



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-06746
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert E. Coacher, Esq., Department Counsel  
For Applicant: *Pro Se*

July 24, 2009

**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Personal Conduct security concerns. Eligibility for access to classified information is granted.

On February 6, 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. The action was taken under Executive Order (EO) 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 answered the SOR on February 27, 2009, and requested a hearing before an administrative judge. The case was assigned to me on May 13, 2009. DOHA issued a Notice of Hearing on June 15, 2009. The hearing was convened as scheduled on July 8, 2009. The Government offered Exhibits (GE) 1 through 5, which were

received without objection. Applicant testified on his own behalf, called three witnesses, and submitted Exhibits (AE) A and B, which were received over the Government's objection. DOHA received the transcript of the hearing (Tr.) on July 16, 2009.

### **Findings of Fact**

Applicant is a 28-year-old employee of a defense contractor. He has an associate's degree and requires about another year of college in order to obtain a bachelor's degree. He is single with no children.<sup>1</sup>

Applicant has a medical history of treatment for anxiety and panic attacks dating back to about 2001, when he was in college. His family physician prescribed medication for his condition in about 2001. He was never treated by a psychiatrist or psychologist. The medication controlled his symptoms. He took the medication for about a year and then weaned himself off the medication.<sup>2</sup>

Applicant enlisted in the United States Air Force in 2003, to go on active duty in May 2004. He had been off medication and was symptom-free for more than a year at that point. He told his recruiter about his medical history. The recruiter told him not to mention his medical history or he would not be permitted to enlist. He accepted the recruiter's illegal advice and did not list or disclose his medical history on his Questionnaire for National Security Positions (SF 86), at the Military Entrance Processing Station (MEPS), or during processing at basic training.<sup>3</sup>

Applicant's symptoms returned during basic training. He sought medical attention and reported his medical history. He was processed and separated from the Air Force after less than a month at basic training. He received an Entry Level Separation with Uncharacterized service on the basis of Fraudulent Entry into Military Service.<sup>4</sup>

Applicant resumed treatment by his physician in 2005, and he went back on medication. His doctor reported in 2008 that:

[Applicant] has occasional problems with rapid heart rate and panic attacks. He is currently taking Lexapro, an antidepressant. He uses Xanax sparingly for panic attacks. Medical problems are well controlled. He should continue to take his current medications. They are not likely to affect his job performance.<sup>5</sup>

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<sup>1</sup> Tr. at 28-29; GE 1.

<sup>2</sup> Tr. at 18, 24; Applicant's response to SOR; GE 1, 4.

<sup>3</sup> Tr. at 17-24; Applicant's response to SOR; GE 1, 4, 5.

<sup>4</sup> *Id.*

<sup>5</sup> GE 4.

Applicant obtained his current job in 2005. He informed his company about his medical and military history before he was hired. His company's chief executive officer (CEO) and facility security officer (FSO) testified on his behalf. He also submitted several character letters. He is described as a man of integrity, who is honest, forthcoming, intelligent, dedicated, reliable, hardworking, dependable, responsible, and trustworthy. His witnesses are aware of his background and recommend him for a security clearance.<sup>6</sup>

Applicant fully disclosed his medical and military history when he submitted his Questionnaire for National Security Positions in February 2008. He is aware that it was wrong to be untruthful about his medical history in order to enlist in the Air Force, even if he was following the advice of his recruiter. He has learned from his mistakes and matured. He is now completely aware of the importance of being totally honest.<sup>7</sup>

### **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 to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common-sense 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 the applicant or proven by Department Counsel." The

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<sup>6</sup> Tr. at 30-41; AE A, B.

<sup>7</sup> Tr. at 17-29; Applicant's response to SOR; GE 1.

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 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 adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The security concern 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 credible government representative; and

(e) 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 intentionally did not disclose his medical history on his SF 86, at the MEPS, or during processing at basic training. He was discharged from the Air Force for Fraudulent Entry into Military Service. All of the above disqualifying conditions have been established.

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;

(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;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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

Applicant did not make a good-faith effort to correct the concealment of his medical condition before being confronted with the facts. AG ¶ 17(a) is not applicable. His actions were based in part upon the illegal advice of his recruiter. However, Applicant knew it was wrong and he did not correct the concealment at MEPS or at basic training. AG ¶ 17(b) is not applicable. Since his discharge more than five years ago, Applicant has been completely truthful about his medical and military history. He informed his employer of his background before he was hired. He now realizes the importance of absolute honesty. I find that such conduct is unlikely to recur and it does not cast doubt on Applicant's current reliability, trustworthiness, and good judgment. His disclosure of his background has eliminated any vulnerability to exploitation, manipulation, or duress. AG ¶¶ 17(c), 17(d), and 17(e) are all applicable.

## **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 the 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 common-sense 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 concealed his medical background on multiple occasions in order to enlist in the Air Force. He knew he was wrong to follow the illegal advice of his recruiter. Since his discharge more than five years ago, he has been open and honest about his medical and military history. He fully informed his employer of his background before he was hired. Applicant is highly regarded at his company, inspiring the CEO and FSO to testify on his behalf. He is remorseful for his actions and never intends to repeat that type of dishonest behavior.

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 has mitigated Personal Conduct security concerns.

## **Formal Findings**

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

Paragraph 1, Guideline E:	FOR APPLICANT
Subparagraph 1.a:	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.

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Edward W. Loughran  
Administrative Judge