



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



In the matter of: )  
)  
) ISCR Case No. 14-01155  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Department Counsel  
For Applicant: *Pro se*

02/06/2015

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 30, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on May 20, 2014, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on October 14, 2014. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on October 21, 2014. As of January 29, 2015, he had not responded. The case was assigned to me on February 3, 2015. The Government exhibits included in the FORM (Items 4-8) are admitted.

### **Findings of Fact**

Applicant is 35 years old. He is applying for a security clearance for the first time. He attended high school for four years, but it is unclear if he graduated. He also participated in an apprenticeship program through a union. He is married with a 16-year-old stepchild.<sup>1</sup>

Applicant was arrested in 1998 and charged with possession of marijuana. He received a deferred adjudication, and the charge was dismissed in March 2001. He was arrested again in July 2001 and charged with possession of marijuana. The charge was dismissed in October 2001.<sup>2</sup>

Applicant was arrested in August 2006 and charged with driving while intoxicated (DWI), second offense. In October 2006, he was found guilty and sentenced to confinement for 365 days with 355 days suspended, probation for three years, a restricted license with an ignition interlock device, a \$500 fine, and \$221 in court costs.<sup>3</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) in January 2014. Section 22 asked:

#### **Section 22 Police Record**

For this item, report information regardless of whether the record in your case has been sealed, expunged, or otherwise stricken from the court record, or the charge was dismissed. You need not report convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. Be sure to include all incidents whether occurring in the U.S. or abroad.

#### **Police Record**

Have any of the following happened? (If 'Yes' you will be asked to provide details for each offense that pertains to the actions that are identified below.)

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<sup>1</sup> Item 4.

<sup>2</sup> Items 2, 5-7.

<sup>3</sup> Items 2, 8.

- **In the past seven (7) years** have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Do not check if all the citations involved traffic infractions where the fine was less than \$300 and did not include alcohol or drugs)
- **In the past seven (7) years** have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?
- **In the past seven (7) years** have you been charged, convicted, or sentenced of a crime in any court? (Include all qualifying charges, convictions or sentences in any Federal, state, local, military, or non-U.S. court, even if previously listed on this form).
- **In the past seven (7) years** have you been or are you currently on probation or parole?

\* \* \*

**Police Record (EVER)**

Other than those offenses already listed, have you **EVER** had the following happen to you?

\* \* \*

- Have you **EVER** been charged with an offense related to alcohol or drugs?<sup>4</sup> (emphasis in original)

Applicant answered “No” to all the police record questions. The SOR alleges that Applicant intentionally falsified the SF 86 by answering “No” to the last question (Have you **EVER** been charged with an offense related to alcohol or drugs?). Applicant denied intentionally providing false information on his SF 86:

This was a mistake on my part as other sections asked about offenses within 7 years and I simply misread the question. Following the initial questionnaire, I did meet with an investigator regarding this matter where I admitted fault and explained that I made an error on filling out the paperwork. While I am not proud of my past indiscretions, I assure you that I would never try to hide them or deliberately lie about them. This is a simple case of human error on my part in completing the paperwork.<sup>5</sup>

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<sup>4</sup> Item 4.

<sup>5</sup> Item 2.

Since Applicant did not request a hearing, I was unable to observe him and make a credibility determination. Applicant stated that he thought the relevant question only required him to list drug and alcohol offenses within the last seven years. That is contrary to the clear wording of the question. Additionally, Applicant answered one of the questions that only went back seven years incorrectly. Applicant was sentenced to probation for three years in 2006. He should have answered “Yes” to the question that asked: “**In the past seven (7) years** have you been or are you currently on probation or parole?”<sup>6</sup> Having considered all the evidence, I find that Applicant intentionally falsified the SF 86.

## 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 to be 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, administrative judges apply the guidelines 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.”

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 the applicant or proven by Department Counsel.” The applicant 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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible

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<sup>6</sup> Item 4.

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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. 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.

Applicant intentionally provided false information about his criminal record on his SF 86. AG ¶ 16(a) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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 factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant may have revealed his criminal history during his background interview. However, having determined that Applicant intentionally provided false information on his SF 86, I have also determined that Applicant provided false information when he denied the omission was intentional. It would be inconsistent to find the conduct mitigated.<sup>7</sup>

### **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 relevant 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.

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<sup>7</sup> See ISCR Case 03-22819 at 4 (App. Bd. Mar. 20, 2006), in which the Appeal Board reversed the Administrative Judge's decision to grant Applicant's security clearance:

Once the Administrative Judge found that Applicant deliberately falsified a security clearance application in September 2002, the Judge could not render a favorable security clearance decision without articulating a rational basis for why it would be clearly consistent with the national interest to grant or continue a security clearance for Applicant despite the falsification. Here, the Judge gives reasons as to why he considers the falsification mitigated under a "whole person" analysis, namely that Applicant has matured, has held a position of responsibility, recognizes how important it is to be candid in relation to matters relating to her security clearance, and has changed her behavior so that there is little likelihood of recurrence. However, the Judge's conclusion runs contrary to the Judge's rejection of Applicant's explanations for the security clearance application falsification. At the hearing (after earlier admitting the falsification in her March 2003 written statement to a security investigator), Applicant testified that she had not intentionally falsified her application. Given the Judge's rejection of this explanation as not being credible, it follows that the Judge could not have concluded Applicant now recognizes the importance of candor and has changed her behavior.

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 have incorporated my comments under Guideline E in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant intentionally provided false information about his criminal record on his 2014 SF 86. There are concerns about his judgment, honesty, and willingness to comply with rules and regulations.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the 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
Subparagraph 1.a:	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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Edward W. Loughran  
Administrative Judge