



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



In the matter of:)	
)	
)	ISCR Case No. 07-16511
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

August 31, 2009

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is granted.

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on January 5, 2006. The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline E on January 13, 2009. 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on January 22, 2009. He answered the SOR in writing on January 26, 2009, and requested a hearing before an

administrative judge. DOHA received the request on February 2, 2009. DOHA issued an Amended SOR on April 20, 2009 and Applicant completed his answer on May 4, 2009. Department Counsel was prepared to proceed in May 2009, and I received the case assignment on May 31, 2009. DOHA issued a notice of hearing on June 3, 2009, and I convened the hearing as scheduled on June 23, 2009. The government offered eighteen exhibits (GE) 1 through 18. Except for GE 13, all exhibits were received and admitted into evidence without objection. Applicant testified on his own behalf. He submitted 12 exhibits (AE) A through L, which were received and admitted into evidence without objection. The record closed on June 23, 2009. DOHA received the transcript of the hearing (Tr.) on July 6, 2009.

Procedural and Evidentiary Rulings

Exclusion of evidence

Department Counsel submitted GE 13, a copy the investigator's summary of the Applicant's employment. The Applicant disagreed with information in this document. Since the government did not call the investigator to testify and authenticate the contents of the document, I marked GE 13 and included it with the file, but did not admit GE 13 into the record. See ¶ E3.1.20 of the Directive.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.d, 1.f, and 1.g of the SOR, with explanations. He denied the remaining factual allegations in the SOR and the factual allegations of the Amended SOR.¹ He denied intentionally falsifying his answers in his e-QIP. He also provided additional information to support his request for eligibility for a security clearance.

Applicant, who is 34 years old, works as a data analyst for a contractor to the Department of Health and Human Services. In his current position, he holds a Level 5 Position of Trust. He began his work for his employer in January 2006 and his current assignment in September 2008. His supervisor states that he consistently meets the expectations of his job and has been successful at assisting customers in resolving data issues. Applicant also works as a contract security officer, a position he has held since September 2007. His manager describes him as a good officer and an employee who

¹When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern. See ISCR Case No. 07-18525 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part).

can be counted upon to perform all aspects of his duties. Applicant constantly meets, and more often exceeds, his job expectations.²

Applicant is single. He has two sons, ages 16 and 11. Neither son lives with him. He maintains regular contact with his older son, but he has lost all contact with his younger son. He does not know where his younger son lives. He pays court ordered child support for his older son.³

Applicant started college in 1993, with a major in chemical engineering. He joined the United States Army in December 1994. Applicant completed a security clearance application (SF-86) in November 1999. On this application, he listed his older son, but not his younger son. He also denied any outstanding debts. While in the Army, Applicant served in Europe. The Army awarded him an Army Achievement Medal, a Good Conduct Medal, a National Defense Service Medal, a National Defense Service Medal, and other medals, ribbons, and badges for his service. The Army honorably discharged him from active duty on July 13, 2000. He served two more years in the Army Reserve and was honorably discharged in August 2002. While in the Army Reserve, he worked in a temporary civilian position as a GS-5 supply clerk. The Army terminated this position on July 18, 2001 because of lack of funds. He completed about two years of college, some while in the Army.⁴

Applicant met with a security investigator on May 10, 2002. He advised the investigator that he had a second son born in 1998 and that he had consolidated his debts. He explained that he did not list his second son on his November 1999 SF-86 because he was not yet born.⁵

Applicant completed a second SF-86 on September 9, 2002. He listed both his sons and acknowledged that two student loans were delinquent. He indicated he had retained a financial services company to work with him on repayment of these debts.⁶

Applicant began work with a federal contractor, employer A, in August 2002. On October 30, 2002, employer A counseled Applicant about violations of its Standards of Conduct for employees. Specially, the employer discussed allegations of harassment, including sexual harassment, respect in the workplace, inappropriate comments, and

²GE 5 (e-QIP, dated January 5, 2006); AE E (Letter, dated June 11, 2009); AE F (Letter, dated June 22, 2009); Tr. 35-39.

³GE 1 (SF-86, dated November 11, 1999); GE 2 (SF-86, dated September 9, 2002); GE 11 (Court records); Tr. 54, 69, 73, 76, 18, 110-111.

⁴GE 1, *supra* note 3; GE 6 (Signed Affidavit, dated May 10, 2002); GE 18 (SF 52-B); AE A (National Guard discharge letter); AE B (Army record); Tr. 108.

⁵GE 6, *supra* note 4; Tr. 108.

⁶GE 2, *supra*, note 3.

unprofessional behavior, such as hugging and touching female co-workers. The employer suspended Applicant for three days and required him to attend EEO training, which he did. Applicant filed a written response to this letter with his employer. In his written response and oral meeting, Applicant denied the allegations of sexual harassment and other conduct. On January 2, 2003, a personal specialist filed a written report, stating that Applicant was flirting with a female government employee and that Applicant was reported to be looking for another job. Three weeks later, this employer terminated his employment during the initial one-year trial employment based on his conduct enumerated in the October 2002 counseling and a failure to maintain office conduct standards. He continued to deny any sexual harassment. He believed that he was a permanent employee in this job and that he was fired after an argument with his supervisor.⁷

Applicant began work for employer B, a federal agency, in April 2003 as a GS-7 Administrative Support Assistant. At this time, he completed a signed Declaration of Federal Employment form. Question 12 on this form asks:

During the last 5 years, have you been fired from any job for any reason, did you quit after being told that you would be fired, did you leave any job by mutual agreement because of specific problems, or were you debarred from Federal employment by the Office of Personnel Management or any other Federal agency? *If "YES," use item 1C to provide the date, an explanation of the problem, reason for leaving and the employer's name and address.*

Applicant answered "no" to this question. He did not list his termination from employer A. He explained that he rushed through his answers. He thought it meant federal jobs only.⁸

In November 2003, while Applicant was still a probationary employee, employer B terminated him based on unacceptable conduct and performance. Applicant believes he was terminated because he and the office manager clashed. From November 2003 until September 2004, Applicant worked for a federal contractor without incident.⁹

In September 2004, Applicant began work for employer C, another federal agency, as a GS-9 program support specialist. He completed a second Declaration for Federal Employment on September 7, 2004. He again answered "no" to Question 12, thus, failing to list his dismissals by employers A and B. He attributed his failure to

⁷GE 14 (Letter, dated November 14, 2003); Tr. 43-46, 83-85.

⁸GE 3 (2003 Declaration of Federal Employment form); Tr. 104-106.

⁹GE 1, *supra* note 3; GE 14, *supra* note 7; Tr. 46, 85.

rushing through the document and his belief he did not need to list a termination during his probationary period.¹⁰

Employer C terminated his employment on June 11, 2005 while he was still a probationary employee. The agency documentation provides no reason for his termination. In an affidavit dated May 30, 2008, Applicant stated that when he was terminated, he was told that he was not meeting the work guidelines for his position. He acknowledged being in a training program for performance improvement. He stated that he received positive feedback on his improving performance and suggestions on additional areas of improvement. He further stated that his supervisor always found problems with the letters he composed. Applicant thought his work was satisfactory.¹¹

In June 2005, Applicant started working for employer D, a federal contractor. In late December 2005, he resigned from his position, effective January 12, 2006, to accept a position with his current employer. Employer D entered a Status Change Notice in its personnel records on February 6, 2006, indicating Applicant voluntarily resigned. On August 27, 2007, a HR Specialist e-mailed a request to Applicant's former supervisor at employer D and asked if Applicant was rehirable. The same day, his supervisor answered that he was not rehirable because he gave him the option to resign for poor performance before being fired. The supervisor then stated "After he was fired, an ex-girlfriend of his replied to all on e-mail [sic] he had sent from his DOJ account that accused him of some negative things. This man is not to be trusted." Applicant denied the allegation he was fired. He acknowledged issues at work concerning how work should be performed. His employer did not provide training; rather, he learned through trial and error. He would receive negative commentary after an issue arose, such as when he e-mailed co-workers concerning work issues without obtaining approval to send the e-mail. He stated that his ex-girlfriend broke into his personal e-mail account and sent the e-mail to everyone in his address book, including co-workers at employer D and his current employer. The employer's employee handbook is not of record, nor are its policies on handling performance issues in the file.¹²

Applicant's current employer, a federal contractor, required him to complete an e-QIP, which Applicant did on January 5, 2006. Applicant listed all seven of his employers from 2000, including contact information, and his military service. He listed his recent college attendance, but not his earlier college attendance. He listed his mother and sister as his relatives, but not his sons. He acknowledged being known by another name. He denied any outstanding debts. He answered "yes" to the following questions:

¹⁰GE 4 (2004 Declaration of Federal Employment form); Tr. 102-106.

¹¹GE 5, *supra* note 2; GE 7 (Interrogatories and answers with attachments); GE 16 (SF 50-B); Tr. 48.

¹²GE 7, *supra* note 11; GE 8 (Affidavit, signed May 8, 2008); GE 17 (Employer D's business records); Tr. 49-53.

Section 22: Your Employment Record

Has any of the following happened to you in the last 7 years?

1. Fired from a job.
2. Quit a job after being told you'd be fired.
3. Left a job by mutual agreement following allegations of misconduct.
4. Left a job by mutual agreement following allegations of unsatisfactory performance.
5. Left a job for other reasons under unfavorable circumstances.

Applicant listed his job with employer A and gave "disagreement with supervisor" as the reason for being fired from this job. He did not list his terminations with employers B and C. At the hearing, he explained that he did not list these job terminations as he was on probation when he was terminated. He believed that since he could be terminated from a probationary position for any reason, whether or not cause for his termination existed, he did not need to list these jobs as being fired or terminated for cause as requested by the question. In his mind, there was a difference between being fired and terminated in a probationary period. He now understands he was wrong in this view. He described his failure to list his sons as "a bone-head mistake".¹³

Unknown to him, in early January 2006, Applicant's former girlfriend and the mother of his older son filed an action in the local courts for child support. The process server gave Applicant the court papers as he left home for his new job one morning in early January 2006. He and his former girlfriend reached an agreement on child support. The court memorized their agreement in an Order dated June 1, 2006. This Order included retroactive child support. Although Applicant had provided monetary and non-monetary support informally, he lacked proof, which resulted in the retroactive award. He is current on his child support payments.¹⁴

The government submitted a credit report dated January 23, 2006, which does not indicate that any debts are overdue. The debt identified in allegation 1.I is listed as "pays as agreed." Applicant met with an investigator in April 2006 and voluntarily acknowledged that two debts, including the debt in allegation 1.I, were delinquent since late 2005. In meeting with this investigator, he also volunteered other information not listed on his e-QIP. He again volunteered information about this debt when meeting with the investigator in October 2006.¹⁵

Applicant stated that he had difficulty adjusting to working in the civilian world after he left the Army. He advised that he continues to learn from his mistakes and has

¹³GE 5, *supra* note 2; Tr. 41-44, 61, 77-80, 101-103, 110.

¹⁴GE 11, *supra* note 3; Tr. 54, 66-69, 73, 76, 110-113.

¹⁵GE 7, *supra* note 11; GE 12 (Credit report); Tr. 63-66.

improved his working relationships and himself. He recently completed his college education, receiving his bachelor's degree in computer information systems and a master's degree in business administration.¹⁶

Supervisors, co-workers, and friends provided recommendations on Applicant's behalf. They described him as a good employee who meets his job expectations. His 2007 performance evaluation showed him as a solid performer. He is described as trustworthy and responsible. A performance evaluation from his reserve supervisor some years ago indicated he excelled at many of his performance elements. The supervisor praised many of his skills. This review also noted that he needed to learn better self control and tact and to control his temper.¹⁷

Applicant demonstrated at the hearing that he is poor with dates and time lines.¹⁸ He understood the events and what occurred as he remembered. He did not organize his thoughts and presentation well. A review of the documents in this case reflects that Applicant provided the necessary information to evaluate his security worthiness over a period of time, but not all at the same point in time.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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

¹⁶AE C (resume); GE 7, *supra* note 11; Tr. 124-126.

¹⁷GE 7, *supra* note 11; AE D through AE L (letters of recommendation).

¹⁸Applicant listed November 9, 1992, November 8, 1994, and November 6, 1991 as the birth date of his older son. The actual birth date is November 6, 1992. See GE 1; GE 2; GE 7; GE11. He listed two different birth years for his second son. GE 2; GE 6; GE 7. Moreover, his employment dates are not exact.

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, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion as to 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 an 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.

Section 7 of Executive Order 10865 provides that 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

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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; 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.

Three employers between January 2003 and June 2005 terminated Applicant from his position for a variety of reasons, including allegations of sexual harassment, inappropriate conduct, and poor performance. Concerning the cessation of his employment with employer D in January 2006, employer D's personnel records indicated that Applicant voluntarily resigned. As this is a business record, this document is credible. This business record supported Applicant's adamant position that he voluntarily left his job with employer D to accept his current employment, which started in January 2006. The e-mail dated August 27, 2007 is entitled to little weight, and is thus of very limited credibility because it was issued 19 months after Applicant's resignation and is primarily based on a derogatory and unsubstantiated hearsay e-mail from Applicant's former girlfriend. The August 27, 2007 e-mail makes only a passing reference to work performance issues. The government has established its *prima facie* case for allegations 1.a through 1.d under AG ¶ 16(e), but has not met its burden of proof for allegation 1.e. Given my findings concerning the August 2007 e-mail, the government has not met its burden of proof as to allegation 1.h.

For AG DC ¶ 16(a) to apply, Applicant's omission, concealment or falsification in his answer must be deliberate. The government established that Applicant omitted material facts from his Declaration for Federal Employment when he answered "no" to the questions about negative job terminations and failed to list his November 2003 and his June 2005 job terminations during his probationary period. This information is material to the evaluation of Applicant's trustworthiness to hold a security clearance and to his honesty. In his response to the SOR and at the hearing, Applicant denied, however, that he had an intent to hide this information from the government. When a

falsification allegation is controverted, the government has the burden of proving the omission was deliberate. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.¹⁹

Applicant failed to list his employment termination in January 2003 on the Declaration of Federal Employment he executed three months later on April 7, 2003. He knew at this time that he had been fired from this job. When he completed the Declaration of Federal Employment form on September 7, 2004, he not only failed to list the January 2003 termination, but he also failed to list his November 2003 employment termination. At the time he completed this application, he knew that he had left these jobs for unfavorable reasons. Applicant provided a credible explanation at the hearing for why he answered this question in the negative in 2003 and 2004. The government has not established its *prima facie* case as to allegations 1.f and 1.g.

Concerning his failure to list his sons on his 2006 e-QIP, his most recent security clearance application, Applicant did not intentionally falsify this information. The government knew from his earlier SF-86 applications that he had one son and from his 2002 statement that he had a second son. This lack of information is not material to an assessment of Applicant's trustworthiness because, contrary to the government's assertion, Applicant's failure to list his sons was not to try to avoid paying child support payments or to avoid embarrassment. He does not pay child support for his younger son and child support has not been requested. He does not know where his younger son is currently living. On the other hand, he has contacts with his older son and provided support for this son on an informal basis. He now complies with the court ordered child support payments. The government has not met its burden of proof as to allegations 1.i and 1.j.

Applicant listed all of his jobs between 1995 and January 2006, including contact information for each employer. He included the three jobs from which he was terminated or fired. He made no effort to hide the jobs which ended negatively for him. Rather, he made information available to the government which gave the government the ability to verify his employment, work history, and performance. He acknowledged that he was fired from employer A, but erroneously believed that he did not need to list jobs from which he was terminated during a probationary period on his January 2006 e-QIP. His erroneous belief is not evidence of intentional falsification. The government has not established its burden of proof as to allegation 1.k.

Applicant did not falsify his answers concerning overdue debts. The January 2006 credit report indicates that the debt of concern to the government was in a "pays as agreed" status. Applicant acknowledged that he became delinquent in his payments

¹⁹See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

on this debt in late 2005, which would be November or December 2005, less than 90 days before he completed his e-QIP. He voluntarily provided information on this debt, as shown by the investigator's reports. The government has not established any debts delinquent at least 90 days at the time he completed his January 5, 2006 e-QIP, and accordingly, allegation 1.I. is not established.

Applicant may mitigate the government's security concerns under AG ¶ 17. The following conditions are relevant to this case:

(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;

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

(f) the information was unsubstantiated or from a source of questionable reliability.

Subsequent to his honorable discharge from the Army, Applicant began working in private industry and as a civilian employee for the federal government. He worked well at four jobs, but did not work well at three jobs. He acknowledged that he had problems at these three jobs. His transition from military to civilian work proved to be a rough road for him. He, however, tried to learn from each negative situation and to improve his work skills. His efforts have been rewarded, as he has worked for his current employer for more than three and one-half years. His supervisor rated him solid in 2007 and his current supervisor has no complaints about his performance or conduct. Throughout the last three and one-half years, Applicant demonstrated that he is a good and desirable employee. He found a work environment which works for him and his employer. He improved his conduct and performance. His last job termination occurred more than four years ago. Applicant has mitigated the government's security concerns about his past negative employment history under AG ¶¶ 17(c) and 17(d). Allegations 1.a through 1.d are found in favor of Applicant.

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to applicant under the whole person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant served on active duty in the Army for five years without problems. The Army awarded him medals, including a good conduct medal, ribbons and badges for his work. He received an honorable discharge from active duty and from the Army National Guard. Although his Army Reserve supervisor did recommend that he learn better self control and more control over his temper, he praised Applicant's work and rated his performance and conduct as best qualified. When he returned to the civilian work force, Applicant encountered difficulties in some work environments, but not all. Between his August 2002 discharge from the Army Reserve and January 2006, Applicant worked at seven jobs, four successfully and three unsuccessfully. A job termination or job firing usually occurs because of multiple factors, not one simple factor. An obvious factor, such as job performance, is usually not the only reason problems arise in the complexity of a workplace. Workplace environment, management philosophy, employee perceptions, and the personalities of all company employees play an important role in the success of an individual in a workplace. Applicant did not work well in three jobs for a variety of reasons. He, however, worked well in the Army, four other jobs, and most

importantly, for the last three and one-half years in his current job. He learned from his mistakes and improved his workplace skills.

The government argues that his failure to properly answer the questions on his security clearance application over a period of time shows a pattern of lying. Despite several allegations of falsification, the government's evidence failed to establish this pattern. Applicant's failure to disclose two children on his e-QIP is credibly described as "a bone-head mistake" and the result of carelessness. He credibly contends that he voluntarily resigned from employer D and the credible evidence of record supports his position. He voluntarily provided information on his finances on two separate occasions and other positive or negative information left out of his e-QIP. His belief that since he worked as a probationary employee, he did not need to list the termination of his probationary jobs is mistaken. Employer B clearly terminated him for performance issues and he acknowledged he had performance issues in the eyes of his management at employer C. Because the e-QIP seeks negative employment information, Applicant should have listed the two federal government jobs which terminated, not fired, him in lieu of offering him a permanent position.²⁰

Applicant is a responsible adult as shown by his support of his older son both financially and actually. He works at two jobs to assure enough income to pay his bills. He learns from his mistakes and works to improve himself.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his personal conduct.

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:

²⁰Being terminated from a job does not necessarily mean being fired. I take administrative notice of the following word definitions from Merriam-Webster's Collegiate Dictionary, 11th Ed. (2003):

- 1) Fire *vb* fired; firing *vt* **1 a** : . . . **2 a** : to drive out or away by or as if by fire **b** : to dismiss from a position . . .
- 2) Terminate *vb* **1** : . . . **2** : to form an ending **3** : to come to an end in time *vt* **1 a** : to bring to an end: CLOSE **b** : to form the conclusion of <review questions . . .> **c** : to discontinue the employment of <workers terminated because of slow business> **2** : to serve as an ending, limit, or boundary of . . .

In the business world, many jobs are ended or concluded for a variety of reasons, such as work loss, lack of funds, loss of customers, that are not negative to an employee. The ending or conclusion of these jobs is often categorized as "terminated." When a person is discharged or dismissed from a job for specific job-related issues, the employee's departure is categorized as "fired".

Paragraph 1, Guideline E:

FOR APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge