



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



In the matter of: )  
)  
) ISCR Case No. 11-05443  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

November 30, 2011

**Decision**

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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. For seven months in 2009, Applicant falsified his timecards while working as a government contractor. He failed to mitigate the personal conduct concerns raised by his actions. Clearance is denied.

**Statement of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on August 5, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information. The SOR detailed the factual basis for the action under security Guideline E (personal conduct).

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<sup>1</sup> This case is adjudicated under Executive Order (EO) 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 in Enclosure 2 to the Directive.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted the Government's written case on September 1, 2011. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on September 12, 2011. He did not object to the items appended to the Government's brief, which are admitted as identified in the FORM as Items 1 through 6. Applicant did not submit a response. The case was assigned to me on November 1, 2011.

### **Findings of Fact**

Applicant is a 27-year-old employee of a defense contractor who works in the information technology field. He has worked for his current employer since April 2007.<sup>2</sup>

In December 2008, Applicant accepted a position on a contract with the understanding that he would be working at a location in Washington, DC. Instead, he was assigned to a location in Arlington, Virginia — a 1.5 to 2 - hour commute from his home. He tried, unsuccessfully, to find a position closer to home. Between April 2009 and October 2009, Applicant left work 30 to 45 minutes early at least twice each week without taking leave. On each occasion, he recorded a full work day on his timecard. He did this until he was transferred to a work site in Washington, D.C.<sup>3</sup>

In 2010, Applicant applied for a security clearance with another government agency. During a polygraph, he disclosed his timecard falsifications. As a result, the other agency denied Applicant's request for access to classified information under the personal conduct guideline. Applicant reported the denial on his SF-86, dated November 12, 2010. At the time of his background investigation interview in June 2011, he admitted that he had not disclosed his actions to his employer.<sup>4</sup>

Applicant admits, takes responsibility, and expresses regret for his behavior. He has since complied with all of his employer's rules and regulations and intends to do so in the future.<sup>5</sup>

### **Policies**

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

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<sup>2</sup> GE 5.

<sup>3</sup> GE 5- 6.

<sup>4</sup> GE 5-6.

<sup>5</sup> GE 5-6.

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 overarching adjudicative goal is a fair, impartial, and commonsense 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.

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 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 safeguard 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 EO 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**

### **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.

Applicant's behavior is disqualifying 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 representative."

Applicant admits that over the course of seven months, he routinely left work early. On its face, this seems inconsequential, but it is not. Applicant falsified his timecards. In doing so, he accepted compensation, in salary and accrued leave, for time that he did not work. Applicant's actions were an immature response to a legitimate work-related concern. His actions cast doubt on his security worthiness that remain unabated.

Of the mitigating conditions available under AG ¶17, none apply. There is no indication that Applicant made any effort to disclose his behavior prior to being confronted during the polygraph with the other government agency. Furthermore, he has not disclosed or corrected the falsifications with his employer. As a result, his actions cannot be mitigated by the passage of time and he remains vulnerable to coercion, exploitation, manipulation, and duress. The behavior cannot be considered minor or trivial because he received financial benefit from his deception. Nor has Applicant provided any evidence to indicate that he would not repeat this behavior if he were again assigned to a geographically undesirable location. Because Applicant did not present any mitigation evidence, the security concerns in this case are resolved in favor of the Government.

Applicant engaged in improper conduct as a 24-year-old new to the professional world. Although he acknowledges the wrongfulness of his actions, he did not provide any information to explain his conduct or refute the resultant security concerns. This decision should not be construed as a determination that Applicant cannot mitigate the concerns raised by his conduct and establish that he possesses the honesty, integrity, and good judgment necessary to justify the granting of a security clearance. The award of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. A clearance is not recommended under the current circumstances, but should he be afforded an opportunity to reapply for a security clearance in the future, he may well demonstrate persuasive evidence of his security worthiness.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a.:	Against Applicant

## **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge