



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



In the matter of:)	
)	
)	ISCR Case No. 24-00111
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: Daniel E. Meyer, Esq.

06/17/2025

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline E (Personal Conduct).
Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 2, 2022. On June 18, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline E (Personal Conduct). The DCSA acted 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on June 26, 2024, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 11, 2024. The case was assigned to me on March 11, 2025. On April 22, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on May 8, 2025. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through G, which were admitted without objection. DOHA received the transcript on May 19, 2025.

Findings of Fact

In Applicant's answer to the SOR, he denied the allegation in SOR ¶ 1.a, admitted SOR ¶¶ 1.b and 1.c in part, and admitted SOR ¶ 1.d with an explanation. His admissions are incorporated in my findings of fact.

Applicant is a 43-year-old personnel security assistant employed by a defense contractor since October 2023. He worked as a pretrial investigator for a state government from November 2012 to July 2016. He was a background investigator employed by federal contractors from about May 2016 to February 2018 and from September 2019 until he was hired for his current position. He received a bachelor's degree in August 2004 and a master's degree in March 2011. He married in September 2019 and has a four-year-old child. He received a security clearance in May 2016.

When Applicant was hired by a federal contractor as a background investigator, he received six weeks of training, followed by two weeks of mentoring. He began working as an unsupervised background investigator in August 2016. (Tr. 67) At the time, background investigators were required to make two in-person attempts to visit residential sources during a background investigation. The purposes of the visits were to verify that an applicant actually resided at an address and to obtain information from neighbors about the applicant's background. (Tr. 72) The investigator would then write a report containing the information that was gathered and file it in the field work system (FWS). The investigator was required to state, by checking a box, that the report, including the results of the contacts with residential sources, were accurate.

As a new investigator, Applicant was unable to handle his caseload well enough to make the second attempt to visit residential sources and complete his report by the assigned close date (ASD) for all of his background investigations. At some time between October and December 2016, he began falsifying some of his background investigation reports by stating that he made two in-person attempts to contact residential sources, when in fact he had made only one attempt, and he filed those falsified reports in the FWS. He testified that he stopped falsifying his reports in 2017, when he realized that the ASDs were not as important as he originally believed, and he realized that what he was doing was wrong. (Tr. 36) He testified that the two-attempt rule was eliminated in June or July 2018, during COVID-19, due to workload. (Tr. 51-52)

On September 14, 2022, Applicant underwent a polygraph examination in connection with his application for a position requiring eligibility for access to sensitive compartmented information. During the pretest interview, he told the polygraph examiner

about his falsifications of his background investigations. According to the polygraph examiner's report, Applicant estimated that about 50% of the reports he submitted contained false information about making a second attempt to contact residential sources. (GX 3)

In May 2023, Applicant was interviewed by a security investigator. He told the investigator that he had followed all required protocols for conduct field investigations, including the requirement for making two attempts to visit residential sources. When confronted with the polygraph pretest interview report in September 2022, he admitted that he sometimes did not follow the protocol, because he did not have time to make the second attempt and file his report before the ASD. He also admitted that he entered his false reports in the FWS. He told the investigator that he was not sure how many times he submitted false reports. (GX 3 at 11)

At the hearing, Applicant estimated that during his employment as a background investigator he submitted well over 1,000 investigative reports in the FWS. He testified that fewer than 100 but at least 30 cases were falsified with respect to the requirement for two in-person attempts to visit residential sources. (Tr. 83-84)

During the September 2022 pretest interview, Applicant also told the polygraph examiner that between 2020 and the date of the interview, he had falsified his timecards between 12 and 16 days per year by reporting that he had worked one hour more than he had actually worked, and he did not make up the time at a later date. He told the polygraph examiner that he was required to work until 6:00 p.m., but that at least once a month he left work at 5:00 p.m. to go to dinner with his wife, and he did not make up the time by working extra hours on other days. (GX 3)

During the May 2023 interview by a security investigator, Applicant said that on the days he stopped working early to go to dinner, he did not log in later in the day to complete his workday, but there were other times when he worked more than eight hours or on weekends. He told the investigator that he was not methodical about tracking his work hours, but his irregular work schedule was not a deliberate theft of company time. He told the investigator that his statement to the polygraph examiner about not making up the time was not true, and that he should have told the polygraph examiner that he made up some but not all of the work hours. (GX 2 at 12-13)

At the hearing, Applicant testified that he worked flexible hours, typically starting at 9:00 a.m. and ending at 6:00 p.m., but that he sometimes started work early in the morning or conducted interviews in the evening to accommodate an applicant's schedule or the schedules of the applicant's neighbors. When he worked more than 40 hours during a week, he would "guestimate" the additional hours worked. (Tr. 100-05)

In Applicant's response to the SOR, he stated that he told his wife about his admission that he falsified his timecards, and she could not understand why he thought he had committed an integrity violation since he routinely worked more than 40 hours every week and would have made up the time he took off for dinner. After this conversation with his wife, he concluded that he had made a false confession to timecard

fraud. (Response to SOR at 5) At the hearing, he recanted his admission to the polygraph examiner that he committed timecard fraud. (Tr. 105-08)

Applicant testified that he has learned his lesson and will not repeat his misconduct. Eight years have passed since his last falsified investigation, and he is no longer an inexperienced investigator. Almost three years have passed since he last falsified a timecard. He has disclosed his conduct to his spouse, friends, and a coworker. (Tr. 57-60) However, as of the date of the hearing, he had not disclosed it to his current employer or his facility security officer. (Tr. 85-86)

Applicant's spouse is a registered nurse with 18 years of experience. She submitted a statement attesting to his honesty and integrity. She states that Applicant routinely worked into late evenings because of his commitment to his work and his employer. When he took a dinner break, he came home and worked into the late hours to meet the demands of his job. (AX D)

A coworker who was mentored by Applicant and has worked with him since 2018 considers him a very trustworthy individual and a stickler for rules. She describes him as "a very reliable coworker, team player, and family man with a very good sense of judgment." (AX E)

A personal friend who has known Applicant since 2006 submitted a statement attesting to his good judgment, reliability, and trustworthiness. (AX F) Another friend who has known Applicant since their college years in 2001 describes him as having a competitive nature but a calm and patient demeanor and unquestionably high moral character. He considers him likeable, responsible, and trustworthy. (AX G)

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* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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. 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* at 531.

Analysis

Guideline E, Personal Conduct

SOR ¶ 1.a alleges that from about 2020 to September 2022, Applicant falsified his timecards 12 to 16 times per year by reporting one additional hour of work that he did not perform during the regular workday and did not make up the time later.

SOR ¶ 1.b alleges that from about September 2016 to about January 2018, Applicant falsified about 50% of his background investigation reports by stating that he

made two in-person attempts to visit residential sources despite having made only one such attempt.

SOR ¶ 1.c alleges that from about September 2016 to about January 2018, Applicant falsified material facts in his employer's fieldwork system (FWS) by reporting that he made two in-person attempts to visit residential sources despite having made only one such attempt.

SOR ¶ 1.d alleges that Applicant falsified material facts during an enhanced subject interview on about May 2, 2023, when asked whether he followed all required protocol for conducting field work for a government contractor, by stating that there had never been a time when he did not follow rules, regulations or protocol related to conducting field work; and that, only upon being confronted with his prior statement, did he acknowledge his falsifications and discuss the information in SOR ¶¶ 1.b and 1.c with the investigator.

SOR ¶¶ 1.b and 1.c are duplicative. Applicant's falsification of his reports was not completed until he filed them in the fieldwork system (FWS). When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). Accordingly, I have resolved SOR ¶ 1.b in Applicant's favor.

The security 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 following disqualifying conditions are relevant:

AG ¶ 16(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 representative, and

AG ¶ 16(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 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.

AG ¶ 16(b) is established by Applicant's false statement to a security investigator, stating that there was never a time he did not follow rules, regulations, or protocol related to conducting field work.

AG ¶ 16(d) is established by Applicant's admissions that he violated the requirement to make two in-person attempts to visit residence sources during a background investigation, his false reports reflecting that he had satisfied the requirement, and his submission of false timecards reflecting that he had worked eight hours on days when he had worked only seven hours.

The following mitigating conditions are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(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

AG ¶ 17(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.

AG ¶ 17(a) is not established for Applicant's false statement during the security interview in May 2023, claiming that he complied with the protocols for conducting background investigations. His false statement was recent and was an important element of the current security clearance adjudication. He did not correct his false statement until he was confronted with the evidence.

AG ¶ 17(c) is not established for Applicant's false reports reflecting two in-person attempts to contact residential sources. His conduct was not minor, because it affected the integrity of his investigative reports, it was not infrequent, and it did not occur under unique circumstances. However, it happened at least seven years ago. The first prong of AG ¶ 17(c) focuses on whether the conduct was recent. There are no bright-line rules for determining when conduct is recent. The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. See ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). Seven years is a "significant period of time." However, during that period, Applicant falsified timecards 12 to 16 times a year between 2020 and 2022 and attempted to cover up his false investigative reports during an interview with a security investigator in May 2023. His track record does not warrant a finding of reform or rehabilitation.

AG ¶ 17(d) is not established for Applicant's fraudulent investigative reports. He acknowledged that some of his reports were fraudulent, but his testimony has been

inconsistent and contradictory. He told the polygraph examiner that 50% of his for Applicant's investigative reports were fraudulent. He told the security investigator that he was not sure how many of his reports were fraudulent. At the hearing, he testified that he filed more than 1,000 reports but that only between 30 and 100 were fraudulent.

Similarly, AG ¶¶ 17(c) and 17(d) are not established for Applicant's falsified timecards. His explanations have been inconsistent and contradictory. He admitted them to the polygraph examiner and admitted that he did not try to make up the time. He told the security investigator that his statement to the polygraph examiner was not true because he made up some of the time. At the hearing, he recanted his admission to the polygraph examiner. He has not accepted responsibility for his conduct.

AG ¶¶ 17(c) and 17(d) are not established for Applicant's false statement to the security investigator in May 2023, asserting that he followed all required protocol for conducting field work, knowing that he had failed to follow the rule requiring two attempts to contact residential sources. His false statement was arguably a one-time incident, but it was recent, involved significant and material evidence, and was not "minor." Falsification during a security interview undermines the integrity of the security clearance process." See ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.)

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the 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 in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). 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 not mitigated the security concerns raised by his false investigative reports, false timecards, and his false statement during his May 2023 interview by a security investigator.

"Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d

1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant has not overcome this presumption.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge