



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01967

**Appearances**

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

08/06/2025

**Decision**

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 22, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct. On February 13, 2025, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on March 18, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded thirty days from receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 31, 2025, and responded to it (FORM Response), but she did not object to the Government's proposed evidence contained in the FORM. The case was assigned to me on June 18, 2025. The

Government exhibits included in the FORM (Items 1-5) are admitted in evidence without objection.

### **Findings of Fact**

Applicant is a 53-year-old employee of a defense contractor for whom she has worked since July 2022. She earned a bachelor's degree in May 1994 and a juris doctor degree in January 2000. She has never married and has no children. (Items 4, 5)

From about August 2001 until July 2020, Applicant worked for the Financial Industry Regulatory Authority (FINRA) as a case administrator. When she began working for FINRA, she advised them that she had a \$2,500 individual retirement account (IRA) with a financial services company (Company A). She claimed that pursuant to its policy, FINRA was not supposed to assign her any files that involved Company A. At some point, in late 2019 or early 2020, FINRA assigned her a case where Company A was the respondent. In January 2020, FINRA gave her a written warning after she failed to disclose that she had a financial interest in this case. She made conflicting claims about when she made FINRA aware of the conflict. Her claims about when she disclosed her conflict of interest vary from as soon as she was assigned the case, to after she was involved with motions practice, to after the case was completed. Regardless of the timing, she claimed that she simply forgot about her small IRA with Company A and alerted her supervisor to the potential conflict of interest as soon as she remembered it. (FORM Response; Items 2-4)

In about May 2020, Applicant incorrectly reported to FINRA that a FINRA arbitrator was deceased. She claimed that someone who she believed was a FINRA arbitrator's son called her while extremely emotional and told her that his father had passed away. Applicant took down the deceased person's name and the city where he resided and notified the appropriate section of FINRA. A few days later, the arbitrator who Applicant thought was deceased called her on the phone, and she realized that she had reported the wrong arbitrator as being deceased. Both arbitrators had the same name and lived in the same city. Applicant claimed they were also near the same age. Based on the information that Applicant provided, the living arbitrator with the same name had been removed from his assigned cases. Applicant claimed that when she realized her mistake, she immediately contacted her chain of command, who then contacted the appropriate FINRA department to reassign the living arbitrator's cases back to him. Given her mistakes in January and May 2020, FINRA terminated her employment in July 2020. (FORM Response; Items 2-4)

In about March 2021, because Applicant was having back pain, her friend gave her some of his prescription painkillers for which she did not have a valid prescription. She claimed that she took possession of these prescription painkillers because she did not think her insurance would cover a similar prescription for her. Sometime between March 2021 and August 2021, she ingested some of these prescription painkillers. (FORM Response; Items 2-5)

In about August 2021, Appellant was arrested and charged with driving under the influence (DUI) and illegal possession of prescription drugs. Police arrested her after finding her asleep in her car. Police attempted to give her field sobriety tests but she refused, so police arrested her. A blood test revealed that her blood alcohol content (BAC) was over the legal limit. Police also found the aforementioned prescription painkillers in her car. Applicant acknowledged that she was intoxicated when she was arrested but claimed that she was asleep in her car and had not driven while intoxicated. She claimed that she had been drinking at a bar and returned to her car to sleep because she was worried about her car being stolen or damaged. When police woke her up, she claimed that they asked her to put her keys in the ignition, and when she did, they arrested her. She attended Alcoholics Anonymous (AA) meetings once per week for 90 days, so both charges against her were dropped. (FORM Response; Items 2-5)

On February 29, 2024, Applicant completed and submitted a security clearance application (SCA). She certified that all the information she provided therein was accurate to the best of her knowledge. Despite being required to do so, she did not divulge her arrest for DUI arrest and illegal possession of prescription drugs. She also did not divulge her misuse of prescription drugs, where required. (FORM Response; Items 2-5)

During an April 22, 2024 interview with a DOD investigator (April 22, 2024 SI), the investigator wrote that Applicant only provided details when she was approached with the developed information. The investigator's statement about confronting Applicant is not specific as to what conduct with which she was confronted. The investigator's statement to this effect is contained in a section of the April 22, 2024 SI entitled, "[d]eveloped [d]rugs," so a reasonable reading of the investigator's imprecise language is that Applicant had to be confronted about her drug use and arrest. Applicant claimed that she volunteered all the information regarding her DUI and prescription drug possession arrest to the investigator before being confronted with it. During the April 22, 2024 SI, Applicant acknowledged not including her arrest in the SCA because she was embarrassed and ashamed, and she thought it was no longer on her record. (FORM Response; Items 2-5)

While it is not alleged in the SOR, Applicant failed to divulge in the SCA that FINRA fired her for the two aforementioned performance issues. Instead, she claimed that FINRA eliminated her whole team and wrote that she was let go because of a lack of work and low caseloads. I will not use unalleged conduct for disqualification purposes. I will use it for appropriate purposes such as analyzing mitigation and my whole-person analysis. (FORM Response; Items 2-4)

During the April 22, 2024 SI, Applicant initially told the investigator that she was laid off from FINRA because of a lack of work and low caseloads. Later, during the April 22, 2024 SI, she acknowledged that she had not been completely honest about her departure from FINRA and admitted that she had been terminated from FINRA because of performance issues. She claimed that she did not divulge the derogatory information because she was embarrassed by it and thought it might inhibit her ability to obtain a security clearance. In the investigator's summary of the April 22, 2024 SI, the investigator wrote on page 4 of the summary that Applicant "only provided details when approached with the developed information." When Applicant was asked to authenticate the April 22,

2024 SI, she specifically denied that quote, and stated that she “remembered telling the investigator without being prompted.” Her specific denial in her interrogatory responses referenced a page number (page 4) in the April 22, 2024 SI that only applied to her alleged failure to provide information about being terminated from FINRA until confronted. In her interrogatory responses, she did not specifically deny the investigator’s statement that she did not divulge information about her arrest until the investigator confronted her. (FORM Response; Items 2-5)

The Government does not allege in the SOR that Applicant provided false or misleading information to the investigator during the April 22, 2024 SI. Likewise, it did not allege that she omitted any such information.

### **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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(c), 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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance 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 government official; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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.

At the outset, despite the Government's argument in its FORM that it applies, I find that AG ¶ 16(b) is not established. There are no allegations in the SOR concerning Applicant's dishonesty to the investigator. While there is some evidence in the record to that effect, I cannot use unalleged conduct for disqualification purposes.

AG ¶ 16(a) is established. Applicant failed to divulge information regarding her arrest and the underlying circumstances in the SCA as she was required to do. I find these omissions were deliberate because of her statements to the investigator that she was embarrassed and thought the information might hinder her chances of obtaining a security clearance. I also note Applicant's advanced education and her years of experience as a lawyer to conclude that she knew she was required to provide this information in the SCA.

AG ¶ 16(c) is established. Applicant's arrest for DUI and illegal possession of prescription drugs in 2021 constitutes credible adverse information in several adjudicative areas (for example, Guidelines G, H, and J), that is not sufficient for an adverse determination under those Guidelines, but which 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. AG ¶ 16(c) is not established by her limited and infrequent poor work performance, so I find for Applicant with respect to those two SOR allegations.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

(a) the individual made prompt, good-faith effort to correct the omission, concealment, or 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.

AG ¶ 17(a) does not apply. In an official government report, the investigator stated that Applicant had to be confronted with information regarding her arrest for DUI and illegal prescription drug possession. Applicant adopted and authenticated this statement in her interrogatory responses, but later claimed that she volunteered this information. There is a rebuttable presumption that government officials act honestly and in accordance with their duties. Applicant was deliberately dishonest on multiple occasions

in the SCA. Given her admitted dishonesty on the SCA, her later claim that the investigator was wrong about needing to confront her is not sufficient to rebut that presumption of honesty. Applicant has not met her burden to show that she volunteered the information regarding her arrest and illegal prescription drug use before being confronted with the facts.

AG ¶ 17(c) does not apply to Applicant's deliberate omission of information regarding her arrest and the underlying circumstances. Deliberately falsifying required information in an SCA is not minor. Instead, this action strikes at the heart of the security clearance process, which relies on candid and honest reporting. About a year and a half ago, Applicant engaged in this deceitful and misleading behavior multiple times on the SCA. Therefore, she has not shown that her behavior was infrequent, happened under unique circumstances, or is unlikely to recur.

AG ¶ 17(c) applies to Applicant's DUI and illegal prescription drug possession arrest, and her illegal prescription drug use. It has been about four years since there is evidence of an arrest or illegal prescription drug use. She went to AA meetings once per week for 90 days, resulting in the dismissal of her criminal charges. These considerations provide sufficient evidence that these behaviors are unlikely to recur, and they do not cast doubt on her reliability, trustworthiness, or good judgment.

AG ¶ 17(d) does not apply to Applicant's deliberate omission of information regarding her arrest and the underlying circumstances. She has not provided evidence that she has undergone counseling or taken other positive steps to alleviate the causes of this unreliable and untrustworthy behavior. She has not provided sufficient evidence that she acknowledged this dishonest behavior. Instead, the crux of her statements in the Answer and the FORM Response are attempts to minimize her dishonest behavior by focusing on her alleged honesty with the investigator. She has not provided sufficient evidence to show that her dishonest behavior is unlikely to recur.

## **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. While I find that Applicant's earlier work performance issues and her arrest and its underlying circumstances were mitigated, I find that her dishonesty in reporting that information is not mitigated.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude she did not mitigate the personal conduct security concerns.

### **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.d:	For Applicant
Subparagraphs 1.e and 1.f:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Benjamin R. Dorsey  
Administrative Judge