



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



In the matter of: )  
)  
) ISCR Case No. 12-06782  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Allison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

08/29/2014

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s security violations demonstrated negligence and lack of judgment. Notwithstanding, he changed his behavior and received no additional security violations from November 2008 to June 2011. The most recent security violation was over five years ago. As such, it is temporally remote. Applicant expressed remorse and took responsibility for his actions. He has demonstrated a renewed, positive attitude toward the discharge of security responsibilities. Considering his service, credible contrition, and his current attitude toward the discharge of his security responsibilities, I find Applicant’s past security violations are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and judgment. Clearance granted.

**Statement of the Case**

Applicant submitted his most recent security clearance application (SCA) on March 6, 2012. On February 24, 2014, the Department of Defense (DOD) issued

Applicant a Statement of Reasons (SOR) listing security concerns under Guideline K (handling protected information) and Guideline E (personal conduct).<sup>1</sup>

Applicant answered the SOR on April 8, 2014, and requested a hearing before an administrative judge. The case was assigned to me on June 10, 2014. The Defense Office of Hearings and Appeals (DOHA) issued the notice for a video teleconference (VTC) hearing on June 19, 2014, convening a hearing for July 2, 2014. The Government requested a continuance that same day, which I granted. (Appellate Exhibit 1) The hearing was convened on July 30, 2014. At the hearing, the Government offered exhibits (GE) 1 through 10, which were admitted without objection. Applicant testified and submitted no exhibits. DOHA received the hearing transcript (Tr.) on August 7, 2014.

### **Findings of Fact**

In his answer to the SOR (Answer), Applicant admitted the factual allegations under SOR ¶ 1.a, with comments. He denied the allegation in SOR ¶ 2.a. Applicant failed to admit or deny SOR ¶ 2.b. At his hearing, he admitted the factual allegations in SOR ¶ 2.b. The personal conduct factual allegations in SOR ¶ 2.b are identical to those alleged under the handling protected information guideline in SOR ¶ 1.a. His admissions are incorporated herein as findings of fact. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 61-year-old employee of a government contractor. He enlisted in the U.S. Marine Corps in December 1974, and served six years. He was commissioned as a Marine Corps second lieutenant in June 1980, and continually served on active duty until he was honorably retired with the rank of lieutenant colonel in March 2005. Applicant held sensitive leadership and command positions as a Marine Corps officer. He possessed a top secret security clearance during most of his service. There is no evidence to show that he was involved in any security violations while serving as a Marine.

Applicant married his wife in January 1983, and they have three sons: a 29-year-old son who is currently serving as a captain in Marine Corps, a 27-year-old son, and a 24-year-old son who is attending college and living at home. Applicant received his bachelor's degree in June 1980, and was awarded master's degrees in June 1996, and June 1999.

---

<sup>1</sup> DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

After his retirement, Applicant was hired abroad by a U.S. government agency (Agency) as a civilian employee. He worked for the Agency from 2004 to June 2011. He resigned his position and returned to the United States because one of his sons was having medical problems and needed his help.

Upon his hiring, Applicant's access to classified information was continued by the Agency, and he possessed a security clearance from 2004 until he resigned in June 2011. Between October 2004 and November 2008, Applicant received 19 security infractions: two in 2004, three in 2005 (two at NATO secret level), two in 2006, five in 2007 (one at NATO secret level), seven in 2008 (two at NATO secret level). Of these infractions, 11 involved Applicant leaving unclassified computer discs unsecured in his office, and 6 violations involved leaving NATO confidential or secret classified documents unsecured overnight in his office.

In May 2007, security personnel counseled Applicant about his security infractions and warned him that his continued violations would impact his ability to hold his position. In the summer of 2008, security personnel again counseled Applicant about his security violations. He was warned in writing that his security clearance was at risk because of his continued security violations. After receipt of this written warning, Applicant was involved in three security infractions.

Following his receipt of the 2008 security written warning, Applicant changed his behavior and his office procedures to avoid future security violations. He moved two secured containers from his office into his secretary's office. He established a policy requiring all office personnel to check each other's area for possible security infractions before leaving the office. Additionally, he returned all computer disks assigned to him to the security office. After the implementation of these office procedures, Applicant received no additional security violations from November 2008 to June 2011.

At his hearing, Applicant's testimony was candid and forthcoming. He acknowledged his 19 security violations, and that he was counseled twice by security personnel concerning his security infractions. Applicant explained that he had a difficult time transitioning from his military position to a civilian work environment. In his civilian position, he was an executive officer and supervised a secretary and three or four civilian employees. He had difficulty remembering the particulars of all of the security violations, but believed that some of them involved his office personnel. Nevertheless, he acknowledged that because he was in charge of the office, he was ultimately responsible for the security violations and took responsibility for them. After each of the infractions, he was required to visit the security office and sign a document acknowledging the security infractions.

Applicant expressed remorse for his past security violations and admitted that he had been negligent. He believes they occurred because he was absent-minded and frustrated with the inconsistency of the security rules concerning unclassified material. He is fully aware of the concerns raised by his security violations. He repeatedly stated that he should have been more careful following security procedures.

Applicant highlighted his 31 years of service in the Marine Corps without any security violations. He held sensitive leadership and command positions as a Marine Corps officer, and possessed a top secret security clearance during most of his service. Applicant believes that his service record shows that he is a loyal American, and that he is not a security risk. Applicant noted that he took steps to remedy his security violations.

Applicant's March 2012 SCA (Section 13(A) - Received Discipline or Warning) required him to disclose whether in the last seven years he received a written warning, was officially reprimanded, suspended, or disciplined for misconduct in the work place, such as a violation of a security policy. Applicant answered "No," and failed to disclose that he was verbally counseled in 2007, and that he received a written warning in 2008 about his numerous security violations.

Applicant readily admitted that his answer to Section 13(A) was wrong. He credibly testified that he did not intend to deceive or withhold relevant information from the Government. He mistakenly focused on the disciplinary part of the question asking whether he had been reprimanded, suspended, or disciplined for misconduct, and failed to read the whole question. Because of his experience in the service and with the security clearance process, Applicant knew that the Government would have access to his entire security record and that the infractions were thoroughly documented. I note that Applicant thoroughly discussed his security violations and security warnings during interviews with government investigators in October 2009 (GE 6) and November 2010 (GE 7).

### **Policies**

Eligibility for access to classified information may be granted "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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

### **Guideline K, Handling Protected Information**

AG ¶ 33 expresses the security concern pertaining to handling protected information:

Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

Applicant received 19 security violations from about October 2004 to about November 2008. Of these infractions, 11 involved Applicant leaving unclassified computer discs unsecured in his office, and 6 violations involved leaving NATO confidential or secret classified documents unsecured overnight in his office. In May 2007 (verbally) and in the summer of 2008 (in writing), security personnel counseled Applicant about his numerous security infractions and warned him that his continued violations would impact his ability to hold his position and a security clearance. After receipt of this 2008 security written warning, Applicant was involved in three security infractions.

Such actions triggered disqualifying conditions under AG ¶ 34 that raised a security concern and may be disqualifying:

(g) any failure to comply with rules for the protection of classified or other sensitive information; and

(h) negligence or lax security habits that persist despite counseling by management.

AG ¶ 35 provides three conditions that could mitigate security concerns in this case:

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

(b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities; and

(c) the security violations were due to improper or inadequate training.

Considering the evidence as a whole, I find that mitigating conditions AG ¶¶ 35(a) and (b) apply and mitigate the security concerns in this case. The most recent security violation was over five years ago. As such, it is temporally remote. After Applicant received his 2008 written warning, he changed his behavior and his office's operating procedures to avoid additional security violations. Following the implementation of these new office operating procedures, from November 2008 to his resignation date in June 2011, Applicant received no additional security violations.

Applicant expressed remorse for his past security violations, admitted that he was negligent, and took responsibility for his actions. He is fully aware of the serious concerns raised by his security violations. Applicant's demeanor while testifying and his credible testimony demonstrate a renewed, positive attitude toward the discharge of security responsibilities.

Applicant served 36 years on active duty in the Marine Corps. He was honorably retired with the rank of lieutenant colonel in March 2005. During his service, Applicant held sensitive leadership and command positions as a Marine Corps officer and possessed a top secret security clearance during most of his service. There is no evidence to show that he was involved in any security violations while in the service. Considering his service, credible contrition, and his renewed positive attitude toward the discharge of his security responsibilities, I find Applicant's past security violations are unlikely to recur and they do not cast doubt on Applicant's current reliability, trustworthiness, and judgment.

### **Guideline E, 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.

Applicant's failure to disclose in his 2012 SCA the security verbal and written warnings he received, if deliberate, would raise security concerns under the personal conduct guideline. Such behavior would trigger the applicability of personal conduct disqualifying condition 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities."

Considering the evidence as a whole, I find that his omission was not intentional or made with the intent to mislead the Government. Because of his experience in the service and with the security clearance process, Applicant knew that the Government would have access to his entire security record and that all his security infractions were documented in his record. Moreover, Applicant thoroughly and candidly discussed his security violations and security counseling during interviews with government investigators in October 2009 and November 2010. There was no reason for him to deliberately omit in his 2012 SCA anything concerning his past security violations or that he received a written security warning in 2008.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (AG ¶ 2(c))

Applicant, 61, honorably served 36 years in the Marine Corps while possessing a security clearance without any security violations. He demonstrated lack of judgment by committing 19 security violations from October 2004 to November 2008.

Notwithstanding, he changed his behavior and his office's operating procedures and received no additional security violations from November 2008 to June 2011. The most recent security violation was close to six years ago. As such, it is temporally remote. Applicant expressed remorse for his past security violations and took responsibility for his actions. He is fully aware of the serious concerns raised by his security violations. Applicant demonstrated a renewed, positive attitude toward the discharge of security responsibilities.

Considering Applicant's service, credible contrition, and his renewed positive attitude toward the discharge of his security responsibilities, I find his past security

violations are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and judgment.

### **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 K:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

---

JUAN J. RIVERA  
Administrative Judge