-105, 112, 130-131, GE 3 at 15)

Applicant acknowledged “multiple counseling sessions” with his direct supervisor and recalled that “I did sign paperwork.” He said he was trying to do his job and to “be on the street with my fellow officers” and felt that the paperwork will “work itself out.” (Tr. 48, 130-131) He said he was first counseled about missing reports in April 2019. He acknowledged failing to complete reports even after being counseled about it. (Tr. 93-98, 108; GE 3 at 16) He said he was “too prideful [and] immature” to ask for help from police colleagues. (Tr. 112)

Applicant learned he was being investigated by IAB in October 2019, the month he resigned. “We sat down. They asked about it. And I told them, ‘Yep, I didn’t turn in this paperwork.’” (Tr. 64-66, 75) He said he does not know if the investigation continued after he left or how it might have concluded. He also asserted that he turned in his equipment when he resigned. “They took all of my . . . equipment, my vehicle. they drove me home,” and he turned over all the department property he had. (Tr. 67-68) The investigation was ongoing when he resigned. (Tr. 76-78)

Applicant also acknowledged that when he was under investigation from IAB, he was placed on probation. He said he was removed from patrol duties and assigned to a desk job at the precinct. He considered himself to be on administrative leave. (Tr. 110) He asserted that, “even if I was to have been cleared of everything, I still would have left at some point,” even though when he resigned from the PD, he was unemployed and had no immediate job prospects. (Tr. 111) He did not attend or participate in any psychological or mental health counseling after leaving the police department. (Tr. 142)

Applicant asserted his current job is “a different situation.” He said he understands the security measures, documentation, and record keeping that are necessary requirements of protection of classified information. He enjoys his job and takes pride in his work and advancement at the company. He sees the other managers as mentors to emulate. (Tr. 49-52, 141-142) Applicant gave as an example a company employee who was investigated and terminated following a security violation or infraction. Appropriate authorities were notified and Applicant documented the matter properly, in his role as AFSO. (Tr. 71-72)

Applicant said he assumed that everything he disclosed during his first clearance investigation “was going to follow into the next one.” He didn’t really “put two and two together” and consider the second application (GE 1) as a second, separate one. “I thought everything was fine.” (Tr. 72-73) He did not think to change anything on his second SCA since he disclosed it to the first investigator and his first clearance was granted about two years before. (Tr. 73-74)

In disclosing what he did on his first SCA about how he left the PD, Applicant said he was told he would have the chance to talk to an investigator. He also said, if what he reported “was incorrect, then I wouldn’t have that opportunity.” (Tr. 76, 78-79) Applicant confirmed his earlier statements that he saw no reason to change anything on his second SCA because he had reported it and discussed it previously. He said the second SCA was largely repopulated with information from the first one. (Tr. 127) He



reaffirmed what he said in his second interview, that is, that he volunteered that he was investigated by the PD, was not disciplined, and that the investigation was ongoing when he left. (Tr. 79)

In addressing the falsification allegation at SOR ¶ 1.g, Applicant said he knew he would have an opportunity to explain the situation to the investigator. He viewed this as “better in my case than trying to type something out and have somebody read it.” (Tr. 80)

As to SOR ¶ 1.h, Applicant said he believed that the reprimands he received from his supervisor were oral reprimands, not written ones and it was “between the sergeant and I at the time.” (Tr. 81) He said he also did not “have dates for anything else.” He said he was trying to disclose the matter to the investigator because “I didn’t know how to explain that” on the SCA. (Tr. 88)

Applicant denied removing the reference to the warning (as reported earlier, on GE 2) from his second SCA. (Tr. 113-114) He said he was not trying to hide anything on his 2022 SCA. He was “just trying to get it done as quick as I could.” (Tr. 115) When asked why he did not disclose any reprimands on the 2022 SCA, he said he did not know why he would have left it out, and he was not trying to hide anything since it had been disclosed on his 2020 SCA. “I may have just assumed that was there.” (Tr. 114-115) He also said that as to this question, the information was not repopulated from the first SCA. He did not have the first SCA with him when he prepared the second one. (Tr. 128-130)

Applicant said he understands the security concern shown by his conduct and acknowledged both the importance of and similarities between complying with rules and regulations for police and for the protection of classified information, as well as the need in both areas to keep proper and complete records. (Tr. 116-119) He testified about his training as an AFSO and his reliance on others in the office with experience and expertise. (Tr. 131-134) He also provided 17 documents regarding the training, education, and security briefings he has received, along with his responsibilities and qualifications for his job as an AFSO for his employer. (AE E) His annual performance evaluations from 2020 through 2023 reflect that he met or exceeded expectations and that he was rated “effective.” The evaluations cover both his time as a painter for the company and his time as a security specialist or AFSO. (AE A-AE D)

Applicant presented character testimony from three witnesses. Mr. A is Applicant’s brother-in-law. They met in 2012 when Mr. A and his wife began dating. They married in 2015. Applicant and Mr. A also have worked for the same company since September 2020. They are co-workers. Mr. A holds a clearance. (Tr. 22-29)

Applicant and Mr. A have weekly professional interaction. Mr. A testified that Applicant’s progress through the company “speaks volumes about [his] work ethic, his ability to learn and comprehend, [and] his accountability.” He is a “tremendous asset” to the organization. He also has character, integrity, and strong family values. (Tr. 27-29)

Mr. N has been Applicant's supervisor for six to eight months. He has a clearance. He has worked with Applicant's father for over 20 years and has known Applicant since 2003, when Applicant was in middle school. Mr. N regards Applicant as open and honest and of good character. He is active in his church. They have daily professional contact and biweekly mentoring sessions. Applicant is very trustworthy. (Tr. 30-36)

Ms. A2 has been a co-worker of Applicant's for two years. She has been their employer's FSO at their worksite for two years and has been an FSO for five years. Applicant was already an AFSO when she arrived. She attested that he is very hardworking and she has not seen anything of his conduct to suggest that he should lose clearance eligibility. She regards him as very trustworthy and she has confidence in his ability to perform professional security responsibilities. Ms. A2 is aware that Applicant is a former police officer with City A but was not aware of any employment issues he had there. (Tr. 37-44)

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

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 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, these guidelines are applied 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(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 not drawn 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 applicant or proven by Department Counsel and 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.

## **Analysis**

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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 proceedings. . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are 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; 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; and (3) 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:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

While working as a young police officer for City A between 2017 and 2019, Applicant had a difficult time keeping up with the paperwork and bureaucratic requirements that came with the job. He failed to complete and/or submit required police reports on about 40 occasions. He acknowledged discarding or throwing away evidence, including of uncharged misdemeanor marijuana offenses, often involving juveniles. Applicant had discretion not to issue citations in such cases, but he belatedly recognized the need for proper and complete documentation. On one occasion, he took custody of about \$250 that a store patron had found and turned in, but then forgot about it for months. When he found the money in his squad car months later, he kept it and spent it instead of turning it in at the precinct.

Applicant was counseled about his record-keeping and evidence collection by his supervisor on several occasions in 2019. He asserted at various times that his counseling sessions also involved reprimands or warnings, some oral and some written. None of the written reprimands themselves are in the record. However, Applicant disclosed at least one warning, which he reported on his first SCA, in 2020.

I find that the April 2019 oral reprimand (SOR ¶ 1.d) and the two alleged written reprimands, from May and April 2019 (SOR ¶¶ 1.e and 1.f, respectively) are sufficiently established by the record, specifically by Applicant's testimony that he was reprimanded by his supervising sergeant on multiple occasions. AG ¶ 16(d)(1) and (3) apply to them.

Applicant resigned as a police officer in October 2019. By this time, he was under investigation by IAB and he knew it. He was also placed on probation, or was at least suspended from street duty, and assigned a desk job at the precinct. The IAB investigation was ongoing when he resigned, and he never learned the result later. SOR ¶ 1.c, as amended, is established. AG ¶ 16(d)(1) and (3) apply. Applicant took \$250 that was turned over by an honest citizen. He took and later spent the money rather than doing what he should have done and turned it in. He was under investigation by IAB for that and other conduct. AG ¶ 16(e)(1) applies.

Since the investigation was ongoing when he resigned, Applicant was not fired, and he did not quit after being told he would be fired. Nor did he leave by “mutual agreement” following charges or allegations of misconduct or notice of unsatisfactory performance. There were such allegations (and they were largely established), and he knew about them, but there was no established “mutual agreement” that he should leave the PD. Therefore, given the choices the question offered, Applicant’s answer of “No” to the “Reason for Leaving” question on his 2022 SCA was true. SOR ¶ 1.g is found for Applicant.

When Applicant reported the circumstances of his departure from the PD (in addressing his resulting period of unemployment) on both his 2020 SCA and 2022 SCA, he indicated that he left the job because he was unsatisfied and wanted to pursue other career opportunities. This was probably true, but it was not the whole truth. He did not disclose that he was also under investigation by the PD for poor performance and neglecting his duties when he resigned, something he unquestionably knew at the time. There is no allegation in the SOR as to Applicant’s lack of candor in reporting his departure from the PD in this way, so it cannot be considered as disqualifying conduct. However, it can be considered in weighing mitigation and Applicant’s credibility, particularly on the relevant issue of his departure from the PD.

Applicant discussed the circumstances of his departure during his first background interview (2020) and gave the same answer, word for word, on his second SCA (2022) as he did on his first SCA. This suggests that, as Applicant claims, his second SCA was “repopulated” with answers from his first one.

The next question, “Received Discipline or Warning,” asked:

For this employment, in the last seven (7) years, have you received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace such as a violation of security policy?

On his 2020 SCA, in answer to this question, Applicant answered “Yes” and disclosed that he had been “warned due to the lack of completing paperwork.” The answer changed to “No” on his 2022 SCA, as alleged in SOR ¶ 1.h. The fact that his answer to the previous question on his 2022 SCA was identical to what he reported on his 2020 SCA strongly suggests that Applicant changed his answer here. In doing so, he gave no indication that he had received any warnings, reprimands, suspensions, or was disciplined by the PD. While the written reprimands are not in the record, he acknowledged being counseled by his supervising sergeant (in about April or May 2019). Yet Applicant also gave no indication that he was suspended or placed on probation, at least during the IAB investigation, when he acknowledged having been removed from patrols and assigned to desk duty.

The fact that Applicant answered “Yes” to this question on a previous form, and discussed some of his warnings in his first background interview did not allow him to change his answer to “No” and thereby give no indication on his second SCA that he

had any issues when he was employed with the PD. He had a responsibility to be fully candid on his second SCA and he was not. AG ¶ 16(a) applies to SOR ¶ 1.h.

A security clearance investigation is not a forum for an applicant to split hairs or parse the truth narrowly. The government has a compelling interest in protecting and safeguarding classified information. That compelling interest includes the government's legitimate interest in being able to make sound decisions, based on complete and accurate information, about who will be granted access to classified information. An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002)

AG ¶ 17 sets forth potentially applicable mitigating conditions under Guideline E:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment of 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; and

(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.

Applicant disclosed one written warning on his 2020 SCA and discussed the circumstances of his departure from the PD in his 2020 background interview. In that interview, he disclosed that he had been under investigation by IAB when he left the job. He discussed the incident where he failed to turn in the \$250. He discussed no other written warnings beyond the one he disclosed on GE 2. He also said he had not been otherwise suspended or disciplined as a result. This was clearly false, given the record of: (1) numerous other incidents where he failed to complete reports and to turn in evidence, incidents that came to light in his subsequent investigation and (2) the fact that he had been suspended from patrol duty during the IAB investigation.

During Applicant's June 2022 interview, he volunteered that he had been investigated by IAB for not turning in reports and for the incident regarding the \$250. He said the investigation was ongoing when he left. It was not until September 2022 that Applicant was confronted about the full extent of his employment record with the PD. At that point, he was confronted about numerous specific instances of failing to complete or fill out reports and to turn in evidence.

Applicant said in his September 2022 interview that he did not list the IAB investigation or the missing reports on his SCA because he was not reprimanded for any of the issues. This is patently false, since it is clear that he was reprimanded by his supervising sergeant for several instances of poor record-keeping at best. He was also suspended or placed on “on the job” probation (desk duty) during the IAB investigation. While these statements are not alleged as separate personal conduct allegations, they can be considered in weighing mitigation because they undermine his credibility in that Applicant minimized his conduct on several occasions during the security clearance process. AG ¶ 17(a) therefore does not fully apply.

Applicant’s actions as a police officer are rather dated. However, while in a position of public service and a fiduciary position of public service he abused that trust, not only by doing a poor job of record keeping and evidence management, but on one occasion by committing an act of theft by stealing \$250. There are marked similarities between (1) the requirements of recordkeeping and management of evidence as a police officer and (2) the requirements of recordkeeping and management of classified information and materials. Applicant has a history not only of poor recordkeeping and evidence management but also of misconduct. This history places a high burden on Applicant to show that he is a suitable candidate for access to classified information – particularly as an AFSSO, a position in which he is tasked with handling and protection of classified information and materials on a daily basis, including with proper documentation.

I credit Applicant’s documented trainings for his position and the testimony of his character witnesses attesting to his judgment, trustworthiness, and reliability. However, notwithstanding this evidence, it is difficult to conclude that Applicant is fully and sufficiently rehabilitated at this time, given his lack of candor about the full circumstances of his departure from the PD on his 2022 SCA. He has not shown that his actions happened under such unique circumstances that they are unlikely to recur and do not cast doubt on his reliability, trustworthiness, or good judgment. AG ¶¶ 17(c) and 17(d) do not fully apply. Applicant has not fully mitigated security concerns about his personal conduct, concerning both his actions as a police officer and his lack of candor about the full circumstances about his departure from that position during the security clearance process.

### **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. As noted, I considered Applicant's testimony, character evidence, and the documentation of his trainings and certificates as a security manager and as an AFSSO. Applicant now better understands the problems with what he did. But that evidence in mitigation must be balanced against his pattern of conduct, including work-related rule violations, lack of candor, and the risk of recurrence. Applicant's actions as a young police officer are themselves rather dated. But the similarities between the police and security requirements of compliance with rules, regulations, and documentation make Applicant's track record difficult to overcome. Further, not until he is completely candid about the full circumstances of his departure from the PD and his actions, can he be considered rehabilitated and, perhaps, a better candidate for access to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for continued access to classified information.

### **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
Subparagraphs 1.a-1.b:	Deleted
Subparagraphs 1.c-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the national security interest of the United States to grant Applicant's access to classified information. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge