



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



In the matter of:)
)
) ISCR Case No. 24-02479
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

01/07/2026

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines E (Personal Conduct) and J (Criminal Conduct). Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 31, 2024. On March 4, 2025, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline E. The DCSA acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on March 18, 2025, and requested a hearing before an administrative judge. On May 5, 2025, Department Counsel amended the SOR by adding SOR ¶ 2.a under Guideline J (Criminal Conduct). Applicant admitted SOR ¶ 2.a on the same day, with explanations. Department Counsel was ready to proceed on May 9, 2025. The case was assigned to me on August 18, 2025. On September 8, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted on October 22, 2025. The hearing was cancelled when all administrative judges were furloughed from October 1 to November 12, 2025, during a federal government shutdown due to a lapse in federal funding. On November 18, 2025, DOHA notified him that the hearing was rescheduled for December 5, 2025. I convened the hearing as scheduled. Government Exhibits 1 through 3 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses. A three-page published article written by Applicant was marked as Applicant's Exhibit 1 and admitted without objection. DOHA received the transcript on December 12, 2025.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegation in SOR ¶ 1.c but denied the allegations in SOR ¶¶ 1.a and 1.b. He admitted the allegation of criminal conduct alleged in SOR ¶ 2.a. His admissions are incorporated in my findings of fact.

Applicant is a 49-year-old associate analyst employed by a defense contractor since August 2021. He married in November 2009 and separated in May 2023. He has three sons, ages 23, 13, and 9. He received a bachelor's degree in August 1999. He held a public trust position while employed by a federal agency from September 2019 to January 2020. (Tr. 33)

When Applicant completed his SCA in January 2024 and listed his former employments, he included non-federal employment as a manager and data journalist from September 2015 to June 2018. He described his reason for leaving this employment as, "Office was rearranged, position was eliminated." He answered "no" to the question asking if, in the last seven years, he had been fired, quit after being told he would be fired, left by mutual agreement following charges or allegations of misconduct, or left by mutual agreement following notice of unsatisfactory performance. (GX 2 at 16)

When Applicant was interviewed by a security investigator in November 2019, he told the investigator that he was hired as a data journalism manager but was assigned additional work outside his individual responsibilities and his expertise. He was placed on a performance improvement plan and told he needed to increase his work output. He was terminated when he did not complete the amount of work required by the performance improvement plan. He told the investigator that he did not think his termination was relevant because it was not likely to recur. (GX 3 at 15) The SOR does not allege falsification of this security interview.

In Applicant's response to the SOR, he denied falsifying material facts in his January 2024 SCA and the subsequent security interview, because his termination would not be considered "fired for unsatisfactory performance." He stated that he was not

dismissed for inability to manage data analysis, which was his job, but that he was fired for not publishing enough stories, which was not part of his original job duties. He admitted “[i]n retrospect,” that he should have erred on the side of disclosure in case any use of a performance improvement plan would be considered being fired for cause. He denied that the investigator “confronted” him about his termination, explaining that he willingly provided additional detail about his dismissal “in the interests of transparency.”

Applicant testified that his performance improvement plan required that he publish more stories, even though he previously had not been required to publish stories, but that he had done so voluntarily to help the office. (Tr. 43) He denied being “confronted” with the information and insisted that he provided it voluntarily. (Tr. 50) He testified that his experience in the private sector is that employees are often “let go” for any reason, with no details or explanations.

In Applicant’s response to the amendment of the SOR, he admitted the criminal conduct alleged, including a court’s finding that he committed assaults on his wife in February 2022 and April 2023. However, he asserted that “the events used to justify the [civil protection order] were *de minimis* in nature only used to prop up an ongoing civil divorce and custody action.”

During a security interview in October 2024, Applicant told the investigator that, while he was working at home during COVID-19, he and his wife argued about COVID precautions, enforcement of bedtimes, and general care for the children, and their arguments sometimes became physical and occurred in the presence of the children. According to Applicant, in mid-2022, his spouse was screaming at him in the presence of their children, while she was standing at the front entrance to the home. He grabbed her arm, put one hand on her back, and pushed her outside. A second incident occurred in March 2023, when his wife was sitting in a chair and screaming at him, again in the presence of the children. He grabbed her arm, pulled her from the chair, and moved her to another location in the home, away from the children. His wife claimed that he picked her up by the neck, which he denied. (GX 3 at 16-17)

In May 2023, Applicant’s wife applied for a civil protection order, which was granted in June 2023. The protection order was initially temporary, but it was later modified to be a two-year permanent order. As part of the protection order, Applicant was required complete a course in parenting and domestic violence, and his visitation with the children was required to be supervised. (Tr. 27) The order expired in July 2025. As of the date of the hearing, he was permitted to have unsupervised visitation with his children. (Tr. 60)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan* at 531. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is "less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan* at 531.

Analysis

Guideline E, Personal Conduct

SOR ¶ 1.a(i) alleges that Applicant falsified his SCA in January 2024 by deliberately failing to disclose his termination of employment by a defense contractor and giving a false reason leaving his job. SOR ¶ 1.a(ii) alleges that he falsified this SCA by denying that, during the last seven years, he had been fired, quit after being told he would be fired, left a job following charges or allegations of misconduct; or left a job by mutual agreement after notice of unsatisfactory performance.

SOR ¶ 1.b alleges that Applicant falsified material facts during a security interview in September 2024 by answering “No” to the investigator’s question whether he had been fired from employment during the last seven years. SOR ¶ 1.c alleges that he was aware of his termination from employment during the same interview and that he intentionally omitted mentioning it. Both allegations are based on Applicant’s failure to disclose his termination of employment during this security interview. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). Accordingly, I have resolved SOR ¶ 1.c in Applicant’s favor.

The security concern under this guideline is set out in AG ¶ 15:

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

The following disqualifying conditions under this guideline are potentially applicable:

AG ¶16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

AG ¶ 16(b): deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official representative.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider all the record evidence to determine an applicant’s

state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010). Applicant is a well-educated, articulate individual. He had previous experience with the adjudication of his trustworthiness.

A security clearance investigation "is not a forum for an applicant to split hairs or parse the truth narrowly." ISCR Case No 01-03132 at 2 (App. Bd. Aug. 8, 2002). In Applicant's answer to the SOR, he attempted to explain the various circumstances in which a person in his profession might be "let go," but he admitted that, "[i]n retrospect," he should have disclosed his termination of employment for failure to complete the performance improvement plan. The evidence case establishes that Applicant was aware that he left his employment under unfavorable conditions, that he failed to disclose it in his SCA, that he denied it during questioning by a security investigator, and that he did not admit it until the investigator confronted him with the evidence of his termination. I conclude that AG ¶¶ 16(a) and 16(b) are established.

The following mitigating conditions are potentially applicable:

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

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Neither mitigating condition is established. Applicant did not disclose the adverse circumstances under which he left a previous employment until a security investigator confronted him with the evidence. His effort to "parse the truth narrowly" was intentional. Lack of candor during the security clearance process is not minor because it undermines the integrity of the process.

Guideline J, Criminal Conduct

The concern under this guideline is set out in AG ¶ 30: "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations."

In Applicant's response to the amendment of the SOR, he admitted the facts alleged, including the fact that the court granting the protection order found that he committed assaults in February 2022 and April 2023. The following disqualifying condition is established by Applicant's admissions and his testimony at the hearing:

AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The following mitigating conditions are potentially relevant:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Both mitigating conditions are established. Applicant's conduct occurred more than two years ago during a dysfunctional marriage and a stressful epidemic. He and his wife separated in May 2023, the protective order expired in July 2025, and the conduct has not recurred. He is now allowed to have unsupervised visits with his children.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guidelines E and J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under those guidelines and evaluating all the evidence in the context of the whole person, I conclude Applicant mitigated the security concerns raised by his criminal conduct, but he has not mitigated the security concerns raised by his personal conduct.

Formal Findings

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

Paragraph 1, Guideline E (Personal Conduct):	AGAINST APPLICANT
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Subparagraph 1.a:	Against Applicant
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Subparagraph 1.b:	Against Applicant
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Subparagraph 1.c:	For Applicant
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Paragraph 2, Guideline J (Criminal Conduct):	FOR APPLICANT
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Subparagraph 2.a:	For Applicant
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Conclusion

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

LeRoy F. Foreman
Administrative Judge