



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



In the matter of: )  
)  
) ISCR Case No. 13-01145  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

08/18/2014

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. Applicant did not present sufficient information to mitigate security concerns for personal conduct under Guideline E.

**Statement of the Case**

On November 13, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. No action was taken on this application. On October 12, 2012, Applicant submitted another e-QIP to obtain a security clearance required for a position with another defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) issued Applicant interrogatories to clarify or augment potentially disqualifying information. After reviewing the results of the background investigation and Applicant's response to the interrogatories, DOD could not make the preliminary affirmative findings required to issue a security clearance. On April 2, 2014, DOD issued a Statement of Reasons

(SOR) to Applicant detailing security concerns for personal conduct under Guideline E. These actions were taken 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). Applicant acknowledged receipt of the SOR on April 7, 2014.

Applicant answered the SOR on April 14, 2014. He admitted seven of the eight allegations of misconduct under Guideline E, and denied one (SOR 1.j). He denied all five falsification allegations under Guideline E. He provided a detailed explanation for his answers. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 22, 2014, and the case was assigned to me on June 3, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 3, 2014, for a hearing on June 12, 2014. I convened the hearing as scheduled. The Government offered six exhibits that I marked and admitted into the record as Government exhibits (GX) 1 through 6. Applicant objected to some of the Government Exhibits but the objections were to the content of the exhibits and not to the admissibility of the exhibits. I admitted the Government exhibits. Applicant and one witness testified. He offered two exhibits that I marked and admitted into the record without objection as Applicant Exhibits (AX) A and B. I kept the record open for Applicant to submit additional information. Applicant timely submitted 14 additional documents I marked and admitted into the record as AX C to P. Department Counsel had no objection to consideration of the documents. (GX 7, Memorandum, dated June 30, 2014) DOHA received the transcript of the hearing (Tr.) on June 23, 2014.

### **Procedural Issues**

Applicant waived the 15-day notice requirement at paragraph E3.1.8 of DOD Directive 5220.6. (Tr. 6-8)

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted seven of the eight allegations of misconduct under personal conduct. His admissions are included in my findings of fact.

Applicant is 34 years old, and has been employed as a logistician by a defense contractor since October 2012. Prior to this employment, he worked as a logistician for various defense contractors in the United States and overseas. He was born in Jamaica, came to the United States in 1983 at age four, and became a United States citizen in 1986. He is a high school graduate with some college credits. He was a member of the Army National Guard from 2000 to 2011, with short periods of active duty. He received an honorable discharge in March 2001 after a short recall to active duty. He then received a general discharge under honorable conditions when he left the National Guard in 2011. He is not married but has two children. (Tr. 12-14; GX. 2, e-

QIP, dated October 12, 2012; AX B, DD 214; AX C, E-mail, dated June 25, 2014; AE E, Grade Report, June 23, 2014; AE O, e-mail, dated June 17, 2014)

The SOR alleges that Applicant was arrested by military police and charged with domestic assault on a female and assault consummated by a battery in February 2003 (SOR 1.a). SOR allegation 1.b alleges that he deliberately failed to disclose this arrest on his November 2009 security clearance application. (GX1, dated November 13, 2009). The SOR further alleges that he was arrested by military police for driving while intoxicated and other traffic offenses in August 2003 (SOR 1.c). It was further alleged (SOR 1.d) that he deliberately failed to disclose this information on his security clearance application, dated November 13, 2009. The SOR alleges that he was investigated by military police for involvement in a verbal altercation and threatening physical harm in March 2004 (SOR 1.e). SOR allegation 1.f alleges that Applicant was terminated by an employer in February 2006 for involvement in a disagreement in Iraq. SOR 1.g alleges that he was terminated by another employer in March 2009 for unprofessional conduct and failure to follow management direction. SOR 1.h alleges he deliberately failed to disclose his March 2009 termination on his second application for a security clearance. (GX 2, e-QIP, dated October 12, 2012) SOR allegation 1.i alleges the he received a general discharge under honorable conditions from the Army Reserve.<sup>1</sup> SOR 1.j alleges that in April 2012, Applicant was terminated by his employer for attitude problems and threats to the staff. He is not eligible for rehire by this employer and he owes them \$2,375 for transportation that he refuses to repay. SOR allegation 1.k is that he deliberately failed to disclose this termination on his second security clearance application. (GX 2, e-QIP, dated October 12, 2012) SOR allegation 1.l is that he deliberately failed to disclose the true circumstances of his termination to a security investigator on February 14, 2013. SOR 1.m alleges that following his termination by another employer in June 2012, he was involved in a verbal confrontation with his former program manager.

Applicant admitted the SOR misconduct allegations at 1.a, 1.c, 1.e, 1.f, 1.g, 1.i, and 1.m. Military police reports also confirm the misconduct allegations at SOR 1.a, 1.c, and 1.e. (GX. 4, Military Police Reports) Applicant stated that he was having a difficult relationship with the mother of his children at the time. She was on active duty and he was a civilian living on the military base with her. Military police were called to the home when he and his girlfriend had difficulties. A memorandum from the employer confirms the misconduct incident at SOR 1.g. As to allegation 1.f, Applicant admits he was terminated for cause because he had returned from an assignment and asked for a day off. (Tr. 27-28, 71-72, 99; GX 6, Memorandum, dated December 12, 2008)

As to allegation 1.i, Applicant admits he was released from the Army National Guard with a general discharge under honorable conditions. Applicant stated he was not able to satisfactorily attended drills with his National Guard unit because he was working overseas for a contractor. His unit knew of his job. Applicant noted that others

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<sup>1</sup> Applicant was actually discharged from the Army National Guard. This mistake does not affect the substance of the allegation. The discharge will be further discussed as a discharge from the Army National Guard.

in his unit were inappropriately discharged from the National Guard by the command. Applicant appealed the characterization of his discharge to the Army Board for Correction of Military Records (ABCMR), but the appeal was denied. (Tr. 70-72, 81-90; AX B, Applicant's Military Records including DD 214; AX J, e-mails, dated December 1, 2011; AX L, ABCMR Request, dated April 2, 2014)

While Applicant admitted to an incident with a teacher as noted in SOR allegation 1.e, he stated he was never advised a complaint had been made, and he was not questioned by military police. He stated that the incident did not happen in a library but in a classroom, and it was a disagreement over the timing of a class paper. He had an excused absence at the time for court appearances concerning his children's custody. Applicant did not threaten or menace the teacher. The incident happened on the military base and was in the time frame that he was having difficulties with his girlfriend. (Tr. 46-53)

Applicant denied the misconduct allegation at 1.j that he was terminated for attitude problems and threats, and that he owed the employer \$2,375 for an airline ticket. A letter from the employer confirms their version of events that led to SOR allegation 1.j. Applicant states that he was not terminated by the employer, but that he had resigned to take a position with a previous employer. He received the offer from the previous employer in February 2012, a month before he was allegedly terminated. He presented e-mails from a recruiter for the previous employer concerning the employment. He left because his present employer had left him in a foreign country at risk. They provided him with an airline ticket that he used, which raised the fact that he owed the employer \$2,375 for the ticket. The employer was required to provide him transportation from the foreign country. After he had received an offer of employment from his previous employer, he verbally informed his managers that he was leaving. Applicant had differences with his managers and there was controversy between them. He also noted that the employer that said he was terminated had a reputation for not treating their employees well. Applicant later filed an Equal Employment Opportunity Commission (EEOC) complaint that has not been resolved. (Tr. 26-27, 30-45; GX 5, Letter, dated March 6, 2014; AX A, e-mails February 2012 and November 2012; AX D, Letter, undated; AE F, Memorandum, undated; AX M, e-mail, dated June 18, 2014)

Applicant denied the falsification allegations at SOR 1.b, 1.d, 1.h, 1.k, and 1.l. When Applicant completed his security clearance application in November 2009, he had some assistance from military personnel. He believed that he only needed to list criminal offenses that were charged and not those that were just an arrest. He did not read the language of the application carefully. Applicant admitted that he was arrested, placed in handcuffs, taken to the military police station, and subsequently appeared in U.S. Magistrate's court where the charge was dismissed for the assault at SOR 1.a. He did not list the assault allegation on the security clearance application because he did not believe he was ever charged with an offense and it was dismissed. He did list a disorderly conduct charge from 2001 because he was tried and fined for the offense. Applicant did not note that he had ever been fired from a job as asked on the security clearance application as alleged at SOR 1.k. He believed he left the position listed in

SOR 1.j to accept a position with another employer and that he had not been fired. (Tr. 56-63, 72-73)

Similarly, Applicant did not include the driving while intoxicated offense at SOR 1.c on his security clearance application (SOR 1.d). Applicant noted he was never charged with an offense even though he was taken to the military police station, failed a Breathalyzer test, went to U.S. Magistrate's court, and was fined. He reiterated that he did not include the offense on the e-QIP because he was not charged with an offense. (Tr. 64-70).

Applicant was interviewed by a security investigator on February 14, 2013. The investigator asked Applicant why he left his position with the employer listed at SOR 1.j. The investigator's notes state that Applicant told him he was not terminated but laid off because his employer lost the contract he was working. Applicant stated he told the investigator that he left because he had taken another job. (Tr. 97-99; AX Q, Memorandum, undated)

Applicant's witness testified that that he is Applicant's friend from the military. Applicant missed a number of National Guard drills because he was out of the area working for a defense contractor. Applicant was discharged because he did not attend the required drills. The unit did not follow the correct procedures on the discharge. Applicant does not have any military records but the witness did not know why. The witness is not now a member of the unit, and he did not independently learn the information in his testimony. He learned the information in his testimony from Applicant. (Tr. 121-129)

Applicant provided letters of recommendation. A friend wrote that Applicant is a hard worker and is committed to his occupation. He is intelligent, capable, dedicated, and personable. (AX H, Letter, dated June 22, 2014) Another friend and colleague wrote that he worked with Applicant for over ten years, including service in Iraq. Applicant has a sense of operational security and the sensitivity of classified information. (AX I, Letter, dated June 19, 2014) Applicant submitted a certificate of appreciation from an Army command for demonstrating professionalism, initiative, and devotion to duty. (AX K, Certificate, dated August 24, 2011)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion for obtaining 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 protect or protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Personal Conduct**

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, 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 ¶ 15) Personal conduct is always a security concern because it asks the central question does the person’s past conduct justify confidence the person can be entrusted to properly safeguard classified information. The security clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the U. S. Government.

Applicant admits to a series of misconduct that also were established by military police and employer reports. These incidents raise Personal Conduct Disqualifying Conditions AG ¶ 16(c) (credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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); and AG ¶ 16(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 indicting that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (3) a pattern of dishonesty or rule violations).

There is a series of misconduct and altercations with employers that go back to 2003. He was charged and convicted of assault on a family member and driving while intoxicated in 2003. He had an altercation with an instructor in 2004. He was terminated by his employer in 2006, and by a different employer in 2009. He was discharged with a general discharge from the National Guard for unsatisfactory performance in 2011. None of these incidents are minor or happened under unique circumstances. The assault on a family member happened because he and his girlfriend were having relationship difficulties. Also, he admits the driving while intoxicated offense. These incidents, admitted by Applicant, are sufficient to raise personal conduct security concerns.

Applicant explained that he was not terminated by his employer as noted in SOR 1.j, but had resigned from the employment to take another position. The e-mail information he provided indicates he accepted another position, and was not terminated for cause. I find for Applicant as to the reason he left his position with his employer in April 2012. I find for Applicant as to SOR 1.j.

In regard to the misconduct offenses, I have considered Personal Conduct Mitigating Conditions 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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment); AG ¶17(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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and AG ¶ 17(f) (the information was unsubstantiated or from a source of questionable reliability).

These mitigating conditions do not apply. The information on each incident, except SOR 1.j, is admitted by Applicant and substantiated. As to SOR 1.e, Applicant admits a confrontation took place. It is not relevant for establishing a disqualifying

condition whether the incident happened in a classroom or a library, and whether he considered his conduct menacing or a threat. The person he confronted did. Taken in isolation, each of these incidents may seem minor, or as happening long ago. However, the incidents show a pattern of misconduct and rules violation by Applicant. He has been involved in frequent relationship problems and they are likely to recur because of Applicant's attitude. The incidents raise issues as to Applicant's questionable judgment and willingness to comply with rules and regulations. This raises questions concerning his reliability, trustworthiness, and ability to protect classified information.

On a security clearance application Applicant submitted on November 13, 2009, he failed to disclose a February 2003 arrest and charge for domestic disturbance and assault. On the same security clearance application, he answered "No" to a question concerning charges for an offense involving alcohol. He was arrested and convicted for driving while intoxicated in August 2003. On a security clearance application submitted on October 12, 2012, Applicant answered "No" to a question concerning whether he had in the last seven years been fired from a job, or received a written warning or reprimand. Applicant had been terminated by his employers in February 2006, March 2007, and April 2012. He told a security investigator on February 14, 2013, that he was laid off by his employer in December 2008 because the company had lost a contract. Applicant testified at the hearing that he resigned from the position because he took a position with another company. His false and misleading information on the security clearance applications and to the security investigator raise security concerns under Personal Conduct Disqualifying Conditions AG ¶ 16(a) (the 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 eligibility or trustworthiness, or award fiduciary responsibilities); and AG ¶ 16(b) (deliberately providing false and misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative).

Applicant denied intentional falsification of his responses. He stated he never told the investigator he was laid off from the position. He told the investigator that he left the employment because he had another job offer. He did not include the arrests for domestic disturbance, assault, and for driving while intoxicated because he thought he was only arrested and not charged for both offenses. He believed he only had to list offenses for which he was charged. Applicant admitted that he was terminated at least twice by his employers. The allegation of deliberately failing to disclose information at SOR 1.h is established. The security clearance application questions concerning an arrest and an alcohol offense are clear and straight forward. A cursory reading of the questions shows that they require a listing of not only charges but arrests. In addition, when Applicant was taken into custody by military police, he was handcuffed and taken to the police station. He was then charged with an offense and appeared in court. There is no mistake then that he was both arrested and charged. Applicant had to know he was required to list the offense in response to the clearly-worded question on the security clearance application. Applicant's failure to list the offenses was deliberate and he provided false and misleading answers.



I found that Applicant was not terminated or fired for misconduct as alleged in SOR 1.j. Since he did not believe he voluntarily left the position to accept another position, he was correct in not listing the termination in response to a question asking if he had ever been fired from a job on the security clearance application. However, Applicant misled the security investigator as to the reasons why he left the job. He may have left the position because he found another position, but he told the investigator he was laid off because the employer lost a contract. The security investigator's notes are clear as to what Applicant told him as to the reason he left the job. He told a completely different story at the hearing. That version was false and misleading. I find that Applicant deliberately provided false and misleading information to the security investigator.

### **Whole Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 the favorable information concerning Applicant provided by his friends and colleagues. Applicant has been involved in a number of incidents of misconduct from 2003 until 2012. He kept getting involved in incidents and confrontations with employers. He provided false and misleading information to some questions on his security clearance applications and to a security investigator. His conduct shows questionable judgment, lack of candor, dishonesty, and an unwillingness to comply with rules and regulations. His actions were reckless, irresponsible, and show poor judgment. His failure to provide accurate and correct information on a security clearance application shows questionable judgment, untrustworthiness, and unreliability. The totality of his behavior indicates he may not be concerned or act responsibly in regard to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, trustworthiness, and eligibility and suitability for a security clearance. For all these

reasons, I conclude that Applicant has not mitigated security concerns arising under personal conduct guideline. Eligibility for access to classified information is denied.

### **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.i:	Against Applicant
Subparagraphs 1.j-1.k:	For Applicant
Subparagraphs 1.l-1.m:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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THOMAS M. CREAN  
Administrative Judge