



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-05690
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: *Pro se*

11/07/2013

---

**Decision**

---

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On April 11, 2013, the Department of Defense Office (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the DOD on September 1, 2006.

Applicant answered the SOR on April 26, 2013. He requested an administrative determination. On May 10, 2013, the Government made a timely request for a hearing before an administrative judge. The case was assigned to me on July 17, 2013. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 21, 2013, with a hearing date of September 11, 2013. The hearing was convened as scheduled. The Government offered exhibits (GE) 1 through 8. GE 1 through 7 were admitted into evidence without objection. GE 8 was admitted over Applicant's objection. The Government's exhibit list was marked and accepted as hearing exhibit (HE) I. Applicant testified, and offered one exhibit (AE A), which was admitted into evidence with no objection. DOHA received the hearing transcript (Tr.) on September 25, 2013.

### **Findings of Fact**

In Applicant's answer to the SOR, he essentially admitted the underlying facts, but denied he deliberately falsified any of the statements referenced in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact.

Applicant is 60 years old. He is divorced, currently single, and has two children. He has a bachelor's degree. He has worked in the defense industry since 1976, and held a security clearance from the mid-1970s until it was revoked on September 27, 2007, by an administrative judge.<sup>1</sup> He is a consultant who works for defense contractors.<sup>2</sup>

Applicant's conduct alleged in the SOR includes: (1) making false statements in response to security clearance application (SCA) questions in June 2004 concerning past alcohol-related charges or convictions and past felony charges or convictions (SOR ¶¶ 1.a - 1.c); (2) filing a false statement in June 2001 with a court concerning his work status and compensation (SOR ¶ 1.d); and (3) falsifying material facts in his security clearance reapplication in May 2012, by denying his intentional acts and statements as set forth in SOR ¶¶ 1.a - 1.d. (SOR ¶¶ 1.e - 1.f)

In June 2004, Applicant executed a SCA which asked him if he had ever been charged with or convicted of any alcohol-related offenses. The SCA required him to disclose such charges or convictions even if the record regarding the offense was sealed or otherwise stricken from the record. Applicant responded "no" to this question. In the same SCA, he was asked if he had ever been charged with or convicted of any felony offense. Again, the SCA required him to disclose such information even if the record regarding the offense was sealed or otherwise stricken from the record. Applicant responded "no" to this question. These answers were all false because he had been charged with two alcohol-related offenses, a driving while ability impaired offense in October 2002, a driving under the influence offense in December 1978; and a

---

<sup>1</sup> See ISCR Case No. 06-25863 (Hearing decision. Sept. 27, 2007) (GE 4) Note: The allegations contained in ¶¶ 1.a – 1.d of the current SOR are identical to the allegations contained in ¶¶ 1.a – 1.c and 1.e of the SOR in the previous case. The current case is before me based upon Applicant's request for reapplication of a security clearance and subsequent issuance of an SOR.

<sup>2</sup> Tr. at 5, 30-31, 34; GE 1.

felony theft offense in April 1974. In November 2004, he provided a signed, sworn statement to a defense investigator in which he discussed these incidents and discussed the reasons he failed to list the 2002 offense. He recalls the judge in his 2002 case stating that there would not be any public record of the offense, which he believed provided him a reason to not list the offense. So, as he read the SCA language of the question, he “rationalized between the judge’s wording and the wording of the security questionnaire, deciding to omit the charge.” Additionally, he stated that he was concerned that his work supervisors would learn of the charge and he did not want that to happen. He stated, “I did not want the 2002 alcohol offense to in any way effect [sic] my relationship with my employers.” He testified in his September 2007 security clearance hearing that one of the reasons he failed to list the information on his SCA was because he was concerned about his employer finding out about the incident.<sup>3</sup>

He responded to not listing the 1978 charge by stating that he had not listed it in a 1991 security update because he deemed it too old and it never occurred to him to list it in any subsequent security updates because of the passage of time. During his September 2007 hearing testimony, he again stated that he didn’t list this information in his 2004 SCA because he had not listed it in earlier applications and he wanted to be consistent. Concerning the felony theft charge in 1974, Applicant worked at a retail store and assisted his friends in stealing clothes and record albums by allowing them to remove items from the store while he was working. When confronted by the police, he admitted his involvement. He claimed that he was unaware of the value of the property stolen and unaware that he was charged with a felony. This claimed state of unawareness is why he failed to list the charge on his SCA in 2004.<sup>4</sup>

In June 2001, Applicant filed with the court where his divorce case was pending, a document from his employer stating that Applicant “has been put on inactive status by this company and will receive no further compensation until further notice.” In his November 2004 signed statement, when asked about this court filing, he stated, “I asked [my employer] to send me a letter saying that I was temporarily laid off in order to convince my former spouse and her attorney that I needed a compromise arrangement regarding the maintenance. I was not really laid-off but was no longer working on long term projects.” In his September 2007 hearing testimony, he stated that he was still employed by his company assigned to “short-term assignments” at the time he requested the letter from his employer.<sup>5</sup>

In his September 2007 decision, the administrative judge found against Applicant on the personal conduct allegations stated above (i.e., SOR ¶¶ 1.a -1.c, and 1.e). At some point in 2012, Applicant submitted a request for reapplication (undated) for security clearance eligibility. In the reapplication, he responded to all the allegations

---

<sup>3</sup> GE 2, 5 (p. 16), 6.

<sup>4</sup> GE 2, 5 (p. 16), 6.

<sup>5</sup> GE 4, 5 (p. 29), 6, 8.

found against him in the September 2007 decision. He admitted the underlying arrests, but claimed the reason he failed to disclose the 1974, 1978, and 2002 charge in his 2004 SCA was because he believed the record for each incident was expunged. In his most recent hearing testimony, he continued stating his position that he thought the records were expunged.<sup>6</sup>

Concerning the allegation that he filed a false statement with the court in 2001 about his employment status, in his reapplication he denied filing a false statement and affirmatively stated that what he filed was true. His recent hearing testimony does not deviate from this position.<sup>7</sup>

## **Policies**

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 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, these guidelines are applied 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 access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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

---

<sup>6</sup> Tr. at 45-47; GE 3, 4.

<sup>7</sup> Tr. at 48-49; GE 3, 4.

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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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**

AG ¶ 15 expresses the security concern for personal conduct:

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 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

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

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

(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

person may not properly safeguard protected 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 other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and,

(4) evidence of significant misuse of Government or other employer's time or resources.

Applicant deliberately omitted relevant information concerning prior arrests when he completed his SCA in June 2004. I do not find credible his claim that he believed the arrests were expunged from his records and therefore he did not have to disclose them for two reasons. First, his earlier statement to an investigator stated his reason for not listing the 2002 offense was because he did not want his employer to know about it. Second, the SCA questions at issue (questions 21 and 24) specifically state, "for this item, report information regardless of whether the record in your case was "sealed" or otherwise stricken from the record." Likewise, his earlier statement admitting that he asked his then-employer to submit a statement to the court that he was no longer working for the company when he actually was working was also a deliberate falsification indicative of questionable judgment, untrustworthiness, and lack of candor. His adherence to his previous claim of lack of knowledge or reliance on expunged records when making his reapplication request makes his specific statements about the original SOR allegations therein deliberately false as well. All the above stated disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

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

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

(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 other factors that caused 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.

Applicant failed to make a prompt disclosure of the omissions and falsifications. He continues to minimize his conduct that resulted in his omissions and falsifications, which he recently compounded when he submitted his reapplication that contained more false statements. AG ¶ 17(a) does not apply.

Failing to provide truthful and complete information about material facts on a security clearance application is never a minor offense. His untruthful answer casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 17(c) does not apply.

Applicant has not acknowledged his past behavior in making omissions and false statements and continues to deny that his actions were intentional, despite evidence to the contrary. There is no evidence of counseling or that he has alleviated the factors that caused his untrustworthy or other inappropriate behavior. The evidence does not support that this behavior is unlikely to recur, particularly since he refuses to acknowledge his previous omissions and false statements. AG ¶ 17(d) does not apply.

Applicant cited both AG ¶¶ 17(e) and 17(f) in his reapplication and answer to the SOR as applying to his case. However, the facts presented do not support the application of either in this case.

### **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(a):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's prior work history. I also considered his intentional omissions of derogatory information and falsifications in the past and his failure to accept responsibility for those false statements. This indicates that he is unwilling to change his unacceptable behavior and cannot be relied upon to give truthful information. Applicant failed to meet his burden to mitigate the security concerns.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline E, personal conduct.

### **Formal Findings**

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

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a – 1.f:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Robert E. Coacher  
Administrative Judge