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

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| In the matter of: | ) | |
| | ) | |
| | ) | ISCR Case No. 24-00119 |
| | ) | |
| Applicant for Security Clearance | ) | |

## Appearances

For Government: Cassie L. Ford, Esq., Department Counsel
For Applicant: Bradley P. Moss, Esq., and Geoffrey Deweese, Esq.

08/12/2025

## Decision

HARVEY, Mark, Administrative Judge:

Security concerns arising under Guideline E (personal conduct) are mitigated. Eligibility for access to classified information is granted.

## Statement of the Case

On November 30, 2012, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SCA). (Government Exhibit (GE) 1) On February 29, 2024, 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 April 16, 2024, Applicant provided a response to the SOR and requested a hearing. (HE 3) On June 11, 2024, Department Counsel was ready to proceed.

On March 17, 2025, the case was assigned to another administrative judge, and on April 17, 2025, the case was transferred to me. On April 11, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for May 29, 2025. (HE 1) The hearing was held as scheduled.

Department Counsel offered three exhibits into evidence; Applicant offered 11 exhibits into evidence; there were no objections; and I admitted all proffered exhibits into evidence. (Transcript (Tr.) 14-16; GE 1-GE 3; Applicant Exhibits (AE) A-AE K) Applicant moved for administrative notice of ISCR Case No. 21-00371 (A.J. Feb. 6, 2023) and ISCR Case No. 22-00022 (A.J. Jan. 30, 2024). Department Counsel noted, and I agreed, that the decisions were not precedential. I granted the motion to take administrative notice of the decisions. (Tr. 17) The facts and circumstances in the two decisions are significantly different from Applicant's case. On June 11, 2025, DOHA received a transcript of the hearing. Applicant provided three exhibits after the hearing, and they were admitted into evidence without objection. (AE L-AE N) The record closed on June 30, 2025. (Tr. 10)

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

## Findings of Fact

In Applicant's SOR response, she denied the allegations in SOR ¶¶ 1.a and 1.b without elaboration.

Applicant is a 39-year-old employee of a Defense contractor. (Tr. 197) She was employed for seventeen years as a federal employee, and she has held a security clearance for 17 years. (Tr. 115) In 2008, Applicant graduated from college with a major in political science. (Tr. 113) In 2008, she began her DOD employment as an intern. (Tr. 113, 118) She left her DOD employment in late 2008; she worked for a DOD contractor for six months; and then DOD reemployed her in May of 2009. (Tr. 118) During her DOD employment, she served in the United States and in Afghanistan. (Tr. 113) In April 2023, she left her DOD employment. (Tr. 114) Her goal is to return to employment as a federal employee. (Tr. 115) She married the first time in 2009, and she was divorced in 2011. (Tr. 197) In 2014, she married the second time, and her children are ages five and eight. (Tr. 173, 197) Her husband is a financial advisor. (Tr. 198) She has not served in the military. (Tr. 173)

### Personal Conduct

SOR ¶¶ 1.a and 1.b relate to Applicant's DOD employment at two different DOD entities. The pertinent investigative reports of investigation (ROI) were written by two distinct DOD investigative agencies. (GE 2; GE 3)

Applicant made Equal Employment Opportunity (EEO) complaints against both DOD employers. The first agency paid her a five-figure settlement. (Tr. 198) Applicant and a coworker, Ms. W, filed EEO complaints against Applicant's supervisor at the second DOD employment. (Tr. 198) As an EEO remedy, Applicant's notice of proposed removal from work for the second employer was rescinded. (Tr. 199)

**April 30, 2018, to June 8, 2019 Timecards**

SOR ¶ 1.a alleges in about May 2022, a DOD investigative agency found that Applicant prepared, signed, and submitted fraudulent time records between April 30, 2018, and June 8, 2019, totaling 192.12 hours asserting that she did not work those hours. The total loss to the Government was estimated at $10,521.

The DOD investigative ROI examined whether Applicant's off-site attendance at classes was authorized work that she could claim on her timecard. The ROI in ¶ 4.j credited Supervisor 3 with authorizing Applicant to claim off-site attendance on her timecard. The ROI said, "We provided credit for hours that were attributed to attending [classes,] courses, and off-site meetings. Those hours reduced the initial questionable amount." (GE 2 at 7) After deducting the hours authorized for her course, the ROI concluded that over a 57-week period (April 30, 2018, to June 8, 2019), Applicant failed to account for a total of 192.12 hours in which she was outside of her primary workplace. (GE 2 at 6-7) Her pay for 192.12 hours is $10,521. (GE 2 at 6-7) Applicant personally completed most of her timecards from April 30, 2018, to June 8, 2019. (Tr. 184) Occasionally she submitted corrected timecards. (Tr. 184) The ROI does not contain witness statements. The only summary of a witness interview is of Applicant's statement, which is exculpatory. Some information from investigative activity is written on spreadsheets the investigator generated.

The ROI included spreadsheets in which the investigator used badge-in and badge-out information to determine the hours Applicant worked, and then the investigator compared this information with her timecards. In the remarks on the spreadsheets, the investigator indicated occasions when she was credited with working outside of her office or primary duty location (PDL). (GE 2) For example, a spreadsheet for May 27, 2019, to June 8, 2019, PP 12, calculated, the unexplained absence to be 28.17 hours for a loss of $1,517 for three dates. Applicant's timecard reflected on May 28, 2019 (claimed 10 hours), May 29, 2019 (claimed 8 hours), and June 6, 2019 (claimed 7 hours). (GE 2 at 55) The investigator noted the following unexplained hours: May 28, 2019 (6.35 hours); May 29, 2019 (4.63 hours); and June 6, 2019 (1.76 hours). (GE 2 at 55) However, there is nothing in the ROI about what the investigator did to find out whether Applicant worked the scheduled hours outside of her building other than an interview of Applicant.

In May of 2021, the DOD investigator interviewed Applicant about her timecards. (Tr. 127; GE 2) The investigator had an Excel spreadsheet, and he wanted information concerning 398 hours. (Tr. 127) The investigator used the Alternative Work Schedule (AWS) 2 during his interview of Applicant. (Tr. 128) From 2018 to 2019, she was working an AWS 3 schedule, which required her to work 40 hours a week. Under AWS 3, she could work six hours one day, 10 hours another day, and indicate regularly graded (RG)

as an authorized code for all 16 hours provided, she actually worked the 16 hours. (Tr. 120) AWS 3 was indicated on her timecards. (Tr. 185) Under AWS 2, she could not be credited with more than eight hours a day. For example, if she worked 10 hours, she could only be credited with eight hours for purposes of pay. (Tr. 128) The investigator changed to AWS 3, and the unaccounted time was reduced 170 hours. (Tr. 128-129) The investigator took very few notes, and the interview was not tape recorded. (Tr. 136) She did not provide a sworn statement. (Tr. 136) The spreadsheet he used for the interview is not an exhibit in the ROI. (Tr. 176) Applicant said the verbal exculpatory and mitigating information she provided to the investigator was not included in the ROI. (Tr. 176) The ROI said:

> [Applicant] denied intentionally submitting erroneous timesheets, and provided substantial mitigation (such as personal notes, her [human] resources business application schedule; miscellaneous emails, etc.) for explanation of her whereabouts on the days in question. [Applicant] also attributed the majority of her absences were due to the preparation, studies and attendance of college classes . . . , which she previously coordinated with her supervisors, who condoned varying hours of government time. (GE 2 at 6-7)

At her personal appearance, Applicant said the ROI credited her with some attendances in her master's degree program; however, the ROI did not credit her with attending classes for one semester. (Tr. 177; GE 2) She did not indicate at her personal appearance the specific timecards that were incorrect. The investigator credited her with some of the time she spent out of her PDL working on her EEO case. (GE 2 at 17, 48 (e.g., credited with 16 hours working on EEO case on February 20, 26, and 27, 2019)) However, for example, Applicant claimed that she was authorized to telework on November 26 and 27, 2018, for EEO, and the investigator indicated on the spreadsheet 3.30 hours of undocumented absence from her workplace. (GE 2 at 17, 41)

Applicant gave the investigator a memorandum for record in which she indicated her master's degree classes were authorized training, and her supervisors approved three to six hours of such training as RG. (Tr. 129-132) Between April 30, 2018, and June 8, 2019, she had three supervisors, and one approved three hours per week for training in October and November of 2018, and the other two supervisors approved six hours for training in the master's degree program. (Tr. 130-131, 180-181) Her hours at training were documented on her office calendar, and she did not indicate on her timecard when she was attending training. (Tr. 132) The hours working on her master's degree program were not properly noted with the relevant timecard code on her timecards.

Applicant advised the investigator that there was a change in the way lunch was charged on timecards. (Tr. 134) For example, if she worked eight hours in a day, and her badge-in badge-out records reflected eight hours, the investigator indicated her badge-in and badge-out records should reflect 8.5 hours. *See, e.g.*, GE 2 at 26. In a five-day workweek, this additional 30-minutes per day would result in a five-hour difference on a timecard. The agency deleted her electronic calendar in June of 2018. (Tr. 138) Applicant did not have access to her calendar or emails and was unable to remember some specific

information about her whereabouts. (Tr. 137) In May 2021, she no longer worked at the agency where she worked in the April 30, 2018, to June 8, 2019 period, and the agency would not give her access to her emails when she worked there. (Tr. 137-138) The agency did not provide access to her timecards, time records, or complete badge logs for entry and exit of her building. (Tr. 138-141)

Applicant said she was not required to separately indicate on her timecard the hours worked outside of her PDL. (Tr. 121) If she worked two hours each at four locations during the duty day, she could indicate eight hours RG on her timecard. (Tr. 122) She indicated her locations outside of her PDL on an electronic calendar on an office server. (Tr. 122) Her training away from her PDL was indicated as RG, and supervisors sometimes made notations about training. (Tr. 123) Her work on an EEO case was indicated as RG. (Tr. 123-124) Fitness was coded as LN or LV on timecards. (Tr. 124) Applicant was able to provide detailed information to the investigator about her EEO-related work, and Applicant indicated she noted RG on her timecard. (Tr. 145, 163) Applicant spent a large amount of time on an EEO case especially in February of 2019. (Tr. 183)

Applicant told the investigator at her interview that she was at multiple federal offices during her workdays as part of her DOD duties. (Tr. 142-143) Sometimes she went to a SCIF from another agency, and she signed in on their written visitor log. Sometimes she did not badge-in to other agencies because her badge would not work. (Tr. 142) The investigator credited her with some absences from her PDL to go to other agencies. The ROI does not reflect the investigator going to other SCIFs or federal locations to check the sign-in logs. (Tr. 144, 154) Applicant said some agencies did not allow investigative access to visitor logs. (Tr. 144) She indicated RG on her timecard for her work-related absences from her PDL. (Tr. 144-145)

In Applicant's counsel's January 5, 2023 letter to DFAS, Applicant listed multiple instances in which Applicant believed the ROI might not have credited her for approved absences from her PDL or badge issues. I have compared her statements to the ROI spreadsheets as follows:

(1) Applicant said on October 5, 2018, she was at another agency's building, and she wanted that agency's badge records to be checked. The timecard spreadsheet for October 5, 2018, shows she worked at her PDL for about five hours in the morning, took three hours administrative leave, and the investigator deemed .67 hours were unaccounted for. (GE 2 at 37) In total over the two weeks on the investigative spreadsheet (October 1-13, 2018), the investigator concluded .18 hours were unaccounted for, for an overbilling of $9. *Id*.

(2) Applicant said on June 21, 2018, she worked offsite. The ROI spreadsheet for June 21, 2018, indicates no unauthorized hours were charged against Applicant for that date. (GE 2 at 29)

(3) Applicant said from October 23 to 26, 2018, she was working at an offsite location for 10 plus hour workdays. The ROI credited her with working at the offsite 10

hours each day. (GE 2 at 38) She also said she was authorized offsite, on leave, or needed a new badge on October 29 to 31, 2018. *Id.* She was credited with working all claimed timecard hours on all six days. *Id*. No unauthorized hours were charged against her for October 15-26, 2018. *Id*.

(4) Applicant said she was authorized telework on November 15, 2018. The ROI credited her with an authorized absence from work on November 15, 2018. (GE 2 at 40)

(5) Applicant said she was authorized to work on her EEO case on November 26 and 27, 2018. The ROI spreadsheet reflects that she was not authorized to badge-out early 2.80 hours on November 26, 2018, and .25 hours on November 27, 2018. (GE 2 at 41) She was charged with an unauthorized absence of 3.05 hours for November 26 and 27, 2018. *Id*.

(6) Applicant said she was attending training from December 3-14, 2018. The ROI spreadsheet indicates she was attending training, and she was credited with working all claimed timecard hours for the nine days. (GE 2 at 41-42)

(7) Applicant said she was charged with eight hours each for December 24 and 25, 2018, and these two days were holidays. The ROI spreadsheet indicates these two days were holidays, and she was not charged with not working on these two days. (GE 2 at 44)

(8) Applicant said she was authorized 36-hours telework from December 26, 2018, to January 4, 2019, to study and take an examination. The ROI spreadsheet indicates she was given the 36-hours telework; however, on January 3, 2019, she was charged three hours of unauthorized absence which caused a loss to the government of $158. (GE 2 at 44)

(9) Applicant said she was authorized to telework part of the days on January 15 and 29, 2019. The ROI spreadsheet indicates she was authorized to telework, and she was not charged with any unauthorized time-off on that day. (GE 2 at 45-46)

(10) Applicant said she was authorized to telework on February 26 and 27, 2019, to work on her EEO case. The ROI spreadsheet indicates she was authorized to telework, and she was not charged with any unauthorized time-off on those two days. (GE 2 at 48)

(11) Applicant said she was authorized to work offsite on March 1, 2019. The ROI spreadsheet indicates she used three hours of ordinary leave and one hour of sick leave on March 1, 2019. (GE 2 at 48) She was not charged with any unauthorized time-off on March 1, 2019. *Id*.

(12) Applicant said she was authorized to work offsite on March 6, 2019. The ROI spreadsheet indicates she worked offsite on March 6, 2019. (GE 2 at 49) She was not charged with any unauthorized time-off on that day. *Id*.

(13) Applicant said she was authorized to work offsite on March 26, 2019. The ROI spreadsheet indicates she worked 9.17 hours in her PDL on March 26, 2019. (GE 2 at 50) She was not charged with any unauthorized time-off on that day. *Id*. at 48.

(14) Applicant said she was authorized to work offsite from April 3 to 5, 2019. The ROI spreadsheet indicates she worked 8.55 hours offsite; however, it does not specify the date. (GE 2 at 51) The most likely dates are April 10 and 11, 2019, because she was not badged in or out on those two days. For the period April 1-12, 2019, she was charged with a total of 2.13 hours resulting in a loss to the government of $115 for April 2, 2019 (1.65 hours) and April 3, 2019 (.48 hours). *Id*.

(15) Applicant said she was charged for 12 hours of approved compensatory time for April 18 and 23, 2019. The ROI spreadsheet shows eight hours of unexplained time claimed on April 18, 2019, without any badge-in badge-out times. (GE 2 at 52) For April 23, 2019, it indicates four hours annual leave and four hours credit hours taken. *Id*.

(16) Applicant said she was supposed to be credited with six hours for "other paid absence" for April 23 and 26, 2019. The ROI spreadsheet shows two hours for credit hours taken and .10 hours unauthorized hours claimed for April 26, 2019. (GE 2 at 52)

(17) Applicant said she was charged five hours for lunch from September 3-14, 2018. The ROI spreadsheet shows from September 3-14, 2018, she was charged .13 hours on September 5, 2018, and 3.72 hours on September 6, 2018. (GE 2 at 35) It does not show any charges while she was on leave. *Id*.

Applicant's counsel's January 5, 2023 letter to DFAS could have benefited from a careful comparison with the ROI spreadsheet. For example, for item (13) Applicant said she was authorized to work offsite on March 26, 2019. The ROI spreadsheet indicates she worked 9.17 hours in her PDL on March 26, 2019. (GE 2 at 50) There is no reason to claim she worked offsite that day, when she was badged-in and badged-out for 9.17 hours. Perhaps her lawyer listed the wrong date as there are dates on the spreadsheet when she was not in her PDL as shown by badged-in and badged-out data. The ROI does not explain Applicant's absence from her PDL as shown by badged-in and badged-out data.

One of supervisors in her PDL said Applicant took lengthy lunch breaks, arrived late for work, and left early. (Tr. 179) The names of the supervisors are redacted from the report, and Applicant was unsure whether her supervisor made this observation as opposed to one of the office supervisors who might not have had direct knowledge of her duties. (Tr. 179) Applicant explained on Tuesdays and Thursdays, she was scheduled to work from noon until 8:00 pm. (Tr. 179) Her absences in the mornings may have caused coworkers to gossip about her absences.

Applicant occasionally traveled on a weekend on temporary duty (TDY). (Tr. 185) Applicant said sometimes the investigation did not account for this time. (Tr. 185) She did not provide specific dates when this occurred. The ROI reflects some TDY as an excused absence from being badged-in and badged-out from her PDL.

As a result of the investigation, Applicant's office issued her a notice of proposed removal; however, it was rescinded as part of a larger settlement agreement. (Tr. 117) Her personnel record reflects that she resigned for personal reasons. (Tr. 117) Around January of 2023, she received a notice from the Defense Finance and Accounting Service (DFAS) that DFAS wanted her to pay about $10,000, and Applicant's counsel requested a hearing. (Tr. 147) DFAS placed the case in abeyance until the investigative agency provides the records used to calculate the debt. (Tr. 148) The correspondence from DFAS is not part of the record. Applicant said the report double-counted some hours and miscounted others. (Tr. 151-155) However, at her personal appearance, she did not indicate which dates were double-counted or miscounted. She said sometimes the wrong day is listed in the report. (Tr. 151) She did not provide specific dates when this occurred. Applicant estimated that she is unable to account for 12 hours for which she was paid. (Tr. 150) She is willing to pay DFAS for any hours in which she is unable to account for her time. (Tr. 155)

**October 2021 through May 2022 Timecards**

SOR ¶ 1.b alleges in about February 2023, a DOD investigative agency found that Applicant had failed to work reported hours and that she submitted inaccurate timecards for at least 18 pay periods between October 2021 and May 2022.

In June of 2022, Applicant learned she was under investigation for timecard issues at her employment. (Tr. 155-156) An investigator interviewed her, and she provided 33 documents after the interview to support her contentions about her timecards. (Tr. 158) The investigator interviewed her the second time, and at her second interview, she learned about the 30-minute lunch policy, and indicating on her timecard 8.5 hours for a workday. (Tr. 159) If her badge-in and badge-out times for a workday were less than the scheduled 8.5 hours, the investigator determined she had an unauthorized absence. During the COVID-19 pandemic, employees were not allowed to remove masks to eat in her PDL. (Tr. 188) Employees worked through the lunch period. (Tr. 188) Applicant was under a maxi-flex schedule, AWS 4, and she was permitted to work various hours during the day so long as they totaled 40 hours a week. (Tr. 160) The Office of Personnel Management defines maxiflex schedule as follows:

> A type of flexible work schedule that contains core hours on fewer than 10 workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization. See U.S. Office of Personnel Management, Alternative Work Schedules webpage, https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/handbooks/alternative-work-schedules#Maxiflex.

For example, if an employee worked six hours on one day and 10 hours the next day, the employee could bill 16 hours as RG on their timecard. (Tr. 161) Generally, she worked in

her PDL four days a week. (Tr. 161) There was no requirement to document on a timecard time spent outside getting some fresh air or taking a break. (Tr. 162)

The investigator verbally advised her during her interview that he cleared her on multiple timecards; however, some of the dates were in the final investigative report as unsubstantiated hours. (Tr. 165-166) In September of 2023, she was escorted out of her workplace. (Tr. 166) In October of 2023, she received a notice of proposed removal or termination. (Tr. 166) Her lawyer sent a 93-page response addressing the dates in the ROI. (Tr. 167) The ROI indicated she had not worked for 20 hours, and 36 hours were misbilled. (Tr. 165; GE 3) The ROI contained new dates that she had not heard were a problem in her investigative interviews. (Tr. 169) She was denied access to her emails and office records after she was escorted out of her workplace. (Tr. 169, 195) She believed she could have accounted for almost all the questioned hours if she had been allowed access to the electronic records in her PDL. (Tr. 169) She agreed that she owed the government for two hours on her timecard. (Tr. 170) Her agency has elected not to seek repayment for any timecard issues. (Tr. 171) Almost all of her time for physical fitness was properly coded on her timecard. (Tr. 192) Applicant improperly coded three hours of physical fitness time as RG when she should have used the code for Civilian Fitness and Wellness Program (CFWP). (Tr. 171, 192; GE 3 at 379)

Applicant did not complete most of the timecards for the 18 months at issue. (Tr. 187) She emailed information about her workhours, and someone in her agency completed her timecards. (Tr. 187) One of Applicant's supervisors was frequently absent from her PDL. (Tr. 190-191) He was also unaware of Applicant working through lunch or taking time for physical fitness. (Tr. 191) Applicant's supervisor said employees were not allowed to claim hours worked on Sundays; however, Applicant said he approved her hours on Sundays on her timecard. (Tr. 193) Applicant said her supervisor never expressed concerns about her timecard to her. (Tr. 196) Applicant promised to conscientiously comply with all known rules. (Tr. 172)

**Mr. B's statement**

Applicant's former supervisor from 2015 to 2016, Mr. B, said Applicant's duty location was primarily at a base away from his office because she was an instructor and course facilitator. (Tr. 61-62, 72, 82) He did not have any concerns about her work when she worked for him. (Tr. 81) He also encouraged her to take courses away from her PDL to increase her expertise. (Tr. 65) She also met with subject-matter experts away from her PDL. (Tr. 61) Her time away from her PDL would be coded as RG or regular duty. (Tr. 61, 66-67) If she exceeded regular hours, her time would be coded as "credit hours" or "comp time," which was managed at the supervisory level. (Tr. 61-63) The instructors were on a flex schedule. (Tr. 63) Compensatory time, or "comp time," is a system where employees earn paid time off (PTO) instead of overtime pay for extra hours worked. They were not permitted to carry comp time for more than a year. (Tr. 63) There are various timecard codes for regular grade (RG), comp time, and credit hours. (Tr. 63) They were not permitted to accumulate more than 24 credit hours, and it was important to management to ensure that employees did not acquire an excessive number of credit

hours because they could make a claim for additional pay. (Tr. 64) Her supervisor was not interviewed in the investigations detailed in SOR ¶¶ 1.a and 1.b. (Tr. 71, 74)

In 2022, management selected Applicant to enroll in a one-year course called leadership development program (LDP). (Tr. 45-46, 164) She was authorized to code her timecard as RG when she was doing her coursework. (Tr. 46) In early 2023 after the time period alleged in SOR ¶ 1.b, Applicant was absent from her PDL for appointments before and after she received a double mastectomy, and some coworkers complained about her being absent from her PDL. (Tr. 28, 41, 46, 50) One coworker learned about the reason for her request for a leave donation in 2023, and he was ashamed of remarks he made criticizing her for her absences. (Tr. 28-29) On another occasion, she was sick with COVID, and a coworker implied that she was lying about being sick. (Tr. 30) In early 2023, Applicant assisted a coworker who was seeking a remedy from their agency under the Americans with Disabilities Act (ADA) and EEO, and Applicant was authorized to assist her coworker in a telework capacity. (Tr. 30, 42) Human resources told Applicant and her coworkers that they were permitted to code the hours on timecards while assisting a coworker with an ADA and EEO problem as RG. (Tr. 31-32, 43-44) Applicant generated about six statements for ADA and EEO issues. (Tr. 43) The timecard investigation of Applicant occurred after she supported a coworker who filed a successful EEO complaint against the agency. (Tr. 50-51) A coworker who filed an EEO complaint suggested the investigation was retaliation for Applicant's support of her. (Tr. 51-52)

Applicant was authorized to work off site in the 2022 to 2023 period. (Tr. 32) Sometimes Applicant's coworkers had to leave their building for videotelephone meetings because the Internet connections in their workplace was not adequate or due to security concerns about using cameras in their building. (Tr. 41) The absences were coded on a timecard as RG. (Tr. 41) Applicant has asthma and had difficulty breathing while wearing a mask. Sometimes employees went outside their workplace during the COVID 19 pandemic to get relief from wearing a mask. (Tr. 48) Applicant said she went outside of her building once or twice a day so she could take off her mask. (Tr. 194) It is unclear how the absences during the duty day were documented on the investigator's spreadsheets.

**Ms. W's statement**

A coworker, Ms. W, who in-processed with Applicant in 2019 and had a desk near her desk at an agency said the DOD did not provide training on completion of timecards and documenting work hours. (Tr. 87, 105) Training was not provided because the agency was in transition. (Tr. 88) She found someone in HR and received instruction on completion of her timecard. (Tr. 106)

Ms. W never heard anyone comment about Applicant's absences from her PDL. (Tr. 89, 91) During the late 2021 to mid-2022 period, office personnel were permitted to telework one day per week. (Tr. 91) Telework was noted on timecards. (Tr. 107) Applicant was required to meet with vendors and attend meetings away from her PDL. (Tr. 92) After Ms. W badged into the building where her PDL was located, she occasionally went to other offices in the building to meetings for work-related purposes. (Tr. 93) Applicant had

to leave her PDL for video teleconference meetings because of security restrictions. (Tr. 194) She has video teleconferences three or four times a week. (Tr. 194) Applicant's badge information might not be captured if she badged into a building or office outside of her own PDL. (Tr. 94) Employees were supposed to code their timecards with RG if they were visiting another office in their PDL building. (Tr. 95) Visits away from the PDL building would be indicated as eight hours RG, and not separated into PDL and non-PDL hours. (Tr. 95)

Ms. W was unaware of any policy on documentation of time at lunch until after Applicant was removed from the SCIF at which time 30 minutes for lunch became the official policy. (Tr. 96) Employees worked 8.5 hours a day to account for the 30 minutes allotted for lunch. (Tr. 96) Applicant worked on her master's degree program and assisted with an EEO complaint during the 2021 to 2023 period. (Tr. 97) Ms. W believed that Applicant's supervisor was supposed to provide timecard guidance for these two actions. (Tr. 97-98) Applicant was also involved in leadership program training (LPT) and the civilian fitness program (CFP) in which she was permitted to take three hours a week for fitness. (Tr. 98) Applicant and other employees walked around their building for fitness and sometimes met outside the PDL for LPT. (Tr. 98, 100) She did not know how LPT and CFP were supposed to be coded on timecards; however, she believed they were appropriate for including in work hours. (Tr. 99) Video teleconferences were conducted outside of their building because cameras are not allowed in the building. (Tr. 100-101, 163-164) Ms. W was not interviewed during the investigation of Applicant's timecards. (Tr. 101) Ms. W said the agency authorizes maxiflex scheduling of work hours. (Tr. 109-110)

**The February 6, 2023 ROI (GE 3)**

The investigator provided Applicant the specific dates in which she claimed more hours than shown in her badge-in and badge-out times. She provided her explanations and some supporting documentation. (GE 3 at 28-32) On multiple occasions she said that she was outside her office to work on her EEO case, communicate with congressional staffers, etc. The ROI did not credit her with having authorized absences unless her absence was supported by documentation, such as billing records from her lawyer. Her timecards reflected RG as the code for her absences.

The February 6, 2023 ROI has the following findings:

> In consideration of the facts of the investigation examined with a preponderance of the evidence as the burden of proof, the Reporting Investigator finds the allegations that [Applicant] failed to accurately report work hours and failed to work reported hours are substantiated. Additionally, the Reporting Investigator finds [Applicant] violated 5 CFR § 2635.705, 5 CFR § 2635.101, [Regulation], "Civilian Fitness and Wellness Program," and [Regulation], "Hours of Duty."
>
> 1. Failure to work reported hours. [Applicant] engaged in improper conduct in violation of 5 CFR § 2635.705 when [she] reported working RG hours for

which there was no evidence that she performed official duties. On days she reported on her [timecards] that she worked at [her PDL] building, the evidence shows [Applicant] was not present for duty within [her PDL building] on 16 days, totaling at least 20 hours 38 minutes. [She] did not provide evidence of the work she alleged she performed during these work hours. [Applicant] was a GG-14, Step 3 and earned an hourly rate of $62.62 from October 1, 2021 to December 5, 2021. She received a within grade increase to a GG-14, Step 4, and, from December 5, 2021 through January 2, 2022, her hourly rate was $64.58. On January 2, 2022, she received a general adjustment to her salary, which made her hourly rate $66.53. Accordingly, [she] received approximately $1,349.28 in earnings resulting from work hours claimed to have been worked in [her PDL] building in which she was not present within [her PDL building] and could not provide objective evidence of the work she alleged she performed, including work performed on pending lawsuits with [her agency].

2. Failure to accurately report work hours. [Applicant] engaged in improper conduct in violation of 5 CFR § 2635.101 when she claimed RG hours [on her timecard] for time spent not performing her duties.

(a) [The agency Regulation] requires employees to record CFWP activity appropriately in the time and attendance system by entering timekeeping code "LN" in the "type" column and "PF" (fitness) or "PH" (wellness) in the "EHO" column of [her timecard]. Although [Applicant] stated she participated in CFWP during the period investigated, a review of her timecards did not reflect recorded CFWP activity requested or approved in [her timecard].

(b) [Applicant] submitted inaccurate work hours in [her] timecards for 18 pay periods, between October 1, 2021 and May 31, 2022, when her time from initial entry scan to last exit scan at [her PDL building] was less than the amount of time reported on [Applicant's] timecards on 38 occasions, which totaled approximately 36 hours and 20 minutes. Based upon the hourly rates stated above, [Applicant] received approximately $2,347.93 in earnings resulting from time when she left [her PDL building] during duty hours before completing a full workday.

(c) [Applicant] failed to submit a leave request for 2 hours of sick leave on October 28, 2021 for a doctor appointment she attended.

(d) [Applicant] failed to request/claim official time for time spent on EEO matters in accordance with [regulation] and failed to come to a mutual understanding of the amount of official time to be used prior to her use of such time in accordance with [regulation] and 29 CFR 1614.605.

(3) Failure to Include a Lunch Period in Tour of Duty. [Applicant] engaged in improper conduct in violation of [a regulation], "Hours of Duty," Section

E3.3 when she did not include a lunch period in her daily tour of duty and her tour of duty was for six hours or more. Specifically, she failed to take the required one-half hour uncompensated meal period for 42 days that she claimed as straight RG and worked in excess of 6 hours between October 1, 2021 and May 31, 2022. Additionally, [a regulation] states employees may not work through their lunch period and leave work early or arrive at work late and work straight through the day without a meal break. [Applicant], by her own admission, violated this policy, as she stated she never took the required 30-minute unpaid lunch break since her employment with [DOD] began in December 2019.

(4) CFWP Participation: In accordance with [an agency regulation], [the Civilian Fitness and Wellness Program (CFWP)], employees must request and receive approval to participate in the CFWP from their supervisor using [a form] before participating in the program. [Applicant] violated [a regulation] when she participated in the CFWP without requesting and receiving approval to participate in the CFWP using a [form].

**Character Evidence**

Applicant's rating was excellent in 2021 and successful in 2022. (Tr. 196; file) In 2018, she received a cash award, and in 2019, she received a time-off award. (AE N) Two former coworkers and a former supervisor made statements on Applicant's behalf at her hearing. Other character witnesses provided written statements. The general sense of their statements is that Applicant is professional, thorough, trustworthy, honest, and conscientious. The character evidence supports approval of her security clearance.

## 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 applicant's 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:

> (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 evidence is sufficient to establish AG ¶¶ 16(d) and 16(e). Additional discussion is in the mitigation section, *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 concisely 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).

"Public records admissible under FRE 803(8), such as court records and police reports, are presumed to be reliable by virtue of the government agency's duty for accuracy and the high probability that it has satisfied that duty." ISCR Case No. 16-03603 at 4 (App. Bd. May 29, 2019) (citation omitted; footnote omitted). The investigators acted in good faith in the performance of their duties. The second investigation is particularly thorough and impressive in its generation of written witness interviews and collection of corroborative information. For example, Applicant's interviews were tape recorded and transcripts were generated and included in the ROI. The investigator for the second ROI advised Applicant of each questioned date, and she had an opportunity to address each date. The two ROIs are sufficient to establish by a preponderance of evidence that Applicant submitted timecards between April 30, 2018, and June 8, 2019, which indicated more hours of work than she completed; she failed to work reported hours; and she submitted inaccurate timecards for about 18 pay periods between October 2021 and May 2022. For security clearance purposes, applicants have a responsibility to present reasonably available documentation of affirmative defenses, and the burden never shifts to the government to disprove affirmative defenses.

For SOR ¶ 1.a, Applicant estimated that she is unable to account for 12 hours for which she was paid. Her written response to DFAS detailed about 17 issues she claimed were unresolved. However, the investigator's notes on the ROI spreadsheets credited her with attending offsite training, completing offsite mission-required actions, receiving telework for EEO preparation, and other offsite work-related actions. In several instances Applicant may have sought credit in her DFAS response for offsite work for an incorrect date. If she had submitted the correct date, the investigator would have credited her with completing a full day of work instead of eight hours of being absent and submitting a false timecard. Applicant was not permitted to have access to her computer, emails, and calendar, because they were located in her PDL, and this limitation impeded her efforts to explain what she was doing on various questioned dates. Applicant honestly but mistakenly believed she was permitted to work through the required 30-minute lunch periods and leave the PDL early. If she is credited with 30 minutes a day, up to five days a week for lunch, over the 57 weeks covered by the investigation, the number of alleged fraudulent hours would be significantly reduced. To make this assessment, each two-week timecard would need to be examined, because there was a substantial variation on each timecard between the number of hours the ROI said she claimed but were not substantiated. The specific number of hours mistakenly or intentionally claimed and the loss to the government is less than the amounts alleged in SOR ¶ 1.a. Applicant conceded she was unable to account for 12 hours for which she was paid.

Applicant claimed that she was approved for CFWP, and she did not believe she was credited in the ROIs for three hours of CFWP per week or six hours of CFWP per pay period. The first ROI covered a 57-week period (April 30, 2018, to June 8, 2019) or 28 pay periods. If she engaged in CFWP during the duty day, that time would be included in her badge-in and badge-out time. I specifically find that the ROI credited her with CFWP during the duty day because the spreadsheet showed her time-in and time-out for each duty day. It is unclear whether she was aware that CFWP could not be taken before or after the duty day.

The first ROI failed to include the actual timecards Applicant submitted and actual badge-in badge-out information as opposed to a spreadsheet the investigator prepared. Applicant's inability to access her office records make it difficult for her to accurately assess the precise number of hours she mistakenly claimed or the amount of pay she improperly received. For employees authorized to perform offsite duties, the employee's timecard should be presumed to be accurate, and badge-in and badge-out information standing alone is inadequate to show work hours are properly claimed because offsite hours are based on the employee's statements and not on badge-in and badge-out information.

The investigators recognized the necessity of investigating offsite work to determine whether the work was actually performed. Applicant had numerous occasions in which she was authorized to be outside of her PDL including CFWP, teleconferences, offsite visits to other agencies, EEO activity, walking outside her building for exercise, her master's degree program, and LDP. The way she coded her hours as RG made it almost impossible for the investigator to find out where she was or what she was doing when she

was outside her PDL because her supervisors did not maintain records of her activities, and Applicant did not have access to her own records, which were inside her PDL.

For SOR ¶ 1.b, Applicant failed to follow the rules for participation in the CFWP. The rules for CFWP are described in the regulation cited in the second ROI at 35. (GE 3 at 35) Employees are required to have a preapproved agreement with their supervisor or agency for CFWP. Special timecard codes are used to document CFWP. She did not have an agreement with her supervisor or agency and she did not properly code her timecards for CFWP.

An agency regulation addresses lunch timecard documentation:

> A lunch or other meal period is an approved period of time, from 30 minutes not to exceed one hour, in a nonpay and nonwork status that interrupts a basic workday or a period of overtime work for the purpose of permitting employees to eat or engage in permitted personal activities. Meal period schedules may vary by office based upon work requirements, availability and convenience of eating establishments, and is typically scheduled approximately midway through an employee's work day, normally between 1100 and 1300.
>
> Employees whose daily tour of duty is for six hours or more are required to have a meal period included in their daily tour of duty.
>
> Employees may not work through their meal period and leave work early, nor can they arrive at work late and work straight through the day without a meal. (GE 3 at 35-36)

The investigator concluded Applicant was not present for duty within her PDL building on 16 days, totaling at least 20 hours 38 minutes during the period of October 2021 through May 2022. She did not provide sufficient evidence of the work she performed during these work hours. The investigator calculated that she received approximately $1,349 in earnings resulting from work hours claimed to have been worked in her PDL building. In sum, she claimed about three more hours for work on average per month than she was able to substantiate as being performed. The agency did not submit that $1,349 to DFAS for collection, and SOR ¶ 1.b does not allege she improperly received funds she did not earn.

Applicant credibly described her work performance and efforts to provide timecards. Her failures to prove that she worked required hours, and to accurately report the hours she worked, were based in part on her lack of understanding of requirements, an absence of enforcement of requirements for documentation of hours, supervisor failures to ensure accountability of Applicant's whereabouts, and unavailability of records after she left her position with the DOD agency. Applicant sent emails to others to complete her timecards. The timecards at issue and emails were not included in the record. Presumably a supervisor signed or certified the timecards, and the supervisors should have counseled Applicant about her timecards or work product or both if they were

aware of the problematic timecards. The intentional submission of false timecards for work not performed is a serious offense.

Applicant's timecard issues ended in May 2022, which is three years before her May 29, 2025 hearing. She expressed her desire to be fully compliant with timecard rules in the future. Her timecard offenses are not recent. Multiple character witnesses attested to Applicant's honesty and professionalism. The timecard offenses happened under such unique circumstances that they are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 17(c) mitigates the personal conduct security concern.

**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 39-year-old employee of a Defense contractor. She was employed for 17 years as a federal employee, and she has held a security clearance for 17 years. In 2008, Applicant graduated from college with a major in political science. During her DOD employment, she served in the United States and in Afghanistan. In April 2023, she left her DOD employment, and she is seeking employment as a federal employee.

Applicant's character statements indicate she is professional, thorough, trustworthy, honest, and conscientious. The character evidence supports approval of her security clearance.

The disqualifying and mitigating information is discussed in the personal conduct section, *supra*. Even if the security concerns were not mitigated under AG ¶ 17(c), they are mitigated under the whole-person concept.

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. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)).

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. Applicant mitigated 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: | FOR APPLICANT |
| Subparagraphs 1.a and 1.b: | For Applicant |

## Conclusion

Considering all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge