



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



In the matter of: )  
)  
) ISCR Case: 14-02361  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

July 27, 2015

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a history of criminal misconduct and poor judgment. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of Case**

On June 4, 2013, Applicant submitted a security clearance application (e-QIP). On July 18, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guidelines E (Personal Conduct) and J (Criminal Conduct). The action was 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant responded to the SOR (Answer) on August 7, 2014. (Item 1.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government's written case on April 24, 2015. A complete copy of the File of Relevant Material (FORM), containing three Items, was received by Applicant on April 30, 2015. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not submit anything in response to the FORM within the 30-day period that ended May 30, 2015. DOHA assigned the case to me on June 29, 2015.

### **Findings of Fact**

Applicant is 36 years old. He has been employed with a Government contractor since October 2011. He served in the Navy from approximately 1996 to 1998 and received a discharge under "Other than Honorable" conditions. He married in 2012 and has two minor children. (Answer; Item 2.)

The SOR alleges Applicant committed a number of criminal violations and that he falsified his e-QIP by omitting some of his arrests and convictions. Applicant admitted to SOR ¶¶ 1.b through 1.p. He denied SOR ¶ 1.a, because he was unaware of an outstanding warrant for his arrest. He failed to explicitly admit or deny SOR ¶ 2.a.

After a thorough and careful review of Applicant's admissions (Item 1) and the FBI Criminal Justice Information records introduced into evidence (Item 3), I find: Applicant was: arrested and convicted for obtaining property under false pretenses in 2009 (SOR ¶ 1.b); arrested and charged with issuing worthless checks in 2007 (SOR ¶ 1.c); charged and convicted of felony forgery of a financial instrument in April 2006 (SOR ¶ 1.d); charged with felony credit card or debit card abuse in November 2004 (SOR ¶ 1.e); arrested and convicted of issuing worthless checks in February 2004 (SOR ¶ 1.f); arrested and convicted of obtaining property by worthless check in December 2003 (SOR ¶ 1.g); arrested in October 2003 for obtaining property by false pretenses, with a subsequent conviction for a lesser charge of obtaining property by worthless check (SOR ¶ 1.h); arrested and charged with driving under the influence of alcohol (DUI) between 2006 and 2007 (SOR ¶ 1.j); arrested and charged with possession of marijuana in February 1998 (SOR ¶ 1.k); and received at least ten or more motor vehicle violations since 1999 (SOR ¶ 1.m). In June 1997, Applicant was discharged from the Navy under other than honorable conditions for writing bad checks and theft (SOR ¶ 1.i). Since 1997, he has been arrested and/or charged with issuing worthless checks or forging financial instruments 20 or more times (SOR ¶ 1.l).

On his June 4, 2013 e-QIP, Applicant identified only that he was arrested in "11/2007" for "worthless check" when he answered "Section-22 Police Record." (Item 2.) He indicated, "No," to the parts of Section 22 that inquired: "Have you EVER been charged with a felony offense?" and "Have you EVER been charged with an offense involving alcohol or drugs?" (Emphasis in original.) He intentionally omitted his 2009

arrest and conviction for obtaining property by false pretenses; his 2006 arrest and conviction for felony forgery; his November 2004 arrest for felony credit card abuse; his 2006-2007 DUI charge; and his February 1998 charge of possession of marijuana in his answers to Section 22.

FBI records reflect that a warrant dated April 10, 2008, for Applicant's arrest on a charge of forgery remains outstanding. (Item 3.) The record contains no outstanding warrant from August 2012 as alleged in SOR ¶ 1.a.

Applicant expressed remorse for his past criminal conduct. He indicated, "I will take ownership of everything I have done in my past, however that is exactly where I have kept it and maintain that it will always be kept. As a dark blemish on my past." (Item 1.)

The record lacks evidence concerning the quality of Applicant's professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. No character witnesses provided statements describing his judgment, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 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.

## **Analysis**

### **Guideline E, Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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 conditions are 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;

(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

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

The evidence shows that Applicant has a history of criminal conduct, and that he failed to disclose his criminal conduct to the Government in his June 6, 2013 e-QIP. Further, he received an other than honorable discharge from the Navy in 1997.

With respect to the allegations concerning falsification of his June 2013 e-QIP, I find that the omissions were deliberate. He was aware of his 2009 arrest and conviction for obtaining property by false pretenses; his 2006 arrest and conviction for felony forgery; his November 2004 arrest for felony credit card abuse; his 2006-2007 driving under the influence charge; and his February 1998 charge of possession of marijuana, yet he failed to disclose them to the Government on his e-QIP. AG ¶¶ 16(a) and 16(b) are disqualifying.

Applicant's other than honorable discharge and lengthy criminal history involving deception raise additional concerns regarding his personal conduct. The Government has established sufficient concerns under AG ¶¶ 16(c) and 16(e) to disqualify Applicant from possessing a clearance.

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.

None of the above conditions are fully mitigating. Applicant has a long history of exercising questionable judgment that continues through at least 2013, with the submission of false statements on his e-QIP. He made no prompt, good faith efforts to correct his deliberate omissions of his criminal conduct on his e-QIP. While he acknowledged his past criminal behavior and claimed it will not be repeated, he failed to present evidence of positive steps toward rehabilitation showing that similar future behavior is unlikely to recur.

### **Guideline J, Criminal Conduct**

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(a) a single serious crime or multiple lesser offenses; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant has a history of multiple criminal arrests and convictions that occurred between 1997 and 2009, including 20 arrests relating to worthless checks or forging financial instruments; an arrest for possession of marijuana; and a DUI arrest. These offenses give rise to concerns about Applicant's judgment and reliability both because of the nature of the offenses and the quantity of criminal offenses. The aforementioned disqualifying conditions have been established.

Four Criminal Conduct mitigating conditions under AG ¶ 32 are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur

and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

While the majority of Applicant's criminal conduct occurred during a 12-year span from 1997 to 2009, he continues to have an unresolved, outstanding warrant. He also engaged in criminal conduct as recently as 2013, when he falsified his e-QIP. Further, he presented little evidence to show that criminal conduct is unlikely in the future. Applicant's criminal past continues to cast doubt on his trustworthiness and judgment. AG ¶ 32(a) does not provide full mitigation.

Applicant failed to present evidence to show that he was pressured into criminal acts. He admitted each of the allegations. Neither AG ¶¶ 32(b) nor 32(c) provide mitigation.

Applicant failed to introduce evidence of rehabilitation. While he expressed remorse for his past, he presented nothing to show job training or higher education, good employment record, or constructive community involvement. AG ¶ 32(d) does not provide full mitigation.

### **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.

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 Guidelines E and J in my whole-person analysis. Applicant's criminal conduct and personal conduct involved deception and forgery. His lengthy criminal history occurred largely over a 12-year period that ended in 2009, but despite the passage of time, remains unresolved due to an outstanding warrant and recent falsification of his e-QIP. The likelihood of recurrence is high. Overall, the record evidence raises doubts about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from the cited adjudicative guidelines.

### **Formal Findings**

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

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a:	For Applicant
Subparagraphs 1.b through 1.p:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.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.

Jennifer I. Goldstein  
Administrative Judge