



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-07745
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Raashid Williams, Esquire, Department Counsel  
For Applicant: Leslie McAdoo Gordon, Esq.

December 7, 2011

**Decision**

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CURRY, Marc E., Administrative Judge:

Applicant’s misconduct in the 1990s was mitigated by the passage of time and significant evidence of rehabilitation. Clearance is granted.

**Statement of the Case**

On April 29, 2011, 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 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) implemented by the Department of Defense on December 1, 2006.

Applicant answered the SOR on April 29, 2011, admitting subparagraphs 1.a and 1.b, and denying subparagraph 1.c. He requested a hearing, and the case was assigned to me on July 5, 2011. The hearing was initially scheduled for September 9,

2011. On August 31, 2011, counsel for Applicant moved, via teleconference, for a continuance. I granted the motion and rescheduled the hearing for October 28, 2011. Two weeks before the hearing, Applicant's counsel informed me that a witness would not be available to testify on the hearing date, and requested that I schedule another time to accommodate this witness. Department counsel did not object, and I scheduled this witness' testimony for November 21, 2011.

The hearing was held over two days. On October 28, 2011, I received five Government exhibits marked as Government Exhibits (GE) 1-5, and ten Applicant exhibits marked as Applicant's Exhibits (AE) A-J. I also considered Applicant's testimony. On November 21, 2011, I received the testimony of Applicant's witness, and considered closing arguments. The record closed on November 21, 2011. The transcript from the first part of the hearing was received on November 7, 2011. The transcript of part two of the hearing was received on November 29, 2011.

### **Findings of Fact**

Applicant is a 40-year-old married man with two children, ages 11 and 7, and one stepson, age 22. He has some college education. He has been working for a telecommunications company for the past 13 years. He has held a clearance during this entire time. (Tr. 22) Applicant's duties include overseeing telecommunications equipment. Specifically, he controls the routers, the circuitry going to the routers, and the switches behind the routers. (Tr. 21)

From 1988 to approximately 1991, while working as a department store security supervisor, Applicant took merchandise without authorization, and undercharged his friends for their purchases on several occasions. His embezzlement collectively totalled approximately several hundred dollars. (Tr. 52)

In approximately 1994, Applicant's next door neighbor backed his car out of the driveway and hit Applicant's car that was parked on the street. Applicant filed a false claim with his car insurance, reporting the accident as a hit and run. His neighbor paid him \$250. (Tr. 25) Applicant used \$200 of this money to pay the deductible, and he pocketed the remainder. (Tr. 25, 63)

The SOR alleges Applicant engaged in time sheet fraud from approximately January 2005 to November 2005, by reporting hours that he did not actually work. Applicant denies this allegation, asserting that he left work daily approximately 15 minutes early, but he typically arrived 15 minutes early each day. (Tr. 29) Applicant did this to avoid evening rush hour traffic. Specifically, if he left at 5:00 p.m., the time he was required to work, rather than 4:45 p.m., the time he typically left, his commute would be approximately one hour longer. Because he worked the required 10-hour daily shift, he "figured it [was] all [a] wash." (Tr. 60)

Applicant was working for his current employer during the period of the alleged time sheet fraud. According to his second-line supervisor at the time, employees' work

time did not have to correspond exactly to their employment contract, so long as they worked a full 40-hour-per-week schedule. (Tr. Part II at 10) Moreover, he was aware of Applicant's lengthy commute during the time at issue and allowed him to arrive early and leave early. (Tr., Part II, at 12)

Applicant's second-line supervisor currently works with Applicant. He considers Applicant "a very upstanding individual," who always reported when he was going to be out of the office even when family emergencies occurred. (Tr., Part II, at 11)

Applicant's second-line supervisor's opinion of Applicant is consistent with Applicant's immediate supervisor's opinion. According to his immediate supervisor, Applicant is "one of the most impressive workers that [he] has ever been associated with," and the "type of person every manager would want to have on his team." (AE F)

## **Policies**

In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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. 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."

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 as to obtaining a favorable security decision.

## **Analysis**

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

Under this guideline, "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." (AG ¶ 15)

Applicant did not commit time sheet fraud, as alleged in the SOR. On the days he left work early, he arrived early. In sum, he worked the requisite hours. I resolve SOR subparagraph 1.c in his favor.

Applicant's misappropriation of store merchandise while employed at a department store in 1990, and his insurance claim fraud committed in 1994 trigger the application of AG ¶ 16(d)(3), "a pattern of dishonesty or rule violations," and AG ¶ 16(e), "personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress . . ."

Applicant's misconduct was not minor. As a store security guard, Applicant was vested with the authority to safeguard the store's merchandise. He abused this authority by misappropriating the merchandise. Similarly, in 1994, he falsely reported an insurance claim for personal gain.

Nevertheless, Applicant's first episode of misconduct occurred when he was in his late teens to early twenties, and the false insurance claim occurred more than 15 years ago. Applicant is now a family man who is highly respected on the job that he has held for 13 years. AG ¶ 17(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," applies.

### **Whole-Person Concept**

Under the whole-person concept, 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.

The seriousness of Applicant's misconduct is outweighed by the amount of time that has elapsed since the last episode of misconduct, his maturity, and his strong job performance over the past 13 years. The presence of significant rehabilitation renders the possibility of recurrence highly unlikely. Applicant mitigated the security concern.

### **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

Subparagraphs 1.a - 1.c:

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.

MARC E. CURRY  
Administrative Judge