



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



In the matter of:	)	
	)	
	)	ISCR Case No. 24-00219
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Cynthia Ruckno, Esq., Department Counsel  
For Applicant: *Pro se*

10/11/2024

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Following various reprimands, Applicant resigned his position as a police officer in February 2023, during an ongoing internal investigation into his conduct stemming from a 2022 incident. 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 a security clearance application (SCA) in July 2022. On April 16, 2024, 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 April 22, 2024, and requested a decision without a hearing. Department Counsel prepared a file of relevant material (FORM) and provided it to Applicant on June 20, 2024. Applicant received the file on July 5, 2024. Applicant was given 30 days to respond to the FORM. He did not submit any material within that timeframe. The case was assigned to me on September 26, 2024.

### **Findings of Fact**

In his Answer to the SOR allegations, Applicant admitted SOR ¶¶ 1.a-1.g with narrative explanations. I incorporate his admissions into the findings of fact. Additional findings follow.

Applicant is 32 years old. He graduated from high school in 2011 and attended college for about a year but did not earn a degree. He is not married. He has one child, age 10. (Item 3)

From September 2012 to February 2023, Applicant worked as a police officer for a police department (PD). On his SCA, he acknowledged he had “multiple disciplines” during the time he worked for PD, including a total of 30 days of suspension. The seven allegations in the SOR set out Applicant’s misconduct during the time he was a police officer. (Answer; Item 3)

SOR ¶ 1.a alleged that in about September 2015, Applicant received written counseling from his employer for causing an accident while on duty. Applicant admitted this incident. He explained in his Answer that he was disciplined because PD believed he would have been able to avoid the accident had he followed protocol and come to a full stop before proceeding into the intersection. (Answer)

SOR ¶ 1.b alleged that in 2016, Applicant received a disciplinary counseling for disregarding his supervisor’s orders and abandonment from his duty location. This event occurred when Applicant was working an off-duty event. He disregarded a Sergeant’s direction to stay in the lobby of the building and not go upstairs. Applicant admitted this incident. He explained that he used a non-public restroom located upstairs instead of using the public restroom in the lobby. (Answer)

SOR ¶ 1.c alleged that Applicant received a code of conduct violation for disregarding dress standards. Applicant admitted this incident occurred as a result of his choice to wear jeans and a t-shirt while working the front desk of a patrol division. He indicated he felt singled out because others wore similar attire. (Answer)

SOR ¶ 1.d alleged that on May 5, 2020, Applicant used improper defensive tactics resulting in an injury to a subject. Applicant admitted this incident occurred. He explained that he tackled the subject from behind to take him into custody. During the apprehension of the subject, the subject’s finger was broken. As a result, Applicant received a written counseling. (Answer)

SOR ¶ 1.e alleged that on May 23, 2020, Applicant used excessive force during an arrest when he pointed his service handgun at someone he did not intend to shoot. Applicant admitted this incident. A Personnel Incident Report provided by Applicant dated October 9, 2020, found that Applicant “un-holstered his firearm and placed it on the right side of [subject’s] face.” This close contact muzzle placement was captured on in-car camera footage. This tactic was “not taught or approved during the basic Defense tactics and Firearms classes” provided by the PD Academy. Applicant was placed on unpaid suspension for 15 days because of this incident. (Answer)

SOR ¶ 1.f alleged that in September 2021, Applicant received an unpaid 15-day suspension for inappropriate behavior with a female employee and for using his mobile phone while on duty. Applicant admitted he was suspended for this incident but denies misconduct with respect to the female employee. However, he admits to using his phone to view Tik Tok while on duty. (Answer)

SOR ¶ 1.g alleged that in about October 2022, Applicant resigned from PD in lieu of being terminated for unprofessional conduct. According to Applicant, this incident had to do with his use of a derogatory swear word and statement he made to jail employees when transporting a subject to be jailed in October 2022. Internal Affairs for PD investigated the incident and reviewed video recordings. Applicant attempted to mitigate the concern by completing anger management classes, however, the discipline coordinator from PD called Applicant and informed him that the recommendation was to terminate Applicant’s employment. Applicant resigned in February 2023 in lieu of termination. (Answer)

Applicant claims to have “maintained a track record of professionalism and ethical behavior since the time of the allegations.” However, he offered no independent support for his claim. He emphasized that he has an unwavering dedication to the United States and is an asset to the country. (Answer)

### **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:

(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

I find that seven instances of misconduct during the time Applicant was a police officer are substantiated by the record and through his admissions. The severity of those allegations range from minor violations, like failing to follow the dress code, to more serious violations, like pointing his service handgun at someone he did not intend to shoot. Applicant's pattern of rule violations from 2015 to 2023 demonstrates untrustworthy and unreliable behavior. AG ¶ 16(d)(1) and (3) apply.

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

(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's conduct while employed by PD did not occur under particularly unique circumstances and was relatively recent. The seven instances of improper conduct occurred over a seven-year period. All instances varied in substance but had the common theme that Applicant did not adhere to established rules and policy. While he has taken the positive step of completing an anger management course, he has not demonstrated that his inappropriate behavior is unlikely to recur beyond his mere averments.

### **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. Applicant's statements in mitigation must be balanced against his pattern of conduct and the risk of recurrence. Applicant's actions as a police officer are recent. Further, the similarities between the police and security requirements of compliance with rules, regulations, and documentation make Applicant's track record difficult to overcome. 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.g:	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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Jennifer I. Goldstein  
Administrative Judge