



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00683
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

10/31/2014

**Decision**

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RIVERA, Juan J., Administrative Judge:

Applicant demonstrated lack of judgment by committing a security violation in 2012. Notwithstanding the clear evidence of his security violation, he continues to make false statements denying it. His security violation and his false statements are likely to recur and cast doubt on his current reliability, trustworthiness, and judgment. Clearance denied.

**Statement of the Case**

Applicant submitted his most recent security clearance application (SCA) on November 14, 2012. On April 28, 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>

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<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.

Applicant answered the SOR on May 27, 2014, and requested a hearing before an administrative judge. The case was assigned to me on September 2, 2014. The Defense Office of Hearings and Appeals (DOHA) issued the hearing notice on September 2, 2014, convening a hearing on September 18, 2014. At the hearing, the Government presented one witness and offered exhibits (GE) 1 through 4. Applicant testified and submitted two exhibits (AE 1 and 2). All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on October 2, 2014.

### **Findings of Fact**

In his answer, Applicant denied all the SOR allegations. After a thorough review of the evidence, including his testimony and demeanor while testifying, I make the following findings of fact:

Applicant is the president and chief executive officer of a company contracting with the Government since 1980. He will be 80 years old in December 2014. Applicant received his bachelor's degree in electrical engineering in 1956, and sporadically completed specialized college courses throughout his career. He served in the Inactive Reserve in the U.S. Navy between 1956 and 1960, and received an honorable discharge. Applicant has been married to his wife for 25 years. He has five adult children, two from his first wife, and three from his current marriage.

Applicant possessed a security clearance from 1981 to May 2012, when his clearance expired. He requested the continuation of his clearance in November 2012, which was denied because of the security concerns alleged in the SOR. There is no evidence to show that he was ever involved in any security violations, except for the SOR allegations.

In September 2012, Applicant attended, as he had been doing during the last 12 years, a classified, yearly trade conference sponsored by a defense industry association. Attendees are required to have a current secret clearance to attend the conference. Applicant failed to submit a "visit request" prior to the conference for security personnel to confirm that he had a current security clearance.

The conference security personnel recognized Applicant as a recurrent conference attendee. Applicant asked for, and was granted, an unclassified badge to attend the Monday ice breaker and other social events taking place on the first day of the conference. The unclassified badge had a red stripe at the bottom of the badge to identify him as an uncleared participant. He was informed he could not attend classified briefings or participate in conversations concerning classified information. Security personnel asked Applicant to return to the registration desk on Tuesday morning to be issued a cleared badge after his security eligibility was resolved.

On Tuesday morning, Applicant failed to report to the security personnel desk as requested. Instead, he clipped (or had someone clip) the red stripe off his badge and attended classified seminars on Tuesday, Wednesday, and Thursday morning.

Applicant was seen coming out of a classified briefing Thursday morning. He was confronted by a security officer and asked to surrender his badge. The security officer noted that Applicant had clipped off the red stripe from the badge, and asked him why he had clipped the badge, and whether he knew he was in trouble. Applicant did not deny clipping the red stripe from the badge. Applicant responded by saying something to the effect that he did not think too much about it because he knew he had a clearance. Applicant was asked to leave the premises.

The subsequent security violation investigation revealed that Applicant's security clearance expired in May 2012. He had not submitted an SCA requesting the continuation of his clearance, and he never submitted a visit request to attend the conference. Security personnel filed a serious incident report. Applicant's facility security officer (FSO) was involved in a car accident in late 2011-early 2012, and after a long period in the hospital, she passed away. Applicant became his company's FSO. He failed to submit a visit request prior to the conference, and to check his access eligibility in the Joint Personnel Adjudication System (JPAS) database before attending the conference.

Applicant was interviewed by a government investigator on December 31, 2013, concerning his attendance at the September 2012 classified conference, and his security violation. Applicant denied that he clipped off the red stripe of his badge and that he attended classified briefings during the conference. (Tr. 46)

At his hearing, Applicant explained that he had possessed a security clearance without any blemishes since 1981, and that he had attended the trade conference during the last 12 years. He acknowledged knowing that the conference was classified, and that attendees were required to have at least a secret clearance. He also knew that he was required to submit a visit request prior to the conference to have his clearance eligibility confirmed. He believed he had a valid security clearance to attend the conference, and that his FSO had submitted the required visit request. He admitted that he attended classified briefings at the September 2012 conference. He again denied that he clipped off the red stripe of his badge.

### **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.

In September 2012, Applicant clipped (or had someone clip) a red stripe of an uncleared badge issued to him by security personnel at a classified conference and illegally attended classified briefings. He knew he was required to have a valid secret clearance to attend the conference. He was told by security personnel not to attend classified briefings until his security eligibility was confirmed. He used the clipped badge to conceal that he lacked a clearance.

Applicant's security violation triggered disqualifying conditions under AG ¶ 34 that raised a security concern and may be disqualifying:

(d) inappropriate efforts to obtain or view classified or other protected information outside one's need to know; and

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

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 none of the mitigating conditions apply. Applicant's security violation is recent and it happened under normal circumstances – his clearance expired and he failed to request its renewal. Applicant deliberately clipped (or was aware it had been clipped) the red stripe off his badge to attend classified conferences after he was told that there were problems with his security clearance. Security personnel told him not to attend classified conferences. He deliberately attended briefings knowing that he was not cleared to attend.

Applicant expressed no remorse for his security violations. On the contrary, he continued to make false statements to investigators and at his hearing denying that he clipped the red stripe off his uncleared badge. He has taken no responsibility for his actions. Because of his many years possessing a security clearance and attending the classified trade conference, Applicant was fully aware that he was engaging in a security violation. Applicant's behavior demonstrates a lack of regard for his security responsibilities. I find Applicant's security violations are likely to recur and cast serious doubt on his 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.

In December 2013, Applicant deliberately made false statements to a government investigator when he denied that he had altered his uncleared badge to attend classified briefings. Applicant had control of the badge since it was issued to him, until it was confiscated from him. He either altered the badge or had someone alter the badge for him to circumvent the conference security and attended classified briefings without the required security clearance. Applicant's deliberate false statement trigger the applicability of personal conduct disqualifying condition AG ¶ 16(b) "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative."

Considering the evidence as a whole, I find that none of the seven personal conduct mitigating conditions under AG ¶¶ 17(a) through (g) apply. Applicant's false statement to a government investigator is a felony offense under 18 USC 1001. Moreover, at his hearing Applicant continued to make false statements when he denied clipping the red stripe of his uncleared badge.

### **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, 79, honorably served four years in the U.S. Navy Inactive Reserve. He provided services to the Government as a contractor and possessed a security clearance from 1981 to 2012.

Applicant committed a security violation in September 2012, which he continues to deny, notwithstanding clear and convincing evidence of it. His security violation is recent. He expressed no remorse for his past security violation, and took no responsibility for his actions. Applicant demonstrated lack of judgment by committing the security violation in 2012, and by continuing to make false statements denying his misconduct. I find his security violation and his false statements are likely to recur and 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 2.a:

Against Applicant

**Conclusion**

In light of all 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. Clearance denied.

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JUAN J. RIVERA  
Administrative Judge