



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



In the matter of: )  
)  
) ISCR Case No. 11-01585  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

05/15/2012

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant's insubordinate and disrespectful response to an investigation of a potential security violation, initiated by his own false statements, lead to his termination from his previous employment. With no security violation being committed, Applicant's behavior was appropriately handled as a personnel issue. The personal conduct concerns raised by the incident have been mitigated. Clearance is granted.

**Statement of the Case**

Acting under the relevant Executive Order (EO) and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on

<sup>1</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines contained in Enclosure 2 to the Directive.

December 2, 2011, notifying Applicant that it was unable to find that it is clearly consistent with the national interest to continue his access to classified information. DOHA recommended that his case be submitted to an administrative judge for a determination whether to revoke his clearance. The SOR detailed the reasons for the action under Guideline E (personal conduct).

Applicant answered the SOR and requested a hearing. The case was assigned to me on February 7, 2011. The hearing proceeded as scheduled on March 27, 2012. Department Counsel offered Government's Exhibits (GE) 1 through 3, which were admitted over Applicant's objections.<sup>2</sup> Applicant's Exhibits (AE) A through H were admitted without objection. I received the transcript (Tr.) on April 11, 2012.

### **Findings of Fact**

Applicant is a 45-year-old employee of a federal contractor. In March 2010, his former employer terminated him, for cause, which resulted in his access to classified information being suspended.<sup>3</sup>

In January 2010, Applicant began working off-site at a client location, but retained his office at corporate headquarters. On a Friday evening, Applicant received an e-mail from the information technology (IT) manager, who was not his supervisor, informing him that he needed to move out of his office and relocate to a nearby cubicle, because the office was needed for a new employee. First taken aback, then angered by the request and the short notice of it, Applicant called his supervisor to determine how to respond. Applicant's supervisor told him not to move out of the office. Unbeknownst to Applicant, his supervisor and the IT manager were engaged in a disagreement about the allocation of corporate office space. Based on his supervisor's advice, Applicant sent an e-mail to the IT manager indicating that he would not move because he worked on classified information that would be inappropriate to have in an open cubicle environment. Because the office in dispute was not authorized for the use or storage of classified information, the IT manager forwarded Applicant's e-mail to the facility security officer (FSO).<sup>4</sup>

Upon receiving the forwarded e-mail, the FSO called Applicant into a meeting that evening to investigate whether or not Applicant was using and storing classified information in the office. After a tense, lengthy conversation, the FSO determined that Applicant did not, in fact, access or store classified information in his office and that Applicant lied to the IT manager about doing so. The FSO concluded that Applicant did not understand classification levels and ordered him to receive training on the issue.

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<sup>2</sup> Tr. 12-13 (Applicant objected to GE 1, his signed security clearance application, because it contained inaccurate information. He objected to GE 3, his personnel file from his former employer, on the grounds of completeness. During his case-in-chief, Applicant supplied the documentation he believed to be missing from the file.)

<sup>3</sup> GE 1.

<sup>4</sup> Tr. 23-27, 92-97; GE 3 at 112-113, 120.

Applicant agreed to do so. At the conclusion of the meeting, he packed up his office, turned in his corporate identification cards, and left the building.<sup>5</sup>

On the hour-long ride home, Applicant began replaying the events of the day in his mind and became increasingly angry. By the time he reached home he was apoplectic and sent a belligerent e-mail to the FSO and the IT manager. While he apologized for saying that he accessed classified information in the office, he accused the FSO and the IT manager of taking his e-mail out of context, explaining that he was merely trying to retain the office space for his team. He decried their lack of professionalism and called their behavior toward him obnoxious. He also informed the FSO that he did not need and would not attend the recommended training because he had committed no security violation. Saturday, Applicant received an e-mail from the director of human resources (HR) informing him of his termination.<sup>6</sup>

On Sunday, Applicant sent an e-mail to the FSO apologizing for his overly harsh and disrespectful e-mail. Although he was seeking a review of his termination from high-level management, he agreed to take any security training the FSO deemed necessary. Applicant's employer decided not to reinstate him. Consequently, the company terminated Applicant's employment, filed an incident report in the Joint Personnel Adjudication System (JPAS), and suspended Applicant's access to classified information. Applicant consulted an attorney to help him resolve any issues his termination may have raised with this security clearance. Under the belief that Applicant had retained an attorney to represent him in a legal action against the company, the HR director began soliciting information about negative incidents involving Applicant. The HR director received three reports.<sup>7</sup>

In the first incident, a co-worker on a business trip with Applicant indicated that Applicant was pulled over by a police officer for running a red light. The co-worker observed that Applicant politely, but vehemently disagreed with the officer about whether he ran the light. The traffic stop ended with a warning to Applicant, who after driving away, talked about the incident with his co-worker using foul language and exhibiting signs of anger leading the observer to send another co-worker a text message calling Applicant "scary." In the second report, the same co-worker reported that on a business trip, Applicant tried to board an earlier train home. Because the train was leaving in less than 20 minutes, security regulations prevented Applicant from boarding the train. Despite buying a ticket for the later train, Applicant attempted to board the earlier train. He was turned away by security. The co-worker indicated that Applicant was visibly angry about not being allowed to board the earlier train. In the third incident, another co-worker reported that, in 2009, Applicant tried to leave a client site with an unauthorized piece of equipment that he intended to carry home on a commercial airplane. Before leaving the site, Applicant returned the equipment

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<sup>5</sup> Tr. 34-36; GE 3 at 120-122.

<sup>6</sup> Tr. 37-41; GE 3 at 109-111.

<sup>7</sup> Tr. 41-44; AE H.

concerned that it may cause problems with airport security. No one reported or disclosed this event until after Applicant was terminated.<sup>8</sup>

Applicant, a software engineer, has held a security clearance since at least 2002. Prior to his termination, Applicant did not have any prior security violations or history of disruptive behavior. The married, father of five children is actively involved in his church congregation and community.<sup>9</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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.

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 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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).

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<sup>8</sup> GE 3 at 129-132, 134-135.

<sup>9</sup> GE 1; AE A-B.

## Analysis

### Guideline E, 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.

The guideline notes several disqualifying conditions that are relevant to this case under AG ¶ 16:

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

(d) 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 their characteristics indication that the person may not properly safeguard protected information. This includes, but is not limited to consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;
- (2) disruptive, violent, or other inappropriate behavior in the work place;
- (3) a pattern of dishonesty or rule violations;
- (4) evidence of significant misuse of Government or other employer's time or resources.

Both disqualifying conditions apply. In an effort to avoid being relocated from a closed-door office to a cubicle, Applicant intentionally lied to the IT manager about his use of classified information in that space. Applicant's reaction to the security violation investigation initiated by his statements, the e-mail he sent lambasting the FSO and the IT manager for their handling of the situation, as well as his refusal to take the training

required by his FSO, was inappropriate and raises concerns about Applicant's judgment and his willingness to comply with rules and regulations.

The guideline notes several mitigation conditions under AG ¶ 17. Of these, only one applies:

(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.

Applicant had an unprofessional reaction to an understandably irksome problem. His actions raised a personnel issue, that his employer remedied by terminating him. The company's investigation found that Applicant did not commit a security violation. He did not misrepresent himself to an outside party on a matter related to his employment. In response to an internal company issue, which could have been handled more deftly by all involved, he inflated his need for a corporate resource by exaggerating the nature of his project to the IT manager. While Applicant's insubordinate and disrespectful conduct may have merited disciplinary action, his behavior was neither threatening nor indicative of violent behavior. Despite efforts to malign Applicant after his termination, he did not have a history of disruptive or otherwise inappropriate behavior. This incident amounted to a single demonstration of bad behavior related to a banal corporate issue.

### **Whole-Person Analysis**

I have no reservations or doubts about Applicant's current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2. Applicant's one-time lapse in professional judgment is not reflective of his ability to safeguard and protect classified information. Similarly, the picayune episodes dredged up by Applicant's former employer are not indicative of Applicant's unwillingness to follow rules, questionable judgment, reliability or trustworthiness. At most, these tales of Applicant's allegedly bad behavior show that he was not particularly well liked by his co-workers. An individual's security worthiness should not be influenced by his likeability or lack thereof. Applicant may be irascible, but such a personality trait is not a bar to having access to classified information. The security concerns raised by the one-time event alleged in the SOR are mitigated.

### **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 in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility to classified information is granted.

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Nichole L. Noel  
Administrative Judge