DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 09-05655
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: Elizabeth L. Newman, Esquire

May 12, 2010

Decision

HARVEY, Mark, Administrative Judge:

Applicant failed to disclose his part-time involvement with a Subchapter S corporation (R) on his security clearance application. He disclosed this involvement to an Office of Personnel Management (OPM) investigator the next month before she could ask him any questions about his employment. He resigned from R in November 2009, ending any potential conflict of interest. Security concerns under Guidelines E and L are mitigated. Access to classified information is granted.

Statement of the Case

On March 3, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or Security Clearance Application (SF 86). (Government Exhibit (GE) 1) On December 29, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry,* dated February 20, 1960, as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleges security concerns under Guidelines E (personal conduct) and L (outside activities). (Hearing Exhibit (HE) 2) The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On January 17, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. (HE 3) On February 17, 2010, Department Counsel announced she was ready to proceed on Applicant's case. On February 19, 2010, DOHA assigned Applicant's case to me. On March 11, 2010, DOHA issued a hearing notice. (HE 1) On April 8, 2010, Applicant's hearing was held. At the hearing, Department Counsel offered two exhibits (GE 1-2) (Tr. 17), and Applicant did not offer any documentary evidence. (Tr. 18) There were no objections, and I admitted GE 1-2. (Tr. 17) Additionally, I admitted the hearing notice, SOR, and response to the SOR. (HE 1-3) On April 15, 2010, I received the transcript.

Findings of Fact[1]

In Applicant's response to the SOR, he denied the allegations in SOR ¶¶ 1.a and 2.a with explanations. He admitted that he was an officer and shareholder of R; however, he denied that he was an employee of R. (HE 3 at 1) He admitted that he received taxable income as his portion of R's profit; however, he denied this was salary. (HE 3 at 1) He knew when he completed his security clearance application he would be subsequently interviewed by an investigator, and he decided not to disclose his work on R's behalf on his security clearance application. He planned to wait and disclose the information to the investigator, and did so on April 23, 2009. (HE 3 at 1-2) Other mitigating information in Applicant's SOR response will be discussed, *infra*. His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 39-year-old program manager employed by a defense contractor (H).[2] (Tr. 19) He has worked for H for 11 years. (Tr. 20) Applicant has a bachelor's degree in civil engineering, and a master's degree in environmental engineering. (Tr. 20) He served on active duty for 10 years and received an honorable discharge from the Army in 2002 as a promotable captain. (Tr. 20; GE 1) He has been married for 15 years, and his spouse works on crafts, which she sells with his assistance as part of an import-export business. (Tr. 21, 48-49) Applicant's role in the craft business is to prepare the tax returns, provide manual labor, and work in her booth at craft shows. (Tr. 49) She does not pay Applicant a salary for working in her business. (Tr. 50) He has a 14-year-old child. (Tr. 21) He has held a secret clearance since 1992. (Tr. 21)

[1]Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

[2]Unless stated otherwise, the facts in this section are from Applicant's March 3, 2009, security clearance application. (GE 1)

Applicant's relationship with R

Applicant was R's President and Chief Executive Officer (CEO) as well as a member of R's board of directors. (Tr. 12, 41; GE 2 at 5) About four other people formed the nucleus of R's owners. (Tr. 36, 41; GE 2 at 5) The chairman of the board had the highest corporate position. (Tr. 41) Three members of the chairman of the board's family were stock holders. (Tr. 41) At one point, Applicant's father was a corporate officer and member of the board. (Tr. 37; GE 2)

R is a corporate, management firm that worked for another government contractor and hired subcontractors to perform government work. (Tr. 22, 54) Applicant worked with R from 2006 until November 2009, when he resigned from R. (Tr. 12, 22; HE 3 at 5-7) His role at R was to provide technical oversight and ensure proper execution of a government contract. (Tr. 23) He did not sign contracts on behalf of R. (Tr. 54-55) He did not receive a salary or a W-2 from R. (Tr. 23) He did not have a written contract specifying what he was supposed to do at R. (Tr. 54) A certified public accountant (CPA), who is the cousin of the chairman of the board, set up R. (Tr. 23, 42) The CPA said R was so small that salaries and employees were unnecessary, and payments would be reported as a profit dividend or distribution on a K-1 form to the Internal Revenue Service (IRS). (Tr. 23) Corporate officers received shares, and corporation profits were divided based on the number of shares owned. (Tr. 40-41) Applicant received 50,000 shares from R. (HE 3 at 6-7; GE 2) The total Applicant received from R over the period from 2006 to 2009 was between $125,000 and $175,000. (Tr. 39)

Applicant's work for R involved: discussions with one contractor about business opportunities, help writing one contract, management or monitoring compliance with the contract, and research using subcontractors relating to development of detection of explosive devices. (Tr. 27, 38, 43-44) His engineering contributions to R involved design of electrical and mechanical devices and development of new electronics. (Tr. 46) He worked for R from zero to 20 hours per week, and on average it was about two hours per week. (Tr. 47) None of R's work was classified. (Tr. 38)[3]

Applicant's relationship with R's other owners deteriorated in 2008, and at the end of 2008, Applicant began the process of resigning from R. (Tr. 24-25, 42) Applicant argued with the owners about profit sharing. (Tr. 25) He disagreed with the amount of effort others applied to the business. (Tr. 51) They lacked follow-on effort. (Tr. 51) Applicant was concerned about R's IRS filings. (Tr. 51-52) He thought R made a profit in 2009, and R showed a loss on the form K-1s the corporation issued. (Tr. 52) He paid his own lawyer and CPA $7,000, and he challenged R's assertion to the IRS on their

[3] Applicant's counsel objected to consideration of the evidence that Applicant told the OPM investigator that he worked 20 hours per week for R. (Tr. 58-59) Department Counsel asked the question in good faith, as there was a basis for it in the summary of OPM interview. The record of the OPM interview is not part of the record, and Applicant's counsel did not receive a copy of it until after Department Counsel asked the question. (Tr. 58-61) I find that Applicant worked for R from zero to 20 hours per week, as he stated at the hearing, and I did not consider the contents of the OPM interview as impeachment of Applicant's credibility.

form K-1 of a loss. (Tr. 52-53) On November 20, 2009, he transferred the 50,000 shares he received back to R. (HE 3 at 6-7) When Applicant resigned from R, and he agreed not to communicate with any of R's subcontractors who are scientists. (Tr. 25)

Applicant's relationships to H, R, and his spouse's export business

Applicant provides business development for H, and has brought in many contracts for H. (Tr. 27) H's work is primarily in consulting and engineering services. (Tr. 27) Applicant provides technical advice to government program managers on directions for research. (Tr. 27) Applicant is a salaried employee; however, H bills Applicant's hours to contracts. (Tr. 48) Applicant works more than 40 hours weekly for H. (Tr. 48) H is not involved in explosives detection engineering. (Tr. 28)

Applicant informed H, his primary employer, of his work on his wife's business. (Tr. 19, 50) He invited H's employees to craft shows when they first started to generate business. (Tr. 50)

Applicant's handling of his relationship to R was different than his handling of his spouse's craft business. He did not want his supervisors at H to know about or get involved with Applicant's problems at R. (Tr. 26, 53; GE 2 at 6) None of the other officers at R worked for H. (Tr. 37)

The President of H provided a January 17, 2010, letter stating Applicant described his role as President, CEO, member of the board, and shareholder of R. (HE 3 at 4) Applicant also disclosed the scope of his employment with R to the President of H, and the President of H concluded there was no conflict of interest between Applicant's employment at H and his work for R. (HE 3 at 4)

S**ecurity clearance application**

On March 3, 2009, Applicant completed his most recent security clearance application. (Tr. 28-29; SF 86; GE 1) Section 13 seeks information about employment activities explaining:

> List all your employment activities, beginning with the present (#1) and working back 7 years (if an SSBI go back 10 years). You should list all full-time and part-time work, paid or unpaid, consulting/contracting work, all military service duty locations, temporary military duty locations (TDY) over 90 days, self-employment, other paid work, and all periods of unemployment. **The entire period must be accounted for without breaks**. EXCEPTION: Do not list employments that occurred before your 18th birthday unless it is necessary for providing a minimum of 2 years of employment history. (emphasis in original) (GE 1)

The instructions also discuss providing employer verification information and disclosure of multiple employments with the same employer. (GE 1 at 14) In response to the requirement to provide employment information, Applicant disclosed that H employed

him from May 1999 to the present, and he provided contact information for H. (GE 1 at 14-15) He did not disclose his work for his spouse on her craft business or his work for R. (GE 1)

Applicant considered whether he should disclose his employment at R, and he decided to wait for the interview to disclose the information about R. (Tr. 29-30)[4] He had completed security clearance forms and participated in background investigations and was well aware that the government followed up with an interview. (Tr. 30) Applicant did not seek advice from his security manager or anyone else before making the decision not to disclose his relationship with R on his security clearance application. (Tr. 30)

Applicant's security clearance application does not list any reportable incidents involving illegal drugs, alcohol, the police, or courts. (GE 1) There is no derogatory information about his financial history or abuse of information technology systems. (GE 1)

Office of Personnel Management (OPM) investigative interview

On April 23, 2009, Applicant had a meeting with an OPM investigator at his office at H. (Tr. 31, 56) The OPM investigator was reviewing Applicant's security clearance application with Applicant. (Tr. 31) When the investigator arrived at the employment section, "before she even asked any questions I said I need to tell you this. . . . So I, before she even asked about [H,] I told her about [R], and I told her about my wife's [craft] company." (Tr. 31-32) He explained that R paid him under the Subchapter S of the IRS Code. (Tr. 32-33) He provided information to the OPM investigator about R's corporate officers and stockholders, and his spouse's craft business. (Tr. 33) There is no suggestion in the record that Applicant withheld any information from the OPM investigator or attempted to deceive the OPM investigator.

The OPM investigator did not raise the subject of R. (Tr. 33-34) The only reason the investigator knew about his relationship with R was Applicant's disclosure to the investigator. (Tr. 34) At the time of his OPM interview, H did not know about R. (Tr. 34) There is no evidence that OPM would have inevitably discovered the existence of Applicant's relationship with R.[5]

At the time he responded to DOHA interrogatories on October 28, 2009, he indicated he did not want H contacted about R, and he planned to end his association with R in the next 30 days. (Tr. 34-35; GE 2 at 6) He did not want H to communicate with R because he was in the midst of a disagreement with R. (Tr. 34) He did not agree

[4]In Section 20B of security clearance application, Applicant disclosed that the U.S. Government paid him from September 2007 to the present to assist a foreign engineer in a research project in collaboration with some U.S. universities. (GE 1) In Section 20C, he also listed 13 foreign trips. (GE 1)

[5]The government does not have a burden to show such information. *See* Policies section, *infra*, regarding burdens of proof.

with R's business practices. (Tr. 35) He did not think H needed to know about R because there was no conflict of interest. (Tr. 34)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." *See* Exec. Or. 10865 § 7. *See also* Executive Order 12968 (Aug. 2, 1995), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *See Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. *See* ISCR Case No. 08-

06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b). The DOHA Appeal Board may reverse the administrative judge's "decision to grant, deny, or revoke a security clearance if it is arbitrary, capricious, or contrary to law." ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (citing Directive ¶¶ E3.1.32.3 and E3.1.33.3.).[6] The federal courts generally limit appeals to whether or not the agency complied with its own regulations.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, I conclude the relevant security concerns are under Guidelines E (personal conduct) and L (outside activities).

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.

AG ¶ 16 describes three conditions that could raise a security concern and may be disqualifying with respect to the alleged falsifications of documents used to process the adjudication of Applicant's security clearance in this case:

> (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;

[6]See ISCR Case No. 09-03773 at 7 n. 4-6 (A.J. Jan. 29, 2010)(discussing appellate standards of review).

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;[7] 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.

Applicant admitted that he intentionally failed to disclose his relationship with R on his March 3, 2009, security clearance application (SOR ¶ 1.a). Section 13 of his security clearance application is written to capture all employment information, including non-salary work for a share of potential corporate profits. Even if the corporation lost money, and made no payments, Applicant's investment in the corporation was labor, and he had to report the relationship with R on his security clearance application. AG ¶¶ 16(a) and 16(b) are established. Applicant did not disclose his relationship with R on his security clearance application because he did not want H to learn of that relationship. He also requested that DOHA not contact H about his relationship with R. AG ¶ 16(e) applies.

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;

[7]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)).

(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.

AG ¶ 17(a) applies to the allegation in SOR ¶ 1.a. Applicant deliberately and improperly failed to disclose his involvement with R on his March 3, 2009, security clearance application because he did not want H to know about his relationship with R. At the same time, he planned to disclose his relationship with R at the expected follow-up investigative interview. In this way, he could fully discuss his relationship with R without H learning of it.

An intentional omission allegation is not mitigated when an applicant admits the omission after an investigator tells him or her that the government has already learned facts establishing the omission.[8] If an Applicant provides false information in multiple interviews, voluntary, accurate disclosure during the third interview does not mitigate the falsification concern.[9] In ISCR Case No. 05-10921 at 4 (App. Bd. Apr. 19, 2007) the Appeal Board considered an applicant's claim that he promptly disclosed his firing from employment to an investigator after falsely denying the termination from employment on his security clearance application stating:

. . . Applicant did not disclose his termination from the hotel until he was at his security clearance interview. The . . . investigating agent asked about the hotel in the context of previous employments and Applicant indicated he worked there. The investigator then asked if anyone at the hotel would

[8]ISCR Case No. 02-30369 at 5 (App. Bd. Oct. 27, 2006) (sustaining denial of security clearance); ISCR Case No. 04-00789 at 7 (App. Bd. June 28, 2006) (reversing grant of security clearance); ISCR Case No. 99-0557 at 4 (App. Bd. July 10, 2000) (reversing grant of security clearance).

[9]ISCR Case No. 03-00577 at 5 (App. Bd. Dec. 11, 2006) (sustaining denial of security clearance).

> have anything negative to say about Applicant, at which time Applicant supplied the investigator with a name and the hotel management. Subsequently, Applicant informed the investigator that he had been fired from the hotel.

The Appeal Board in ISCR Case No. 05-10921 at 4 (App. Bd. Apr. 19, 2007) affirmed the administrative judge's decision not to credit applicant with making a "prompt, good faith [effort] to correct the falsification before being confronted with the facts." *Id*. at 4-5. Stated differently, once it becomes apparent to an applicant that an investigator is likely to discover derogatory information, it is too late to receive mitigating credit under AG ¶ 17(a). In the instant case, Applicant disclosed the omission concerning his employment with R before being confronted with any information that made it appear likely the investigator would discover that employment. He fully cooperated with the investigator's follow-up interrogation.

AG ¶ 17(e) fully mitigates AG ¶ 16(e). Applicant attempted to conceal his relationship with R from his employer, H, raising a security concern. He ended his association with R, and disclosed his past relationship with R to H, mitigating this specific security concern.

In sum, Applicant's falsification of his security clearance application by intentionally failing to disclose his relationship with R was improper and raised a security concern. He did not disclose this information because he wanted to conceal it from H, raising a separate personal conduct security concern. Fifty-one days after falsifying his security clearance application, in good-faith, he corrected the omission, concealment, or falsification before being confronted with the facts. In January 2010, after resigning his interest in R, he disclosed his involvement with R to H. Guideline E concerns are mitigated; however, assuming AG ¶¶ 17(a) and 17(e) are not applicable, security concerns are separately mitigated under the whole-person concept, *infra*.

Outside Activities

AG ¶ 36 expresses the security concern pertaining to outside activities stating, "Involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information."

AG ¶ 37(b) provides for one condition that could raise a security concern and may be disqualifying in this case stating, "failure to report or fully disclose an outside activity when this is required."

AG ¶ 37(b) applies because Applicant failed to disclose his activity on behalf of R on his security clearance application. Under AG ¶ 38(b), the concern about outside activities can be mitigated when "the individual terminated the employment or discontinued the activity upon being notified that it was in conflict with his or her security responsibilities." I concur with Department Counsel's concession that Applicant's

outside activities are mitigated by his resignation from any involvement with R. (Tr. 10-11, 13-14, 61)

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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines E and L in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

The whole-person factors against reinstatement of Applicant's clearance are significant; however, they do not warrant revocation of his security clearance. Applicant's failure to disclose his relationship with R on his security clearance application was imprudent, irresponsible, and improper. His intent was to conceal his relationship with R from H. This is not a valid reason for failing to disclose his relationship with R on his security clearance application.

The rationale for reinstating Applicant's clearance is more substantial. He was forthright and candid in his OPM interview, his response to DOHA interrogatories, his SOR response, and at his hearing about his failure to disclose his relationship with R, as well as his rationale for failing to provide this information.[10] Applicant is 39 years old. He has a stable marriage of 14 years. He has successfully worked for the same employer for 11 years. From 2006 to November 2009, he was employed at R. He ended his relationship at R in part because he believed R was providing false income statements to the IRS. He spent $7,000 for an attorney and CPA to ensure he was not culpable for R's attempts to defraud the IRS. His criticism of R's improper conduct resulted in a strained relationship with R. He knew that if H contacted R, R's employees would likely make negative comments about him to H. The President of H has been fully

[10]ISCR Case No. 05-03554 at 4-6 (App. Bd. Aug. 23, 2007) (discussing factors an administrative judge should consider when making credibility determinations including consistency of statements).

informed of Applicant's past relationship with R, and he stated, "this work was not and is not in conflict with the work [Applicant] performs" for H. (HE 3 at 4)

Applicant has achieved some important educational and employment goals, demonstrating his self-discipline, responsibility and dedication. He earned bachelor and masters degrees. He served successfully on active duty in the Army, rising to the grade of promotable captain. He received an honorable discharge in 2002. Applicant is an intelligent person, and he understands that his failure to disclose his relationship with R on his security clearance was improper. He accepted that he showed poor judgment and regrets not consulting his security specialist. He has held a security clearance for many years without any other non-SOR allegations of misconduct. Applicant has demonstrated his loyalty, patriotism, and trustworthiness through his service to the Army as a commissioned officer and to the Department of Defense as a contractor. He is an asset to his employer. His security clearance application does not list any reportable incidents involving illegal drugs, alcohol, the police, or courts. There is no derogatory information about his financial history or abuse of information technology systems.

After weighing the disqualifying and mitigating conditions, my application of the pertinent factors under the adjudicative process, and all the facts and circumstances in the context of the whole person, I conclude Applicant has mitigated the security concerns relating to personal conduct and outside activities. *See Department of Navy v. Egan,* 484 U.S. 518 (1988). Applicant has mitigated or overcome the Government's case. For the reasons stated, I conclude he is eligible for access to classified information.

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
Paragraph 2, Guideline L:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

_____
MARK HARVEY
Administrative Judge