



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



In the matter of:)	
)	
)	ISCR Case No. 08-06035
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel

For Applicant: *Pro se*

September 20, 2010

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline E, Personal Conduct, and the whole-person analysis. His eligibility for a security clearance is denied.

Applicant completed and signed a security clearance application (SF-86) on July 23, 2007. On September 8, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, Personal 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 revised adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On September 29, 2009, Applicant answered the SOR in writing and requested a hearing before an administrative judge. The case was assigned to me on December 1,

2009. Applicant's hearing was scheduled for January 11, 2010. However, Applicant requested a continuance because he was suffering from a serious verified medical condition. The Government did not object to Applicant's request. I granted Applicant's request for a continuance on April 19, 2010. The order granting the continuance and Applicant's supporting documents are identified as Hearing Exhibit (H.E.) 1.

Applicant's medical condition improved, and, on June 7, 2010, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced three exhibits, which were marked Ex. 1 through 3 and admitted without objection. Applicant testified on his own behalf and called no witnesses. He introduced nine exhibits, which were identified and marked as Applicant's Ex. A through Ex. I. All of Applicant's exhibits were admitted without objection. At the conclusion of the hearing, I left the record open for four calendar days, until close of business on June 11, 2010, so that Applicant could, if he wished, supply a missing page from his Ex. I. On June 11, 2010, Applicant reported by e-mail to Department Counsel that he was unable to locate the missing page. Applicant's e-mail is identified as H.E. 2. DOHA received the transcript (Tr.) of the hearing on June 14, 2010.

Findings of Fact

The SOR contains four allegations under AG E, Personal Conduct (SOR ¶¶ 1.a. through 1.d.). SOR ¶ 1.a. alleged that Applicant was terminated and deemed not eligible for rehire by an employer in April 2007 after the employer's investigations revealed that Applicant had engaged in intimidation of others, inappropriate language, possession of property for personal gain, and improper instruction of subordinates in time reporting. Applicant admitted that the investigation occurred, but he denied the allegation. (SOR; Answer to SOR.)

SOR ¶ 1.b. alleged that Applicant had received a written warning from his employer in June 2006 for inappropriate language discussion and intimidation of others. He was advised at that time that further violations would result in additional corrective action, including possible termination. In his answer to the SOR, Applicant admitted the facts in allegation in ¶ 1.b. (SOR; Answer to SOR.)

SOR ¶ 1.c. alleged that Applicant falsified material facts on the SF-86 he executed and signed on July 23, 2007, and attempted to conceal the information alleged at SOR ¶ 1.a. when he responded "No" to Question 20 which asked whether he had ever been fired from a job; quit a job after being told he would be fired; left a job by mutual agreement following allegations of misconduct; left a job by mutual agreement following allegations of unsatisfactory performance; or left a job for other reasons under unfavorable circumstances. In his answer to the SOR, Applicant denied SOR ¶ 1.c. (SOR; Answer to SOR.)

SOR ¶ 1.d. alleged that Applicant falsified material facts when, in an October 2007 interview with an authorized investigator, he reported that he had resigned from

his job in April 2007, thereby concealing the information set forth in SOR ¶ 1.a. Applicant denied SOR ¶ 1.d. (SOR; Answer to SOR.)

Applicant, who is 55 years old, has been married and divorced twice. He is the father of three adult children. He dropped out of high school before graduation but later earned a General Education Development (GED) credential. In 1975, Applicant enlisted in the military and served for two years. He has taken some college classes, and he received technical training while in military service. He was granted a security clearance in 1975. Since 1981, he has been employed as a senior engineer and manager, and he was granted eligibility for access to Sensitive Compartmented Information (SCI) in 2003. (Ex. 1; Tr. 44-46, 76.)

From October 2001 until April 2007, Applicant was employed first as an engineer and later as manager of product operations by a federal contractor, identified as Employer A. As a manager, he was paid \$84,000 a year and was responsible for supervising seven employees. He had experience as a manager in three previous jobs, and Employer A also provided him with management training in January 2007. (Ex. 1 at 3-4; Ex. 2 at 2-4; Ex. H; Tr. 44-46, 74-77.)

Employer A provided Applicant's employment records in response to DOHA's request. Employer A's business records established that in April 2006, employees under Applicant's management and supervision alleged he had intimidated others in the workplace and had used inappropriate language in workplace discussions. The employer investigated the allegations and found them to be factually accurate. On June 27, 2006, the employer issued Applicant an employee corrective action memo, which he signed, acknowledging receipt. The employee corrective action memo read, in pertinent part:

On 5/11/06 employees that work in the integration and test department . . . were interviewed to fact find and obtain information about the work environment and your management style. Based on the interviews the following violations were corroborated 1) inappropriate language discussion and 2) intimidation of others. The company deems your behavior to be unacceptable, and in violation of the expectations set forth in [Company's name] expected behaviors.

(Ex. 2 at 32.)

The employee corrective action memo further stated:

You are expected to interact with others in a professional manner, treat all employees with respect and dignity, and exhibit a professional management demeanor. Further, you are expected to adhere to all of the company's expectations as outlined in [citation deleted], Expected Behaviors. It's been acknowledged that your behavior has improved over the past several weeks with coaching and training. Further violations will

result in a review for additional corrective action, up to and including possible discharge from [Company A].

(Ex. 2 at 32.)

Additionally, Company A's business records reflect that in November 2006, Company A's management learned that Applicant instructed three of the employees he supervised to charge two hours of time to a program the employees were not working on. Company A's business records also reflect that Applicant directed employees he supervised to load three hard plastic cases belonging to a government customer into his vehicle. He then told the employees he was taking the cases to his home. He took the cases to his home, used them for his own purposes, and did not return them. (Ex. 2 at 9, 23; Ex. 3 at 4.)

In January 2007, Company A's management learned that Applicant confronted an employee he supervised and accused him of failing to complete a work task. The employee responded that he had completed the task, and he showed Applicant proof of completion. Applicant then began to yell at the employee, threatened him with the loss of his job, made other threats, and sent the employee home. When Applicant's supervisor learned of the incident, he sent Applicant home. Several employees reported that they feared Applicant's angry flare-ups, intimidating behavior, and retaliation threats. (Ex. 2 at 22-23.)

Employer A convened a threat management team to review Applicant's workplace conduct. The threat management team concluded that Applicant's behavior was of medium to medium-high risk status. By memorandum dated January 24, 2007, Company A gave Applicant notice that he was being placed on paid administrative leave, pending investigation of allegations of unacceptable workplace behavior, and directed him to contact the company's employee assistance program. He was told he could contact his direct supervisor, two human resource generalists, and the individual conducting the investigation of his behavior. He was not allowed to communicate with any other employees. Applicant acknowledged receipt of the notice of administrative leave. (Ex. 2 at 22-24; Ex. E; Tr. 58-59.)

Applicant contacted the employee assistance program, and, as a part of the investigation, he was interviewed by a psychologist three times in January and February 2007. On April 6, 2007, Applicant, who remained on paid administrative leave, sent an e-mail to his immediate supervisor and one of the human resource generalists. The e-mail read, in pertinent part: "[n] light of the current situation I have resigned my position with [Company A] effective today." At his hearing, Applicant defined "the current situation" as his inability to obtain from his employer information on the progress of the investigation. (Ex. A; Ex. 3 at 4; Tr. 49, 60-61.)

On April 16, 2007, Company A sent Applicant a letter by certified mail. Applicant acknowledged receipt of the letter and offered it as his Ex. C at his hearing. The letter

stated that his voluntary resignation had been converted to a discharge. The letter further stated:

Since your resignation was submitted prior to closing stages of several Corporate Investigations the company is unable to accept your voluntary resignation. Based on the investigative findings, and review of the finding by the Employee Corrective Action Review Board (ECARB), your actions were deemed unacceptable and in violation of the Expected Behaviors for all [Company A] employees. The decision of the ECARB was to terminate your employment from [Company A] without eligibility for rehire. Enclosed is a copy of the Corrective Action Memo (CAM).¹

(Ex. C; Tr. 55.)

After receiving notice of termination from Company A, Applicant applied for unemployment benefits. Company A disputed Applicant's claim for unemployment benefits and reported that he had been fired for cause. Applicant was required to repay the money he had received in unemployment compensation. (Tr. 87-90.)

On July 23, 2007, Applicant signed and certified his SF-86. Question 20 on the SF-86 seeks information about an individual's employment record. Specifically, Question 20 asks if, in the past seven years, an applicant has been fired from a job; quit after being told he or she would be fired; left a job by mutual agreement following allegations of misconduct; left a job by mutual agreement following allegations of unsatisfactory performance; or left a job for [an]other reason under unfavorable circumstances. Applicant answered "No" to Question 20. (Item 1 at 6-7.)

At his hearing, Applicant acknowledged that he had received the April 16, 2007, letter from Employer A terminating his employment without eligibility for rehire before he completed and signed his SF-86 on July 23, 2007. When asked by Department Counsel why he then answered "No" to Question 20 on his SF-86, he said: "I have never worked anywhere in my life where an accepted resignation was rejected two to three weeks later and turned into a termination." (Tr. 55.)

When pressed further to describe his state of mind when he answered Question 20, Applicant stated: "I'm not denying that I received the letter. Again, to me, it kind of goes back to what came first, the chicken or the egg." (Tr. 55.)

The following colloquy then occurred between Department Counsel and Applicant:

¹ The CAM, dated April 16, 2007, was signed by the human resources generalist. It concluded: "Based on the investigative findings the following violations were corroborated: 1) Intimidation of Others; 2) Inappropriate Language/Discussion; 3) Possession of Property for Personal Gain; and 4) Improper Instruction for Time Reporting. Specifically, your actions since the issuance of a corrective action memo in June 2006 are deemed unacceptable and in violation of Expected Behaviors for all [Company A] employees." (Ex. D.)

DEPARTMENT COUNSEL: Okay, so you made a decision in your head, when you read this question, since I quit before they sent me the letter, I'm going to put no?

APPLICANT: I guess if you wanted to put it that way, it would be a fair statement.

(Tr. 55.)

On October 23, 2007, Applicant was interviewed by an Office of Personnel Management (OPM) investigator, who asked him about his employment. He provided the following facts to the investigator: he was placed on administrative leave pending an investigation of a disagreement with a subordinate; the investigation was completed in February 2007, and he then returned to work; after he returned to work, some unknown person complained that he had stolen company property; he was cursed at work a few times; he grew tired of accusations at work and in April 2007 decided to quit his job. His daughter is aware that he quit his job, and this could not be used against him in any way as blackmail or coercion. Applicant said nothing to the investigator about his dismissal from Company A. (Ex. 3 at 3.)

On March 12, 2009, DOHA sent Applicant interrogatories, which included a copy of his personal subject interview, and requested the following: "Please read carefully the investigator's summary of the statement you made to the investigator during your interview. On the last page of these interrogatories, you will be asked to verify the accuracy of the investigator's summary of the interview." (Ex. 3 at 2.)

Item 4 on the interrogatory states: "If the report of investigation does not reflect accurately the information that you provided, please explain how the report is not correct." In response to Item 4, Applicant wrote: "While I was aware the investigation at [Company A] was completed in Feb. 2007, I remained on Administrative Leave until I resigned in April 2007." He made no other changes, revisions, or additions to the investigator's report. (Ex. 3 at 10.)

Item 6 on the interrogatory asks for a "Yes" or "No" response from the applicant to the following: "Subject to any additions or deletions made above, do you agree with and adopt the investigator's summary as accurately reflecting your interview? If you agree, these interrogatories, along with the content of the attached report of your interview, may be admitted into evidence at a hearing to determine your suitability to hold a security clearance." Applicant checked "Yes" in response to Item 6. Then, on March 30, 2009, Applicant signed the following statement: "I swear (or affirm) that I have read the enclosed summary of my interview conducted on October 23, 2007, and I either found the interview to be accurate or I have added corrected entries to Item Four (4)." (Ex. 3 at 11.)

At his hearing, Applicant testified that he did not discuss his employment issues at Company A with the investigator in his personal subject interview. He denied telling the investigator about being placed on administrative leave after a disagreement with a

subordinate. He denied telling the investigator that he had been accused of stealing. He denied telling the investigator that he had quit his job in April 2007. He denied that he intended to lie on his SF-86 or in his interview with the investigator. (Tr. 63, 71-73, 100.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “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 and modified.

When evaluating an applicant’s suitability for a security clearance, an 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 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, the administrative judge applies these 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.” 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, 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 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 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

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

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.

Applicant’s personal conduct raises security concerns under AG ¶¶ 16(a), 16(b), 16(d)(2), and 16(e)(1). AG ¶ 16(a) reads: “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.” AG ¶ 16(b) reads: “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.”

AG ¶16(d)(2) reads: “credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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. This indicates but is not limited to a consideration of . . . disruptive, violent, or other inappropriate behavior in the workplace.” AG ¶ 16(e)(1) reads, in pertinent part: “personal conduct, or concealment of information about one’s conduct, that creates a

vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.”

Applicant denied SOR ¶ 1.a. and admitted SOR ¶ 1.b. Applicant's former employer provided business records that established his unacceptable workplace behavior in 2006 and 2007. Company A's business records and Applicant's Ex. C and Ex. D establish the Government's prima facie case in allegation 1.a. Applicant provided no evidence to rebut or mitigate the allegation. He denied SOR allegations at ¶¶ 1.c. and 1.d., which alleged deliberate falsification.²

Applicant, an experienced manager and the supervisor of seven subordinate employees, was put on notice by his employer in June 2006 that his unacceptable behavior in the workplace had been corroborated through an investigation. He was warned that similar behavior in the future could be cause for dismissal. In 2007, Applicant was again accused of inappropriate workplace behavior, and during the ensuing investigation, his employer placed him on administrative leave. Before the investigation was concluded, Applicant sent an e-mail to his employer stating that he was resigning from his position with the company. Applicant's employer refused to accept his resignation and notified him by letter dated April 17, 2007, that he was fired.

When he completed and certified his SF-86 three months later, in July 2007, Applicant concealed the fact that he had been fired or left a position under unfavorable circumstances when he answered “No” to Question 20. In October 2007, when he was interviewed by an authorized investigator, he told her he had resigned from his position. He failed to disclose to the OPM investigator the fact that the company sent him a letter firing him after he had tendered his resignation. At his hearing, he denied discussing his workplace problems with the investigator, although he certified as true the investigator's summary which included that information. He acknowledged that he had applied for unemployment benefits. At his hearing, for the first time, he also acknowledged that his employer informed the unemployment commission that he had been fired for cause, and he was then required to repay the unemployment benefits that he had received.

² The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). See *also* ISCR Case No. 08-05637 at 3 (App. Bd. Sept. 9, 2010) (noting an applicant's level of education and other experiences are part of entirety-of-the-record evaluation as to whether a failure to disclose past-due debts on a security clearance application was deliberate.

Applicant denied deliberately falsifying his answer to Question 20. However, he provided his employer's letter of termination as an exhibit for the record. His denial was not credible, and he failed to provide a credible reason for failing to inform the government that he had been fired.

At his hearing, Applicant also denied he told the government investigator that he had resigned from his position. His statement at the hearing was not credible.³ I believe he did in fact tell the OPM investigator he resigned, and he did not disclose his receipt of the termination letter.

Additionally, Applicant's decision to conceal his unacceptable workplace behavior and to conceal his dismissal for cause from his position as a manager made him vulnerable to exploitation, manipulation, and duress. These facts, if known, would affect his personal and professional standing.

AG ¶ 17 provides seven conditions that could mitigate security concerns in this case:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

³ Applicant's inconsistent statement falls outside the scope of the conduct alleged in the SOR. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in a SOR may be considered:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct 24, 2003)). See also ISCR Case No. 08-09232 at 3 (App. Bd. Sept. 9, 2010) (stating that inconsistent statements in exhibits may be considered in assessing an applicant's credibility and evaluating mitigation and rehabilitation evidence even though they are not cited in the SOR as raising a security concern.) I have considered Applicant's non-SOR statement that he did not tell the investigator that he had resigned from his job and did not discuss his workplace problems with the investigator for the purposes of (a), (b), (c), and (e) and not for any other purpose.

(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;

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

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

I thoroughly reviewed the documentary and testamentary evidence in this case. I observed Applicant carefully, and I noted his demeanor and how he responded to questions about answering Question 20 and his interview with an OPM investigator in October 2007. I also listened carefully to his responses to questions posed during his security clearance hearing in order to assess his credibility and state of mind. I conclude that there is sufficient record evidence to conclude that Applicant's "No" response to Question 20 and his statement to the OPM investigator that he had resigned from his position with Company A were willful and deliberate falsifications. I conclude that none of the Guideline E mitigating conditions applies to the facts alleged at SOR ¶¶ 1.c. and 1.d.

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. Applicant is a mature adult of 55 years. He has held several managerial positions and was aware of his role and responsibilities as a manager. Nevertheless, his behavior toward his subordinates was investigated by his employer and found to violate expected behaviors for managers.

Applicant was not a credible witness. He resigned from his position, and then his employer sent him a letter terminating his employment. After receiving his termination notice, he applied for unemployment benefits. When his employer told the unemployment commission that Applicant had been fired for cause, Applicant was required to repay the unemployment compensation he had received. In his response to Question 20 on his SF-86, Applicant did not reveal that he left employment under adverse circumstances.

In response to DOHA interrogatories, Applicant reviewed his personal subject interview. He made one correction, but he did not dispute that he told an OPM investigator that he had resigned from his employment after having some problems with other employees. At his hearing, however, Applicant denied telling the investigator about his workplace issues. I believe Applicant did in fact provide the information reported by the OPM investigator in her summary of Applicant's personal subject interview on October 23, 2007. I found his testimony denying the accuracy of the summary to be unreliable and lacking in credibility.

Applicant saw a psychologist briefly at the request of his employer, but he has not sought professional counseling or treatment for his unacceptable behavior in the workplace. The false information he provided is recent and serious. He has not taken responsibility for his failure to be candid about his work record. He failed to provide evidence of rehabilitation, and he failed to establish that the behavior would not recur, raising ongoing concerns about his judgment, trustworthiness, and reliability.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude, after a careful review of the facts of his case, the personal conduct adjudicative guideline, and the whole-person analysis, that Applicant failed to mitigate 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:

Paragraph 1, Guideline E: AGAINST APPLICANT

Subparagraphs 1.a. through 1.d.: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge