



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-02701
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

May 12, 2010

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on September 7, 2006, and a second on September 9, 2008. On July 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines E and J for the Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant answered the SOR in writing on July 23, 2009, and requested a hearing before an Administrative Judge. DOHA received the request on December 1, 2009, and it was assigned to another Judge. It was reassigned to the undersigned on February 3, 2010. DOHA had already issued a notice of hearing on January 14, 2010, and I convened the hearing as scheduled on February 10, 2010. The Government

offered Exhibits (GXs) 1 through 6, which were received without objection. The Applicant testified on his own behalf, as did two witnesses. DOHA received the transcript of the hearing (TR) on February 23, 2010. I granted the Applicant's request to keep the record open until March 11, 2010, to submit additional matters. On March 2, 2010, he submitted duplicates of Exhibit (AppX) A to Department Counsel. On March 28, 2010, Department Counsel forwarded to the undersigned one copy of AppX A, which was admitted, without objection, into evidence on March 29, 2010. The record closed on March 29, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, the Applicant admitted the factual allegations to all of the allegations in the SOR, except for Subparagraph 2.b., with explanations. He made no response to Subparagraph 2.b. He also provided additional information to support his request for eligibility for a security clearance.

### **Guideline E - Personal Conduct**

1.a., 1.e., and 2.a. The Applicant's September 2006 e-QIP, Question 22. "Your Police Record - Firearms/Explosive Offenses" asks, "Have you ever been charged with or convicted of a firearms or explosives offense," to which the Applicant answered, "NO." (GX 1 at page 7.) This was not a truthful answer to the posited question. (TR at page 43 line 2 to page 44 line 7.)

In December of 1994, the Applicant was arrested for, and subsequently charged with: (1) Receiving Stolen Property, (2) Carrying a Concealed Weapon on Person, (3) Carrying a Loaded Firearm in a Public Place, and (4) Disturbing the Peace. (TR at page 38 line 6 to page 41 line 11, and GX 6.) He ultimately pled guilty to Disturbing the Peace, and the other charges were dismissed. (*Id.*)

The Applicant was not a truthful in his answer to Question 22., as he was afraid he "wouldn't get the job" for which he was applying. (TR at page 43 line 2 to page 44 line 7.) As a result of this wilful falsification, he was denied program access by a Government agency in July of 2007. (GX 5 at page 6.)

1.b. Two years later, on the Applicant's September 2008 e-QIP, Section 23.b. "Your Police Record," again asked, "Have you ever been charged with or convicted of a firearms or explosives offense," to which the Applicant again answered, "NO." (GX 3 at page 26.) This was not a truthful answer to the posited question. (TR at page 43 line 2 to page 44 line 7.)

1.c. The Applicant's September 2008 e-QIP, Section 26.a. "Your Investigations Record" asks, "Has the United States Government ever investigated your background," to which the Applicant answered, "NO." (GX 3 at page 28.) This was not a truthful answer to the posited question. (TR at page 43 line 2 to page 44 line 7.) His

background was investigated in conjunction with his September 2006 e-QIP submission and program access denial, noted above.

1.c. The Applicant's September 2008 e-QIP, Section 26.b. "Your Investigations Record" asks "have you ever had a clearance or access authorization denied, suspended or revoked," to which the Appellant answered, "NO." (GX 3 at page 28.) This was not a truthful answer to the posited question. (TR at page 43 line 2 to page 44 line 7.) His access authorization was denied, as a result of untruthful answer to Question 22. on September 2006 e-QIP, noted above.

## **Guideline J - Criminal Conduct**

2.a. The Applicant's 1994 conviction for Disturbing the Peace constitutes Criminal Conduct.

2.b. The Applicant's 2006 and 2008 falsifications of his e-QIPs are violations of 18 U.S.C. 1001; and as such, constitute Criminal Conduct.

## **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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 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 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 for Personal Conduct is set out in AG Paragraph 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.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 16(a), “*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form . . .*” may be disqualifying. Here, the Applicant falsified his 2006 and 2008 e-QIPs. I can find no countervailing mitigating conditions that are applicable. His admitted falsifications are repetitive and recent.

### **Guideline J - Criminal Conduct**

Paragraph 30 of the new adjudicative guidelines sets out the security concern relating to Criminal Conduct:

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

## Whole-Person Concept

(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.

## Formal Findings

Paragraph 1, Guideline E: **AGAINST APPLICANT**

Subparagraph 1.a~1.e:                      Against Applicant

Paragraph 2, Guideline J:

AGAINST APPLICANT

Subparagraph 2.a. and 2.b:

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.

Richard A. Cefola  
Administrative Judge