DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 24-02085
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

07/01/2025

Decision

HARVEY, Mark, Administrative Judge:

Guideline E (personal conduct) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On December 14, 2018, and February 2, 2024, Applicant completed and signed Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance applications (SCA). (Government Exhibit (GE) 1; GE 2) On January 14, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to

determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline E. (HE 2) On January 20, 2025, Applicant provided a response to the SOR and requested a hearing. (HE 3) On February 20, 2025, Department Counsel was ready to proceed.

On March 3, 2025, the case was assigned to me. On March 4, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a Notice and scheduled Applicant's hearing on April 15, 2025. The hearing was held as scheduled on April 15, 2025.

Department Counsel offered seven exhibits into evidence; Applicant did not provide any exhibits for admission into evidence; there were no objections; and I admitted all proffered exhibits into evidence. (Transcript (Tr.) 14-15; GE 1-GE 7) On April 24, 2025, DOHA received a transcript of the hearing. No post-hearing exhibits were offered into evidence. (Tr. 50)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

Applicant admitted in part and denied in part the allegations alleged in SOR ¶¶ 1.a, 1.b, and 1.c, and he denied the allegations in SOR ¶¶ 1.d and 1.e. He also provided extenuating and mitigating information. He denied that he made intentionally false statements to the DOD. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 64-year-old senior program manager who has worked for a defense contractor for 20 months. (Tr. 6-7) A security clearance would be beneficial to his employment; however, it is not required. (Tr. 19) In 1978, he graduated from high school. (Tr. 6) In 1982, he received a bachelor's degree in computer science, and in 1997, he received a master's degree in information management. (Tr. 7) He has never served in the military. (Tr. 7) In 1985, he married, and his sons are ages 26 and 36, and his daughter is age 34. (Tr. 8)

Personal Conduct

SOR ¶ 1.a alleges Applicant was employed by companies T and B, and those employers issued two corrective action memos (CAM) to him in about 2016 and about 2022 for engaging in inappropriate behaviors and communications that scared co-workers or caused them to fear for their safety. He was consequently fired in April 2022, and he is not eligible for rehire. Companies T and B are closely associated with each other. Companies T and B will be referred to as company T/B.

The May 24, 2016 CAM states, "After an investigation it was deemed that on May 17, 2016 you had inappropriate behaviors in the workplace during and after a phone call. Specifically you cursed and shadowed boxed scaring co-workers in the general area." (GE 4) His employer said in the CAM, "You shall seek anger management assistance

from your medical provider. Any addition[al] behavior of this type will result in additional corrective action up to and including termination." (GE 4)

As to the 2016 CAM, Applicant said he did not "really remember" his behavior, and he "may have punched the air . . . out of frustration, but that was all." (Tr. 22) He discounted the seriousness of his behavior stating, "I'd find it difficult to understand why somebody is scared of shadowboxing, . . . unless they were [a] shadow." (Tr. 22) He attended three anger management sessions. (Tr. 23)

A company T/B report states:

> [O]n February 21, 2022, [Applicant] "became irate and slammed his fist on the table after [a coworker] notified him of missing information. [A coworker] told [Applicant] he did not feel safe, [Applicant] replied; "I bet you don't." [He] admonished [a coworker] he does not care about safety. [Applicant] said he does not give a "f _ _ ck" about anything else other than writing code. [Applicant] stood up in front of [a coworker] and balled up his fist. (GE 5 at 10)

The April of 2022 CAM issued in response to an incident documented in a February of 2022 report said he was discharged from his employment and explained: "It has been determined you have engaged in inappropriate behaviors. Specifically, you engaged in behaviors and communications in the workplace that caused another to fear for their safety and well-being. The company deems this unacceptable and in violation of a company policy." (GE 5 at 9)

A coworker said he asked Applicant, "Don't you want this aircraft to fly safely?" According to the coworker, Applicant yelled at the coworker, "I don't care because it's not my job to worry about safety," adding "and it's not your concern either." (GE 5 at 12-13)

Applicant said he confronted a coworker about his lack of focus on the job at hand and deviations from providing support for other departments. (Tr. 17) He also said the coworker seemed to be trying to make connections and receive possible employment in the safety section. (Tr. 29-30) Applicant told the coworker not to inspect the airframe for safety because that was not his job. (Tr. 30) He maintained that any allegation of the coworker that Applicant was endangering the airframe is untrue. (Tr. 29-30)

Applicant denied that he made the statement about not caring about safety. (Tr. 31) He said he was angry at the coworker for giving a higher priority to safety issues that were unrelated to his software duties. (Tr. 32) Contrary to the investigative report, Applicant said the coworker said, "I do not feel comfortable," not "I do not feel safe." (Tr. 17, 33) Applicant said, he replied, "I'll bet you don't." (Tr. 17) Applicant said management made an "exaggerated evaluation of the intensity of the incident." (Tr. 17)

SOR ¶ 1.b alleges Applicant was terminated from his employment with company O in about August 2016 for falling asleep at a client site. Applicant said:

> [I]t was a very, you know, unclear situation. Was I let go? They just said, hey, you don't have a job here anymore. And the person who I was working with directly just said, hey, they just want to end the contract. So now whether that was because they didn't feel like I . . . really served a purpose there or that the falling asleep was a -- an offense, now that was not -- that was [an] unwritten rule. That wasn't a formal policy that -- of theirs. So that's what makes it – that's why it was unclear as to, you know -- you know why I was let go. (Tr. 18)

SOR ¶ 1.c alleges Applicant falsified material facts on his February 2, 2024 SCA. In "Section 13A - Employment Activities," his SCA asked the following questions: "Have any of the following happened to you in the last seven (7) years?"; "Fired from a job?"; "Quit after being told you would be fired?"; "Have you left a job by mutual agreement following charges or allegations of misconduct?"; and "Left a job by mutual agreement following notice of unsatisfactory performance?". Applicant answered yes but that he left employment with company T/B by mutual agreement following charges or allegations of misconduct. SOR ¶ 1.c alleges that he deliberately failed to disclose that information as set forth in subparagraph 1.a., above. In the comments of the SCA he said he engaged in "Inappropriate behavior to a subordinate. To[o] loud and aggressive in addressing poor performance." (GE 2 at 13)

Applicant said, "The word fired probably didn't come up. I thought it was a mutual agreement, but maybe it wasn't a mutual agreement really. Does that -- so was my job eliminated? Was I no longer -- did I no longer have a job there? That is correct, okay?" (Tr. 43; GE 2 at 12-13) Eventually, he said he did not leave by "mutual agreement" because he was fired. (Tr. 43) He acknowledged that he did not have a choice of whether to leave the employment. (Tr. 43)

SOR ¶ 1.d alleges Applicant falsified material facts on his February 2, 2024 SCA. In his response to "Section 13A - Employment Activities," For employment with company O, he said his reason for leaving the employment was a "lack of work." SOR ¶ 1.d alleges he deliberately failed to disclose that information set forth in subparagraph 1.b., above. (GE 2 at 18)

Applicant's April 12, 2024 OPM summary of interview states he was confronted with information about the termination of his employment from company O. The OPM summary of interview states:

> The Subject did not list this correctly because he considered this a temporary employment. The Subject stated others who were involved in this situation were unknown. The Subject was asked what happened. The Subject stated he was at a meeting . . . on 08/12/2016, when [company O] decided they did not need him as a project manager. When asked what proceeded the decision, the Subject volunteered that he had fallen asleep in the [off-site] meeting. Some unknown person woke him up, told him to leave the meeting, and told the Subject, "you don't have a job here anymore. . . ." (GE 3 at 5)

Applicant was employed by company O for less than one month in August 2016. (Tr. 44) Several of company O's employees were out late at night, and a manager warned the employees that anyone who fell asleep during the workday would be fired. (Tr. 45-46) Applicant fell asleep during a long presentation, and was told that he did not have a job anymore. (Tr. 46) Company O indicated in a document he was terminated the same day he fell asleep. (Tr. 46) And the reason for termination listed on that document was, "fell asleep at client site." (Tr. 47) Applicant said he was not presented the company O document with the reason for termination. (Tr. 47) He said he was hired as a project manager and company O did not need a project manager because they were hiring staff augmentation. (Tr. 47) He agreed that falling asleep was a factor, but another factor was he was an unnecessary employee. (Tr. 48-49)

SOR ¶ 1.e alleges Applicant falsified material facts during an April 18, 2019 Office of Personnel Management (OPM) personal subject interview, when he stated he did not have to attend anger management classes, when, in fact, he deliberately sought to conceal his referral to anger management. During a personal subject interview on April 12, 2024, with an authorized investigator with the OPM, he stated he was referred to three anger management classes in a particular city at an unknown business with an unknown provider.

Applicant's April 18, 2018 OPM summary of interview states that Applicant told the investigator that because of the May 17, 2016 incident, he did not have to attend an anger management class, and that this incident only required a quick sit down with his manager in which he was told not to do it again. (Tr. 25; GE 3 at 14) Applicant said a manager suggested that he attend anger management. (Tr. 25) He did not view it as a requirement. (Tr. 25-26)

Applicant said he was directed to a psychologist and not referred to anger management classes. (Tr. 18) The psychologist provided an evaluation and did not provide any therapy. (Tr. 18)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 an applicant 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are

applied 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, 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 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 "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

Analysis

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

> 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. . . .

AG ¶ 16 lists personal conduct disqualifying conditions that are potentially relevant in this case as follows:

(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;

(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;

(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;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The record evidence establishes AG ¶¶ 16(a), 16(b), 16(d), and 16(e). Further details will be discussed in the mitigation analysis, *infra*. AG ¶ 17 lists conditions that could mitigate personal conduct security concerns:

> (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
>
> (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
>
> (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;
>
> (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;
>
> (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and
>
> (f) the information was unsubstantiated or from a source of questionable reliability.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

> 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. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. *See* Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan*, *supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2, [App. A] ¶ 2(b).

SOR ¶¶ 1.b and 1.e are mitigated. SOR ¶ 1.b alleges and the record established in August 2016, Applicant was terminated from his employment with company O for falling asleep at a client site. There are no allegations that he subsequently fell asleep during the workday.

SOR ¶ 1.e alleges and the record establishes that Applicant made a false or misleading statement during his April 4, 2019 OPM interview when he stated he did not have to attend anger management classes. At his hearing, he admitted he attended three anger management classes.

The incidents in SOR ¶¶ 1.b and 1.e are not recent, and they do not cast doubt on his current reliability, trustworthiness, and judgment. AG ¶ 17(c) applies to and mitigates these two SOR incidents.

SOR ¶ 1.a alleges and the record established that on May 17, 2016, Applicant behaved inappropriately in the workplace after a phone call. He cursed and shadowed boxed scaring co-workers in the general area. On February 21, 2022, Applicant became upset with a coworker, slammed his fist on a table and yelled at the coworker. Some of Applicant's comments in 2022 minimized the coworker's concerns about safety. The coworker felt threatened. Applicant's employer viewed the incident in 2022 as sufficiently serious to warrant terminating his employment. The February 21, 2022 incident is relatively recent.

Personal Conduct—Falsification of Applicant's SCA

"Applicant's statements about his intent and state of mind when he executed his [SCA] were relevant evidence, but they [are] not binding on the Administrative Judge." ISCR Case No. 04-09488 at 2 (App. Bd. Nov. 29, 2006) (citation omitted). In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019), the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

> When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant's *mens rea* in light of the entirety of the record evidence. *See, e.g.*, ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant's intent or state of mind may not always be based on an applicant's statements, but rather may rely on circumstantial evidence. *Id*.

When Applicant completed his February 2, 2024 SCA he provided false or misleading answers to questions about the end of his employments with companies O and T/B. He was fired on both occasions. His statements that he left by mutual agreement and the expressed rationales for his leaving the employments were false. SOR ¶¶ 1.c and 1.d are established.

Applicant's explanations at his hearing for not disclosing accurate information on his SCAs are not credible. He is intelligent, well educated, and experienced in the ways of the world. The questions are clear and easy to understand. He knew what termination

or fired means, and he understands that he was terminated from his employments with companies O and T/B. He knew he should have disclosed the required information about his terminations from the two employments on his 2024 SCA. No mitigating conditions apply to the falsifications of Applicant's February 2, 2024 SCA. His falsification casts doubt on his reliability, trustworthiness, and judgment. Personal conduct security concerns are not mitigated.

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 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.

Under AG ¶ 2(c), "[t]he 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. My comments under Guideline E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 64-year-old senior program manager who has worked for a defense contractor for 20 months. In 1982, he received a bachelor's degree in computer science, and in 1997, he received a master's degree in information management. There is no evidence of security violations, abuse of illegal drugs, and criminal conduct.

The reasons for revocation of his security clearance are more persuasive. Falsification of his February 2, 2024 SCA strikes at the heart of the security clearance process. The personal conduct analysis, *supra,* explains why the Guideline E security concerns are not mitigated.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. *See Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c and 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant

Conclusion

Considering all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

_____
Mark Harvey
Administrative Judge