DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 11-14135
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

05/07/2016

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline K (handling protected information) and Guideline E (personal conduct). Clearance is denied.

Statement of the Case

On February 13, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines K and E. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry,* dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program,* dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF could not find under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. In an undated document, Applicant answered the SOR. The case was

assigned to me on January 8, 2016. DOHA issued the Notice of Hearing on January 29, 2016. The hearing was held as scheduled on February 22, 2016.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 7, while Applicant testified and offered no exhibits. After the hearing, he submitted documents that were marked as Applicant Exhibits (AE) A through F. All exhibits were admitted into evidence without objection. The transcript (Tr.) of the hearing was received on March 1, 2016.

Procedural Matter

Department Counsel moved to amend SOR ¶ 1.c by changing the listed month from May to April. Applicant had no objection to the amendment. The motion was granted.[1]

Findings of Fact

Applicant is a 33-year-old security guard who is being sponsored for a security clearance by a federal contractor. He first began working for that contractor in about February 2010, but subsequently has been employed by other companies. He graduated from high school in 2002, attended college without earning a degree, and qualified as an emergency medical technician (EMT). From 2002 to 2008, he served in the Army National Guard, achieved the grade of specialist (E-4), and received an honorable discharge. He deployed to Iraq from January 2007 to February 2008. He is divorced and has a child who is nine years old. He was first granted a security clearance in 2004.[2]

The SOR alleged under Guideline K that Applicant committed three security violations in 2010 (SOR ¶¶ 1.a-1.c). Under Guideline E, the SOR alleged the he was charged with assault on a family member in 2009 (SOR ¶ 2.a); that he was terminated from a job during a probationary period in 2009 (SOR ¶ 2.b); that he was counseled for neglect of duty and falsification in 2009 (SOR ¶ 2.c); that he illegally gained access to a hotel in 2009 (SOR ¶ 2.d); that he was returned early from an overseas assignment and placed on probation in 2010 (SOR 2.e); and that he falsified his responses to two questions in an Electronic Questionnaire for Investigations Processing (e-QIP) (SOR ¶¶ 2.f and 2.g). The allegations in SOR ¶¶ 1.a-1.c were also cross-alleged under Guideline E in a single allegation (SOR ¶ 2.h). In his Answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c, and 2.a-2.e, did not respond to the allegation in SOR ¶ 2.h, and denied the remaining allegations.[3]

[1] Tr. 10-11, 42.

[2] Tr. 5-6, 62, 65, 92-93, 102-104; GE 1, 2.

[3] Applicant's Answer to the SOR.

SOR ¶¶ 1.a-1.c, 2.e, and 2.h – three security violations in a two-month period, being returned from an overseas assignment without completing a contract, and being placed on probation in 2010. From March to April 2010, Applicant worked as a security guard for a company [hereafter referred to as "Company A"] at an overseas location. In that job, his duties included verifying the eligibility of those seeking access to controlled spaces and classified information.

On March 1, 2010, a team leader at Company A issued a memorandum for the record (MFR) that reflected Applicant closed, but did not lock, a safe in a secured space and failed to record properly the opening and closing of the safe and the logging in and out of classified documents. (Allegation in SOR 1.a). Applicant was counseled to ensure that all procedures were followed, especially those concerning the safeguarding of classified information, and admonished that further instances of unsatisfactory performance would result in more severe corrective action. The MFR reflected it was placed in "personnel file," but it does not contain Applicant's signature or any indication that he was shown it or informed about it.[4]

Applicant testified that he never willfully violated any security protocol that was properly explained to him. This incident occurred soon after he began working for Company A. He arrived at the overseas location less than 48 hours before the incident. It happened his first day on the job. He claimed that he was not given proper guidance on the opening and closing of the safe. The safe was not secure because he failed to spin the lock dial. The safe was located in a secure room and the classified information was not subject to compromise. Additionally, a person cleared for classified information signed out a document, but Applicant did not know there was a part of the document that he was required to fill out. He acknowledged that he made mistakes because he did not ask enough questions and stated he did not thereafter make those same mistakes again.[5]

On March 10, 2010, a team leader at Company A issued a MFR that reflected Applicant failed to follow orders by permitting a non-cleared worker to have access to the controlled access area (CAA) without verifying the worker was on the CAA access roster. (Allegation in SOR ¶ 1.b). Applicant was questioned about this security violation and stated that he recognized the worker. The MFR noted that the worker had just returned from a leave of absence and had not yet been placed back on the CAA access roster. The MFR also indicated that it would serve as a written reprimand of unsatisfactory performance. The MFR reflected it was placed in "personnel file," but it does not contain Applicant's signature or any indication that he was shown it or informed about it.[6]

[4] GE 2, 3.

[5] Tr. 13, 21-34, 41; GE 2; Applicant's Answer to the SOR.

[6] GE 2, 4. Interestingly, the text of the MFR issued on April 19, 2010, referred to an incident that occurred on May 17-18, 2010. An email attached to the MFR corrected those dates to April 17-18, 2010.

Applicant testified that this was his second day working at a particular post. He stated that he read the wrong weekly CAA access roster at the post and the non-cleared worker was listed on that roster. This was an outdated access roster. Applicant claimed that, due to a clerical error, the individual was not added to the most recent access roster. He claimed he recognized the individual as being a person on the access roster from the previous day, but that was the wrong access roster. When the error was discovered, the old roster was taken away and a new roster was issued with the individual in question added to it. Applicant stated his team leader was upset that he had not checked the latest access roster. He was counseled for this incident, but did not remember receiving a written warning at that time.[7]

On April 19, 2010, a team leader at Company A issued a MFR that reflected Applicant failed to conduct properly a page inventory of classified documents on April 17, 2010. (Allegation in SOR ¶ 1.c). The MFR noted that two of the documents had been previously combined and another had 48 pages removed for destruction. Applicant's inventory failed to account for the missing pages. He was asked how he conducted the inventory and responded by saying he conducted a page-by-page count. When asked to explain the discrepancy involving the missing pages, he acknowledged his mistake. The MFR reflected it was placed in "personnel file," but it does not contain Applicant's signature or any indication that he was shown it or informed about it.[8]

In his background interview, Applicant stated that he counted the pages. At the hearing, he testified that every week a document inventory was conducted and every month a more extensive page-by-page document inventory was conducted. He stated that he made the mistake of believing this inventory was the weekly document inventory instead of the monthly page-by-page inventory. He claimed the team leader had improperly taken the missing pages and stored them in his room without logging them out. He believed the team leader was setting a trap for the guard conducting the inventory. This incident resulted in a conflict between him and the team leader. He contacted the program manager and reported that the team leader improperly handled documents. He also indicated that he wrote a detailed rebuttal to the counseling.[9]

Shortly after the incident on April 17, 2010, Applicant was sent home before the completion of his contract. A payroll document reflected "[h]e is on probation. Please hold pay." (Allegation in SOR ¶ 2.e). He stated that he received all of the written warnings/reprimands when he was leaving this overseas location. He further stated that he was so upset about being sent home that he did not read the documents that were given to him. He did not consider his return to the United States as a termination. His program manager led him believe that he was sent back because of the personality

[7] Tr. 34-42; GE 2; Applicant's Answer to the SOR.

[8] GE 2, 5. Interestingly, the text of the MFR issued on April 19, 2010, referred to an incident that occurred on May 17-18, 2010. An email attached to the MFR corrected those dates to April 17-18, 2010.

[9] Tr. 39-40, 42-48; GE 2 at 9-11; Applicant's Answer to the SOR.

conflict with the team leader and told him that he would get another assignment. He resumed working for Company A at another overseas location in October 2010. This is also the company that is currently sponsoring Applicant for a security clearance.[10]

SOR ¶ 2.a – charged with assault on family member in 2009. On January 9, 2009, Applicant was issued a summons to appear in court for the charge of assault on a family member, a Class 1 misdemeanor. On April 28, 2009, Applicant pleaded not guilty to the charge. The court found there were sufficient facts to establish guilt but deferred adjudication for one year. He was required to attend anger-management classes and avoid committing any offenses. In April 2011, the charge was dismissed.[11]

In his e-QIP, Applicant disclosed this charge. He testified that his ex-wife was striking him during an argument. He tried to block her hands but accidently hit her on the side of the head with an open hand. He testified that he never hit his ex-wife before or after that incident.[12]

SOR ¶ 2.b – termination from a job during a probationary period in March 2009. In his e-QIP, Applicant disclosed that he was terminated from a security guard position with Company B near the end of a six-month probationary period. Company B was not required to provide an explanation for the termination during that period. He noted that he was accused of wearing an earbud linked to an unauthorized MP3 player while at work. He stated the earbud was for a cell phone that was permitted. He also indicated that this incident happened about a month before his probationary period ended, and he was never written up for this incident.[13]

Applicant testified that he believed that he was terminated from the probationary position because of the pending domestic-violence charge. If he was convicted of the charge, he would have been prohibited from carrying a firearm at work. If he continued to work for Company B beyond the probationary period, he would have become a member of the employee's union and the company would have had to hire an attorney to remove him from the job if he could no longer carry a firearm. He indicated the employer was willing to rehire him after the domestic-violence charge was dismissed.[14]

SOR ¶ 2.c – counseled for neglect of duty and falsification in September 2009. Applicant's background interview reflected that, while employed with Company C overseas, he was counseled for neglect of duty and falsification of log book. During the

[10] Tr. 42-51, 93-97; GE 7; Applicant's Answer to the SOR.

[11] GE 2 at 20-21, 6.

[12] Tr. 59-65, 71; GE 1, 2; Applicant's Answer to the SOR.

[13] GE 1, 2 at 15-16.

[14] Tr. 66-72; Applicant's Answer to the SOR.

interview, he voluntarily provided a copy of the official counseling he received on September 7, 2009, for this incident.[15]

Applicant testified that the night shift consisted of two guards who manned two posts. Usually the guards would rotate between the posts each night. On the night in question, however, the schedule did not rotate the guards between the posts. Applicant and the other guard assumed their assignments were rotated and stood them in that manner. In doing so, they signed the logs for the wrong posts. He claimed no dereliction of duty occurred because both posts were properly manned. The other guard also was written up for this discrepancy.[16]

SOR ¶ 2.d – illegally gained access to hotel by opening a sliding door in 2009. While working for Company C overseas from July to December 2009, Applicant resided in a hotel. The hotel was connected to a mall. There was a sliding door from the mall to the hotel. After a certain time each night, the door was secured. On two occasions, Applicant went through the sliding door after it was secured. He claimed that he was given permission from the guard in the mall to use the door on both occasions. After the second occasion, the hotel management was upset and threatened to kick out all of the U.S. contractors from the hotel. Company C agreed to send Applicant back to the United States to appease the hotel. He acknowledged that he was given a written warning because of this incident. He also stated that he did not consider it a termination because he was told it was not his fault and the company would find him another job. He met with a company representative for another job opportunity overseas, but soon thereafter his father passed away and his mother was in the hospital, which precluded him from taking that job. In his e-QIP, he did not list the reason for termination of employment with Company C. Two months later he accepted employment with another employer, Company A.[17]

SOR ¶¶ 2.f and 2.g – falsification allegations. Applicant submitted his e-QIP on October 14, 2010. He responded "No" to two similar questions in Paragraphs 2 and 3 of Section 13C – Your Employment Record. The question in Paragraph 2 asked, "Have you received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace." The question in Paragraph 3 asked, "Have you received a written warning, been officially reprimanded, suspended, or disciplined for violating a security rule or policy." Of note, Applicant responded "Yes" to the question in Paragraph 1 of Section 13C that asked if, for example, he had even been fired, left a job under unfavorable circumstances or been laid off, checked the block "laid off," and disclosed his termination of employment during the six-month probationary period discussed in SOR ¶ 2.b, above.[18]

[15] GE 2 at 13-15.

[16] Tr. 72-77.

[17] Tr. 77-84, 88-92; GE 2 at 11-13; Applicant's Answer to the SOR.

[18] GE 1.

Applicant stated that he did not disclose the written warnings he received from Company A (SOR ¶¶ 1.a-1.c) in his e-QIP because they slipped his mind. (Allegation in SOR ¶ 2.g). When he submitted the e-QIP, he was working at an overseas location and did not have access to all of his records. He acknowledged that he made a mistake in completing the e-QIP, but claimed the errors were accidental. Because of the way the written warnings were presented to him and what the program manager had told him, he did not believe the warnings were actually filed and they were not something that stuck in his mind.[19]

Applicant admitted that he also made a mistake in failing to disclose in his e-QIP the written warning he received for the 2009 incident as set forth in SOR ¶ 2.c. (Allegation in SOR ¶ 2.f). He acknowledged that he received the written warning/reprimand and wrote a lengthy rebuttal to it. He noted that, while completing his e-QIP, he was rushed and did not disclose this incident due to an oversight.[20]

Non-alleged Conduct.[21]

In his background interview, Applicant acknowledged that he received a written reprimand in 2006 from a company that he did not list on his e-QIP. The reprimand was issued because he reported late to work. In the interview, he claimed he did not list that employment and the reprimand on his e-QIP because he forgot about them.[22]

In his background interview, Applicant acknowledged receiving a written disciplinary action for making an incorrect log entry. While standing a watch at a post, a person came to the post and was assisting him. Applicant assumed this person was his relief and made an entry in the log to that effect. The person, however, was not his relief and the entry did not match who actually relieved him. This incident apparently occurred while he was working for Company C from July to December 2009; but is not clear when this incident happened.[23]

Applicant testified that, since completing his e-QIP, he occupied a security position in Afghanistan for 26 months. While there, he received a written warning for oversleeping and being late once or twice for his watch. While serving as an armorer, he also received a written reprimand for an inaccurate weapons count. He was also

[19] Tr. 51-59, 104-106; Applicant's Answer to the SOR.

[20] Tr. 84-92, 104-106; Applicant's Answer to the SOR.

[21] Non-alleged misconduct will not be considered for application of the disqualifying conditions, but may be considered for application of the mitigating conditions, assessing credibility, and evaluating the whole person.

[22] GE 2 at 18. Of note, the question in Paragraph 2 of Section 13C does not have a timeline for reporting official reprimands received for workplace misconduct.

[23] GE 2 at 13.

written up for having cats in his living area. He received the last written reprimand in 2014.[24]

Applicant received two non-judicial punishments (Article 15, UCMJ) for military-related offenses. One offense involved having a cell phone in his locker while he was in training from September 2003 to December 2003. He did not disclose either non-judicial punishment on his e-QIP. When asked about the offense during his background interview, he initially stated he received a written warning. Upon being confronted with information about the non-judicial punishment, he stated that it was a company-grade Article 15, which would have been removed from his service record after a few months. From the information in the record, I am unable to determine whether Applicant was required to disclose that punishment when he responded "No" to the question in his October 2010 e-QIP (Section 15d) about being subject to such proceedings in the last seven years.[25]

Character Evidence. Applicant presented letters of reference that describe him as an exemplary guard and outstanding individual. He also provided certificates showing he became an EMT in 2015.[26]

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AGs. 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 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, to reach his decision.

[24] Tr. 96-104.

[25] Tr. 103-104; GE 1, 2 at 18-19.

[26] AE A-F.

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 that 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. 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), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 or her] 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).

Analysis

Guideline K, Handling Protected Information

AG ¶ 33 sets forth the security concerns for the handling of protected information:

> Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or unwillingness and ability to safeguard such information, and is a serious security concern.

I have considered all of the handling of protected information disqualifying conditions under AG ¶ 34 and the following are potentially applicable:

(g) any failure to comply with rules for the protection of classified or other sensitive information; and

(h) negligent or lax security habits that persist despite counseling by management.

In early 2010, Applicant committed a number of security violations that resulted in him being issued written warnings and being returned early from an overseas assignment. AG ¶¶ 34(g) and 34(h) apply.

There are three handling of protected information mitigating conditions under AG ¶ 35:

(a) so much time has elapsed since the behavior, or it happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities; and

(c) the security violations were due to improper or inadequate training.

As the Appeal Board has stated, once it is established that an applicant has committed security violations, he or she has a "very heavy burden" of persuasion as to mitigation. Such violations "strike at the heart of the industrial security program." Accordingly, a judge must give any claims of reform or rehabilitation "strict scrutiny." ISCR Case No. 11-09219 at 3 (App. Bd. Mar. 31, 2014).

The conduct in question happened over six years ago. While Applicant has not committed any other security violation since then, this conduct should not be considered in isolation, but should be examined in relation to his other questionable conduct as alleged under Guideline E. When viewed in that manner, I am unable to find that his conduct happened so long ago, was so infrequent, or occurred under unusual circumstances that it is unlikely to recur. In reaching this conclusion, I also considered that the security violations happened shortly after he started a new job and he claimed he had not received adequate training. Nevertheless, I find that his security violations continue to cast doubt on his reliability, trustworthiness, and good judgment. None of the mitigating conditions fully apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for 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.

AG ¶ 16 describes conditions that could raise security concerns and may be disqualifying 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 eligibility or trustworthiness, or award fiduciary responsibilities;
>
> (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; 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 evidence information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior. . . ; (3) a pattern of dishonesty or rule violations; (4) evidence of significant misuse of Government or other employer's time or resources.

I did not find Applicant's testimony convincing that he forgot about the written warnings he received for the security violations in 2010 (SOR ¶¶ 1.a-1.c), or the written counseling he received for dereliction of duty and falsification of a document in 2009. The security violations happened about six month before he submitted his e-QIP. Due to those security violations, he was sent home from an overseas location, placed on probation, and was not employed for the intervening six months. It is not believable that he would have forgotten about those recent events when he submitted his e-QIP at the start of his next job. His claim that he did not have the records or written warnings with him when he submitted the e-QIP is likewise not persuasive. I find that Applicant deliberately falsified his 2010 e-QIP when he failed to disclose those written warnings and counseling. AG ¶ 16(a) applies.

Applicant was charged with a domestic assault in 2009, terminated from a probationary job in 2009, counseled for misconduct at the work place in 2009, terminated from employment due to misconduct in 2009, and committed multiple security violations that resulted in his early return from an overseas assignment and employment probation in 2010. Viewed in its entirety, his conduct reflects a pattern of unreliability, untrustworthiness, and poor judgment. AG ¶¶16(c) and 16(d) apply.

Five personal conduct mitigation conditions under AG ¶ 17 are potentially applicable:

> (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;
>
> (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; and
>
> (f) the information was unsubstantiated or from a source of questionable reliability.

Applicant's alleged conduct, including his e-QIP falsifications, occurred over five years ago. He denied the falsifications in his Answer to the SOR and at the hearing, which shows that he has not reformed and rehabilitated himself. All of his misconduct must be viewed in its entirety. From the evidence presented, I am unable to find that his questionable conduct happened so long ago, was so infrequent, or occurred under unique circumstances that it is unlikely to recur. None of the Guideline E mitigating conditions fully apply.

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 relevant 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.

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. After considering the whole-person evidence in the record, I continue to have questions and doubts about Applicant's eligibility and suitability for a security clearance. From the foregoing, I conclude that Applicant failed to mitigate the handling protected information and personal conduct security concerns.

Formal Findings

Formal findings on the allegations set forth in the SOR are:

Paragraph 1, Guideline K:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.h:	Against Applicant

Decision

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

_____
James F. Duffy
Administrative Judge