



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



In the matter of:)
)
) ISCR Case No. 24-01874
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: Brian G. Smith, Esq.

03/13/2026

Decision

HARVEY, Mark, Administrative Judge:

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

Statement of the Case

On April 13, 2017, January 5, 2023, and November 15, 2023, Applicant completed Electronic Questionnaires for Investigations Processing or security clearance applications (SCA). (Government Exhibit (GE) 1-GE 3) On April 9, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; 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 May 22 and June 30, 2025, Applicant provided his responses to the SOR. (HE 3) On August 1, 2025, Department Counsel was ready to proceed. On August 26, 2025, Department Counsel issued an amendment to the SOR, and on December 31, 2025, Applicant responded to the amended SOR. (HE 4; HE 5) On December 19, 2025, the case was assigned to me.

On January 7, 2026, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing on February 25, 2026. (HE 1) The hearing was held as scheduled using the Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered seven exhibits into evidence; Applicant provide two exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 13-15; GE 1-GE 7; Applicant Exhibits (AE) A-AE B) On March 10, 2026, DOHA received a copy of the transcript. The record was not held open after the hearing. (Tr. 147, 156)

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, he admitted the SOR allegations, and he provided extenuating and mitigating information. His admissions are accepted as findings of fact. He provided information about SOR ¶¶ 1.a through 1.c and extenuating and mitigating circumstances. He said:

My role at [Corporation E] was 100% remote, primarily focused on managing LAN/WAN installation status reports, coordinating field schedules, and overseeing network deployment logistics Due to the nature of the remote role, there were periods of reduced workload caused by vendor protests and delayed site activities. This amount of idle time, along with an uncertain labor market for contractors like me, contributed to my decision to seek additional employment. My intent was to hedge against the risk of being laid off due to potential work shortages and to ensure both consistent productivity and financial stability for my family.

* * *

In February 2024, I accepted a fully remote role with [Corporation C2], where I managed cybersecurity efforts at the [a Federal Department]. At the time I accepted the position, I did not fully grasp how strictly company policies were applied regarding dual full-time employment or that this could lead to immediate termination. Additionally, I was not aware that being terminated for overemployment could have implications for my security clearance. I also did not receive [Corporation C2's] policy on dual employment during my onboarding process, which further contributed to my limited awareness of the company's specific expectations in this area. It was

only after both [Corporations E and C2] discovered my dual employment and subsequently terminated my employment that I fully recognized the seriousness of the issue and the strict prohibition on such arrangements. Since this occurrence, I have thoroughly reviewed compliance documents and policies and made it a priority to identify the appropriate points of contact, such as the Facility Security Officer (FSO), should I have any questions or concerns that could pose potential risks. (HE 3)

Applicant is 51 years old, and he is seeking employment as a high-level technical project manager if his security clearance is approved. (Tr. 53; GE 1) In 1998, he received an associate's degree in applied science; in 2010, he received a bachelor's degree; and in 2015, he received a master's degree in business administration (MBA). (Tr. 80) He served in the Army from 1992 to 2000. (Tr. 81; GE 1) He served in the Army National Guard from 2009 to 2012. (Tr. 82) He received honorable discharges in 2000 and 2012. (GE 1 at 25) He has a 75 percent disability rating from the Department of Veterans Affairs (VA). (Tr. 143) He has multiple technical and management certifications. (Tr. 82-83) He was married from about 1998 to 2002; from 2003 to about 2008; and from 2010 to about 2018. (Tr. 142; GE 1) His children were born in 1995, 1998, and 2005. (Tr. 142-143; GE 1) He does not currently hold a security clearance. (Tr. 100)

Personal Conduct

SOR ¶ 1.a alleges in about April 2024, Applicant was “fired from [his] employment at [Corporation E] for a direct violation of [Corporation E’s] policy for working part-time or full-time while working for another Corporation. . . at the same time. [He is] not eligible for rehire.”

SOR ¶ 1.b alleges in about September 2023, Applicant was “fired from [his] employment at [Corporation Z] for a direct violation of [Corporation Z’s] policy for working part-time or full-time while working for another Corporation . . . at the same time. [He is] not eligible for rehire.”

SOR ¶ 1.c alleges in about April 2024, Applicant was “terminated from [his] employment at [Corporation C2] after [his] employer discovered that [he was] also working for another Corporation . . . at the same time.”

In his November 15, 2023 SCA, Applicant disclosed five full-time employments from 2011 to present:

(1) Corporation S from April of 2011 to May of 2021. (GE 3 at 15) He left his Corporation S employment to work at Corporation E. (GE 3 at 16) His employment at Corporation S did not overlap with his employment with the corporations in SOR ¶¶ 1.a, 1.b, or 1.c.;

(2) Corporation C1 from December of 2022 to February of 2023. (GE 3 at 14) He said he resigned from his Corporation C1 employment “for a new opportunity” at Corporation Z. (GE 3 at 15);

(3) Corporation Z from January of 2023 to September of 2023. (GE 3 at 12) Applicant said his reason for leaving his Corporation Z employment was “[m]y employment was terminated by [Corporation Z] as a result of my engagement in a secondary job, which constituted a violation of the Outside Employment Handbook Policy.” (GE 3 at 13);

(4) Corporation H from October 2023 to present. (GE 3 at 11-12); and

(5) Corporation E from May 2021 to present. (GE 3 at 10).

Applicant’s employment at Corporation C2 was not listed in his November 15, 2023 SCA because he worked for Corporation C2 from about February to April of 2024, which was after he completed his SCA. (Tr. 92)

At his hearing, Applicant said he worked for Corporation E from about May of 2021 to April of 2024. (Tr. 84, 101) On May 4, 2021, he signed a Corporation E policies acknowledgment sheet, and he received an electronic copy of the employee handbook. (Tr. 85-86, 103-104; GE 5) The handbook states “[a]pproval for outside employment or business services that do not conflict with [Corporation E] responsibilities should be obtained from the [Corporation E] Chief Executive Officer. Willful failure to observe these rules may result in loss of employment.” (Tr. 86-87, 104; GE 5 at 2) He did not receive an in-person briefing on the requirement for permission to engage in outside employment. (Tr. 90) He said in March 2023 he probably received a refresher copy of the policies. (Tr. 104) His position at Corporation E was master specialist project manager and technical lead, and his Corporation E annual salary was \$170,000. (Tr. 101) He supported a Federal Government contract, which supported a Federal Agency. (Tr. 102)

Applicant did not apply for approval for outside employment while employed at Corporation E. (Tr. 87) While he had full-time employment at Corporation E, he also had employment with Corporations Z and C1 without obtaining permission from Corporation E for outside employment. (Tr. 105) He was never directly asked if he was engaging in outside employment. (Tr. 88) He did not receive any adverse counseling or actions from his employer before he was terminated from his Corporation E employment for engaging in outside employment without permission in September of 2023. (Tr. 87-88, 95, 109; GE 4) The comment section of the Corporation E termination notice states “it was a direct conflict of interest, in addition to being a conflict due to your billing full time on their contract while employed for another Corporation.” (Tr. 109)

Although not alleged in the SOR as a security concern, at the hearing Applicant said he worked as a project manager for Corporation C1 from December 2022 to February 2023. (Tr. 112) His annual pay for his Corporation C1 employment was about \$125,000, and this employment overlapped with his Corporation E employment. (Tr. 114) Both employments were for 40 hours a week. (Tr. 112) He resigned from his Corporation C1 employment to work for Corporation Z. (Tr. 112) He did not disclose the Corporation C1 employment to Corporation E. (Tr. 113) He conceded that most likely Corporation C1 had a policy limiting outside employment without permission. (Tr. 113)

In January of 2023, Applicant began working for Corporation Z for annual pay of about \$175,000 while he was an employee of Corporation E. (Tr. 88, 115) The Corporation Z policy handbook states “Any outside job shall be discussed and approved with [Z’s] executive management.” (Tr. 89, 119) Applicant admitted that he received Corporation Z’s policy handbook. (Tr. 89) He electronically signed for the policy handbook. (Tr. 118) He did not receive an in-person briefing on the contents of Corporation Z’s policy handbook. (Tr. 89)

From about January to February of 2023, Applicant was working for and being paid for full-time employment with companies E, Z, and C2 at the same time. (Tr. 114) He explained he might work for four hours for Corporation E, and he might not have any additional work for Corporation E. (Tr. 116) He would then be available to work for Corporation Z. (Tr. 116) He would nevertheless bill Corporation E for eight hours even though he only worked for four hours. (Tr. 116) He considered the eight hours he billed to be legitimate because he was available for eight hours. (Tr. 116) He could be available for more than one Corporation at the same time. (Tr. 116) He said, “You know, pretty much all those resources were available to me where I, I leveraged to stay in constant contact with anyone on the team that needed me, ad hoc or scheduled.” (Tr. 116) He said Corporation policies varied on how work was supposed to be reported. (Tr. 137) He believed it was appropriate for his employer to bill the government for eight hours of work even though he only worked four hours, if that was his corporation’s policy. (Tr. 143-144)

Companies E and Z required availability “during standard core business hours, 9:00 a.m. to 5:00 p.m.,” and Applicant “structure[d] [his] schedule to compartmentalize [his] responsibilities working mornings for [E] and afternoons for [Z].” (Tr. 105; HE 2) He put eight hours on his Corporation E timecard. (Tr. 106) He had a lot of downtime, and he filled the downtime working for others or earning technical certifications. (Tr. 107; SOR response)

When Applicant completed his SCA while employed at Corporation Z, he disclosed his employment at E, and his security officer told him he needed to disclose his employment at E with his Corporation Z management. (Tr. 91, 120) Applicant admitted that he violated Corporation Z’s policy on outside employment. (Tr. 119) This disclosure ultimately resulted in his termination from his Corporation Z employment. (Tr. 91-92, 95) The Corporation Z termination letter states that he did not resign with Corporation E when he received employment from Corporation Z, and he did not disclose that information to human relations, executive management, nor obtain approval for continued employment with E. (Tr. 118-119) After he was terminated from Corporation Z for outside employment, he did not disclose his Corporation Z employment to Corporation E because he was terminated from Corporation Z. (Tr. 121)

After he was terminated from Corporation Z, he applied for employment with Corporation C2. (Tr. 121) He worked for Corporation C2 from about February to April of 2024. (Tr. 92) Corporation C2 hired him as a program manager for a cybersecurity contract at a Federal Agency. (Tr. 92) He did not receive a briefing or policy handbook from Corporation C2 concerning outside employment. (Tr. 93) His annual pay at

Corporation C2 was \$175,000 plus a bonus. (Tr. 121) He did not receive any adverse actions at Corporation C2 before he was terminated from his employment because he was still employed at Corporation E. (Tr. 94-95, 121; GE 6 at 1)

The work Applicant provided for the three corporations was different, and he did not realize that there could be a conflict of interest. (Tr. 108) He conceded he was unaware of “whether they’re competing on other contracts or not.” (Tr. 108)

Although the SOR does not allege it, Applicant had part-time employment with Corporation H; however, he was not paid for his services. (Tr. 124-125; GE 3) His compensation was being taken out for dinner, for example. (Tr. 125-126)

Applicant has never been asked to return the pay he received from employers. (Tr. 98-99) He acknowledged that he showed poor judgment, and he regretted his decisions. (Tr. 96, 108) He said, “I am fully aware what I’ve done was just wrong, and it -- it was egregious, you know.” (Tr. 145) In the future, he plans to “look at policies a little bit closer.” (Tr. 96) He plans to ask questions and follow instructions. (Tr. 96) He enjoys contributing to his country, and he takes “great pride in that as a contracted government employ[ee].” (Tr. 97) He hopes he can obtain a security clearance because it will enable him to continue to contribute to the United States. (Tr. 97-98)

Character Evidence

Applicant called four character witnesses at his hearing, and he provided two written character statements. (Tr. 17-78; AE A; AE B) The witnesses were his former and current supervisors, friends, and coworkers. The general sense of his character evidence is that he is a trustworthy, diligent, reliable, technically superior, and professional employee. His work performance has been outstanding. He indicated he received outstanding employee evaluations from his employers. (HE 3)

Applicant’s former coworker praised Applicant’s leadership, management skills, and contributions to his employers. His coworker said:

[Applicant] consistently demonstrated exceptional leadership, trustworthiness, and honesty in his role. His commitment to delivering reliable status updates and ensuring transparency in project progress contributed significantly to the success of our efforts. . . . His ability to navigate complex regulatory requirements while keeping his team focused and on task was a testament to his project management skills. (AE A)

Applicant’s former manager at Corporation E said, “In summary, [Applicant] is a reliable, driven, and competent professional who would be a valuable asset to any organization. I have no doubt that he will continue to excel and make meaningful contributions wherever his career path may lead him.” (AE B)

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 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, *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, this decision should not be construed to suggest that it is based 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 two 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 SOR alleges and Applicant admitted he was terminated from his employments with employers E, Z, and C2 because he engaged in outside employment without his

employer's permission in violation of his employers' policies. This conduct is relevant under AG ¶¶ 16(d) (firings not covered under other guidelines), 16(d)(2) (inappropriate behavior), 16(d)(3) (rule violations), and 16(e)(1) (vulnerability to exploitation). AG ¶ 16(e)(1) applies because violations of important employer policies is professionally and personally embarrassing, and he is vulnerable to coercion, manipulation, exploitation, or duress.

AG ¶ 17 lists the conditions that could mitigate security concerns as follows.

(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.

From October 2023 to April of 2024, Applicant had multiple full-time employments with Federal Government contractors without the permission of his employers, in violation of their policies. His employments with Corporations C1 and E, at the same time, in 2021 were not alleged in the SOR and will not be considered for disqualification purposes. It will be considered for assessment of mitigation.

Applicant's employers at Corporations C2, Z, and E fired him when they learned of his outside employments. Applicant did not indicate whether his employers had cost- or cost-plus contracts with the government. Applicant did not disclose how his employers billed the government for his services. He did not know whether the Federal Government was being billed for his availability during the day or was being improperly billed for the

hours he was not working. His employments raise the possibility that he was billing more than one employer for the same hours during the same workday without the knowledge or permission of his employers. There is no allegation of timecard fraud, and timecard fraud is not established.

Applicant was candid and frank during his hearing. Security officials are aware of his multiple employments without employer permissions. AG ¶ 17(e) applies to AG ¶ 16(e) because Applicant took “positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.” AG ¶ 17(e) does not mitigate security concerns under AG ¶ 16(d).

Applicant was unaware of whether he was working for two or more employers who were in competition with each other. He did not receive counseling relating to his violations of rules and policies. None of the mitigating conditions apply to his violations of workplace outside-employment policies. His violations are serious and relatively recent. Personal conduct security concerns are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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

Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall common-sense 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 51 years old, and he seeks employment as a high-level technical project manager if his security clearance is approved. In 1998, he received an associate’s degree in applied science; in 2010, he received a bachelor’s degree; and in 2015, he received an MBA. He served in the Army from 1992 to 2000, and in the Army National Guard from 2009 to 2012. He received honorable discharges in 2000 and 2012. He has a 75 percent disability rating from VA. He has multiple technical and management certifications.

Applicant's character evidence established his outstanding work performance. The general sense of his character evidence is that he is a trustworthy, diligent, reliable, technically superior, and professional employee. He indicated he received outstanding employee evaluations from his employers. The character evidence supports reinstatement of his security clearance.

The evidence against grant of a security clearance is detailed in the personal conduct section, *supra*, and this evidence is more substantial than the evidence of mitigation.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With continued compliance with rules and policies, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

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 failed to mitigate personal conduct security concerns.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge