



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 07-16355
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric H. Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

June 30, 2010

**Decision**

CURRY, Marc E., Administrative Judge:

Over the years, Applicant engaged in a number of questionable activities, including surfing the Internet for pornography on his work computer and falsifying the amount of time worked on a government contract. This raises security concerns that he failed to mitigate. Clearance is denied.

**Statement of the Case**

On March 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, Personal Conduct, and Guideline M, Use of Information Technology. 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 revised adjudicative guidelines (AG).

Applicant answered the SOR on April 7, 2009, admitting the allegations set forth in SOR subparagraphs 1.a, 1.b, 1.e, and 1.g, and denying the remainder. Also, he requested an administrative determination instead of a hearing. Applicant filed a supplemental answer on May 8, 2009. On January 4, 2010, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the file on February 2, 2010, and provided a three-page reply on March 3, 2010. On April 12, 2010, the case was assigned to me.

### **Findings of Fact**

Applicant is a 43-year-old married man with two teenage children. He earned a bachelor of science degree in 1989 and has been working as an engineer for the same company since 1998.

In 1989, Applicant's car was burglarized. Applicant filed an insurance claim to receive cash reimbursement for several personal belongings that were stolen. His father, who was the insurance policy holder, told him to list personal items on the claim that were not actually in the car when the burglary occurred. Applicant complied, and the insurance company ultimately paid his father approximately \$1,800 more than he would have collected had Applicant filed an accurate claim. Because Applicant was not the insurance policy holder, he did not receive any of the money from the claim. (Item 8 at 3)

In 1997, Applicant, while backing his car out of a parking space, struck the bumper of another parked car, causing what he estimated to be approximately \$1,500 of damage to the other car. The car was not occupied. Applicant left the scene of the accident without leaving any contact information with the car owner. (Item 8 at 4)

In 2001, Applicant, while backing his car out of a parking space, struck the bumper of another car. Although he may have possibly scratched the other car's bumper, Applicant drove away without either checking for damage to the car or leaving any contact information. (*Id.*)

Between 1998 and 2006, Applicant spent approximately 10 to 20 minutes each day viewing pornography on his company-issued computer. Company policy prohibited employees from uploading, downloading, creating, distributing or otherwise transmitting sexually explicit materials. (Item 10 at 6) In 2003, Applicant signed a statement certifying that he had read this policy and understood it. (*Id.* at 2)

From 2003 to 2006, Applicant worked on a government contract. During this time, he sometimes billed the government agency for time he spent "goof[ing] off with coworkers, surfing the Internet, and playing video games" instead of working on the contract. (Item 7 at 2) Some of the time, Applicant inappropriately billed to the government contract time he spent looking at pornography on the company-issued computer. (Item 7 at 3)

The SOR alleges that Applicant overbilled the Government \$50,000 in this manner. Applicant admits he had frequent periods of down time, but contends he never overbilled the Government. Specifically, he asserts that his maintenance of the Government agency's information technology system sometimes involved menial tasks requiring minimal effort. Consequently, Applicant had frequent periods of "down time." (Item 6 at 3) The periods when he was entertaining himself instead of working on the project occurred during these periods. He would always "make up" the time by working extra hours. (*Id.*; Item 2 at 2)

The basis of the Government's contention that Applicant overbilled a government contract \$50,000 derives from an interview that a polygrapher conducted with the Applicant. (Item 9) Applicant admits telling the polygrapher that he goofed off on the job "a couple of hours a week," but contends that the polygrapher erroneously inferred that "a couple of hours a week" for the length of the contract totalled 20 hours a week, each week for eight years. (Item 6 at 3) Also, the report of information that the polygrapher prepared omitted Applicant's contention that he always made up the time by working extra hours. (Item 6)

In the 12 years Applicant has worked for his employer, his charges to various contracts have never been questioned. (Item 3 at 2) I find that Applicant engaged in some overbilling, but that it was less than the Government alleged. The exact amount overbilled is inconclusive.

Over the years, Applicant has occasionally driven his car after drinking too much alcohol. (Item 9 at 3) The last time he drank too much alcohol before driving was in 2006. He has neither been stopped nor arrested for drunk driving. (*Id.*)

Another Government agency conducted an investigation into Applicant's conduct in 2006. It denied Applicant access to Sensitive Compartmented Information (SCI) in 2006.

### **Policies**

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that are used to evaluate an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. This process involves the scrutiny of the following variables :

- (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.

This process of considering these variables when evaluating an applicant's security-clearance worthiness is known as the "whole-person concept."

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

## **Analysis**

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

Under this guideline, "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." (AG ¶ 15) Applicant has engaged in several episodes of misconduct including time card fraud, viewing pornography on a work-issued computer, and driving while under the influence of alcohol. 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," applies.

In assessing the seriousness of Applicant's conduct, I did not assign as much weight to the 1989 false insurance claim allegation, set forth in SOR subparagraph 1.a, as I did to the other allegations. Applicant was 23 years old at the time and listed under his father's policy. Also, he falsified the claim based upon his father's instruction, and did not receive any money from filing the false claim. 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 it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment," applies to SOR subparagraph 1.a.

None of the mitigating conditions apply to Applicant's other misconduct. He did not overbill the Government as much money as the SOR alleged. However, his contention that he engaged in no overbilling is not plausible given his history of dishonesty demonstrated by leaving the scene of two accidents between 1997 and 2001.

Applicant has not engaged in any episodes of misconduct in four years. The passage of time is outweighed by the severity of the conduct. I was particularly troubled by the work-related nature of some of his misconduct, particularly the Government contract fraud. The significance of this transgression was not lessened by the fact that he did not defraud the Government of as much money as the SOR alleged. Applicant failed to mitigate the personal conduct security concern.

### **Guideline M, Use of Information Technology Systems**

Applicant viewed pornography on a work-issued computer approximately ten minutes per day from 1998 to 2006. From 2003 to 2006, he engaged in this activity knowing that it was against company policy. This conduct triggers the concern listed under Guideline M, as follows:

Noncompliance with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information.

In particular, the disqualifying condition listed in AG ¶ 40(e), "unauthorized use of a government or other information technology system," is applicable.

Applicant has not engaged in this conduct in four years. Given this passage of time, I conclude that AG ¶ 41(a), "so much time has elapsed since the behavior happened . . . that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment" applies.

Applicant's misuse of information technology, when considered alone, no longer generates a security concern under Guideline M. However, this does not lessen the significance of Applicant's computer-related misconduct when considered together with his other personal misconduct, as evaluated in the Personal Conduct section, above.

### **Whole-Person Concept**

I have considered the whole-person factors listed at AG ¶ 2(a) in my analysis of the relevant adjudicative guidelines. My conclusion that Applicant has not mitigated the security concerns remains unchanged.

### **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:	For Applicant

Subparagraphs 1.b - 1.g:	Against Applicant
Paragraph 2, Guideline M:	FOR APPLICANT
Subparagraph 2.a:	For 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.

MARC E. CURRY  
Administrative Judge