DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 24-00832
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Sean Rogers, Esq.

08/04/2025

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant mitigated the personal conduct security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On August 6, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct. Applicant responded to the SOR on August 15, 2024, and requested a hearing before an administrative judge. The case was assigned to me on February 14, 2025.

The hearing was convened as scheduled on May 6, 2025. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant objected to the entry in evidence of a portion of GE 3, but I overruled his objection and admitted GE 3 in evidence. Applicant testified and submitted Applicant Exhibits (AE) A through S, which were admitted in evidence without objection. DOHA received a transcript (Tr.) of the hearing on May 13, 2025.

Amendment to the SOR

During the hearing, Department Counsel moved to amend the SOR by withdrawing SOR paragraph 1.b. There being no objection, I granted the motion to amend the SOR and paragraph 1.b was stricken.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor (Company A). He has worked for his current employer since about May 2023. He earned a bachelor's degree in 2014, after having been on the Dean's List for multiple semesters. He was also a member of a Greek honor society. He has earned multiple professional information technology (IT) certifications. He has been married since 2012. He has two children, ages 10 and 9. He served on active duty with the U.S. Army from about April 2003 until February 2006. He was deployed to an active combat zone during his Army service. Sometime in 2005, the Army sought to separate him for a pattern of misconduct, however the evidence is unclear as to the nature of his military separation. There is evidence that he suffers from post-traumatic stress disorder (PTSD) from his military service. (Tr. 18-20, 55-57; GE 1, 2; AE A-E)

From 2019 until about April 2023, Applicant worked for another government contractor (Company B). He traveled about three or four times per year while he worked for Company B. He was a manager and had supervisory responsibilities for employees who worked under him, including for travel. In February 2023, Applicant and two of the employees that he managed were required to travel across the country for a work conference. He and the two other employees had to quickly make arrangements for a hotel and airfare. Applicant testified that he only had three days to plan for the trip. His hotel options were limited because the trip was set to last for a couple of weeks, he needed to find a place where he and two other employees could stay, and the function for which they traveled had a large number of attendees. Additionally, there were other conventions taking place in the area during that time. Some of these same issues affected his choices and the cost of airfare, especially the lateness of the booking. After consulting with some co-workers, to avoid crowded conditions and a long wait for a rental car at the airport closest to the conference, he booked airfare into a larger airport farther from the conference, and then drove to the conference. (Tr. 22-38; GE 1-3; AE A-E)

Applicant testified that Company B had a 300 percent policy that could be used for booking hotels and airfare. He claimed that, pursuant to this policy, Company B allowed for the booking of lodging and airfare for up to 300 percent of the allowable rate under certain exigent circumstances, such as booking near the travel date, or if no other options were available that were within the allowable rate. Company B later alleged that there were two such hotels available, but Applicant testified that he did not see them when he was looking for lodging. He testified that, even if he had seen them, there were other disqualifying factors, such as being located in a high crime zone, that he would have to consider before booking them. He employed the 300 percent policy and booked a hotel

and his airfare that were over the allowable rate. Company B had no policy for preapproval if the hotel or airfare purchased was over the allowable amount, nor did it have a process for preapproval for utilizing the 300 percent rule. After they requested his permission, he told the two other employees traveling with him that it was okay for them to book first-class tickets because they had medical conditions that allowed for the upgrade. He told these two employees that they needed to be prepared to be questioned about the upgrade upon their return. Company B did question those two employees about their airfare upgrade when they returned to the office, but after they submitted notes from their doctors, Company B approved their upgrades. (Tr. 30-37, 43, 63-66; GE 2, 3)

Applicant testified that, after a few weeks at the conference, Company B asked him and the two other employees to leave the conference one day early and come back to the office, because they were needed back at the office. He therefore had to find another flight on short notice. As he had time constraints for his wife to pick him up from the airport at home, he booked an early morning first-class flight departing from the same large airport at which he arrived. He testified that the first-class ticket was less expensive than the other two economy options that met his time requirements for allowing his wife to pick him up while managing their two young children. He also reserved a hotel room near the airport at which he arrived, so that he could drive there the night before and then have a short trip to the airport early the next morning. He testified that there were other hotels available further away from the airport that were within the per diem, but because he was unfamiliar with the area, and it was a 5:00 a.m. flight, he opted for the closer, more expensive hotel room. The cost of first-class airfare and the additional hotel room were both above the allowable limit, but within the 300 per cent rule. (Tr. 37-44; GE 2, 3)

Applicant flew back home and went to the office the next day. The trip lasted from about February 24, 2023, through March 9, 2023. Company B later alleged that there was one other less expensive available flight that day that would have gotten him home about an hour and a half later than the one he took, but he testified that he only saw the three aforementioned flights. (Tr. 37-43, 63-66, 69-71, 77-78; GE 2, 3)

Shortly after returning from his trip, in early March 2023, Applicant completed and submitted his expense report on Company B's website. He uploaded all his claimed expenses, including an explanation for why the 300 percent rule should apply where he requested it. He also included information as to the various circumstances for why he made the purchasing decisions that he made. Sometime later that month, a Company B ethics officer contacted him, letting him know there were issues with the expenses from his trip. On April 5, 2023, the ethics officer conducted a phone interview with him regarding the potential issues Company B had with his claimed expenses. Just prior to the phone interview, Applicant heard that there were issues with some of the items he claimed for reimbursement, so he paid about $436 for those items with his own money. These items included two coolers, two $70 department store gift cards, two $20 video-game gift cards, and a $54 video-game controller, which he listed as "groceries." He reportedly told the Company B investigator that he purchased those items to reach his allowable per diem. (Tr. 45-47, 73-77; GE 2, 3)

On April 21, 2023, Company B terminated Applicant's employment for inappropriate conduct. The written notice read that, after an internal investigation, Company B found that he had instructed employees to book hotel/airfare over per diem. It also found that he had inappropriately used his company credit card for personal benefit while on this business trip. It found that his conduct violated several of Company B's employment policies. He is not eligible for rehire. This termination decision was based upon Company B's April 6, 2023 Report of Investigation (Company B ROI). The Company B ROI concluded that, while on company travel in February and March 2023, Applicant booked hotels and airfare that were over the allowable rate without prior approval and instructed his two employees to do the same. The Company B ROI also found that, on his expense report, Applicant misclassified as "groceries" the aforementioned personal items that were not appropriate for reimbursement. The Company B ROI reflects that Applicant complained about the differences between Government-permitted expenses and contractor-permitted expenses. The Company B ROI acknowledged that Applicant voluntarily paid about $436 to his company credit card to repay these personal expenses. (Tr. 20-23, 41-43, 50-53, 66-69, GE 2, 3)

In hindsight, Applicant understands that he should not have claimed the gift cards and video-game controller. He testified that while he knew it was wrong, there was a systemic mindset at Company B that employees could claim up to their full per diem regardless of whether the expense was appropriate for reimbursement. He described it as "taking advantage of your per diem." He testified that his manager advised him to do it when he started at Company B. He testified that in his attempt to let the ethics officer know about the systemic problem with taking advantage of the per diem, he believed that she misinterpreted his intention, and that she thought he was trying to justify the practice. Before Company B terminated him, it provided additional training regarding appropriately claiming expenses for reimbursement. He regrets having used his per diem for unallowable expenses and is much more careful about making sure he follows the rules regardless of whether others are following them. (Tr. 47-51, 66-69, 72-73; GE 2, 3)

While it is not alleged in the SOR, Company B also counseled Applicant in December 2022 for using derogatory language, including profanity, in an e-mail to another Company B employee. 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. (GE 3)

Applicant had three witnesses testify during his case in chief. They consisted of his current co-workers and a friend who is a pastor. His co-workers were generally aware of the issues regarding his security clearance, including his termination from Company B, and his issue with his expense report. They opined that Company B dismissing him for his conduct seems harsh. One of his co-workers has handled expense reports and their coverage in the past, although she acknowledged that she is not aware of whether Applicant knowingly violated Company B's travel reimbursement policies. All three character-witnesses noted that he is honest, reliable, and hardworking. They believe that he should have his security clearance reinstated. (Tr. 41, 80-106; AE A, B, F-S)

Applicant also provided a multitude of character-evidence letters from friends, colleagues, a former landlord, and his family's martial arts instructor, in which the authors noted that he shows integrity and is trustworthy and reliable. He has received several awards from both Company A and B, including an award for when he was on the business trip at issue in this matter. He completed several professional and security related training courses after his termination from Company B. He is active with his church and volunteers his time there. (Tr. 41, 80-106; AE A, B, F-S)

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 is potentially applicable in this case:

> (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.

In an expense report that Applicant submitted to his employer, Company B, he intentionally mislabeled unallowable expenses for personal gain. He expensed hotels and airfare that cost over the allowable limit. He also advised employees he managed to book

hotel and airfare that were over per diem. Company B terminated him for this conduct. AG ¶ 16(d) is established.

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

> (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.

It has been over two years since Applicant engaged in this disqualifying conduct. He claimed that he has learned from the experience and is more careful with following employer policies regardless of whether others are doing so. His reputation at his current employer, as evidenced by witness testimony and employer award recognition, supports this claim. He has undergone relevant security training after his disqualifying conduct. Available evidence shows only two instances where Applicant has been counseled since he left the Army in 2005, so his conduct is infrequent.

I note the distinction between Applicant's conduct involving spending more than the allowable rate for hotel and airfare (and advising his employees to do the same) versus mislabeling unallowable expenses such as gift cards and a video-game controller as groceries. I find the former conduct was relatively minor as it was largely contributed to by a lack of clear guidance at Company B as to when utilizing the 300 percent rule was appropriate. This finding is bolstered by the fact that Company B provided additional training regarding travel between the trip in question and Applicant's termination. I also note that Applicant's subordinate employees were ultimately reimbursed for their first-class airfare, yet Company B relied upon Applicant's instructions to expense this airfare as a basis for his termination.

Applicant acknowledged that he should not have expensed some of the items he claimed, including gift cards and a video-game controller. He paid those expenses back. While Applicant knew that his conduct in claiming his personal items and taking advantage of his per diem was inappropriate, even this conduct was contributed to by a lack of proper direction by Company B. Evidence shows that his manager told him it was okay to claim up to his full per diem for expenses, and the practice was common. This consideration does not excuse the conduct, but it does tend to diminish his culpability. Regardless, of the more serious nature of his mislabeling of expenses, the aforementioned mitigating evidence is still established. AG ¶¶ 17(c) and 17(d) are applicable.

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 have incorporated my comments under Guideline E in my whole-person analysis. I have considered his military service, including in a combat zone, his employment recognition, and his many positive character-references from both his work and social life. I believe the evidence reflects a generally honest and reliable individual who made a mistake, learned from it, and will not make a similar one again. I find that his past behavior does not cast doubt on his current reliability, trustworthiness, and good judgment. I find he mitigated 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:	FOR APPLICANT
Subparagraphs 1.a:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

_____
Benjamin R. Dorsey
Administrative Judge