



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



In the matter of: )  
)  
) ISCR Case No. 11-14491  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Stephanie Hess, Esq., Department Counsel  
For Applicant: *Pro se*

09/24/2013

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant falsified his security clearance application and subsequent interview by mischaracterizing the circumstances surrounding his departure from a job that he left in 2007. Clearance is denied.

**Statement of the Case**

On April 18, 2013, the Department of Defense Consolidated Adjudications Facility (DODCAF) 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).

Applicant answered the SOR on September 22, 2012, admitting subparagraphs 1.a and denying the remaining allegations. He requested to have a decision without a hearing, whereupon, Department Counsel timely requested a hearing. The case was assigned to me on June 21, 2013. On July 26, 2013, a notice of video teleconference hearing was issued scheduling the case for August 13, 2013. At the hearing, I received two Government exhibits marked as Government Exhibits (GE) 1 and 2. Also, I considered Applicant's testimony and the testimony of one Government witness. I denied Department Counsel's motion to admit an exhibit marked as GE 3. The transcript was received on August 16, 2013.

### **Findings of Fact**

Applicant is a 45-year-old married man with two teenage children. He graduated from college in 1990 and earned a master's degree of business administration in 1997. Currently, Applicant works as the assistant construction administration head for a construction company. (Tr. 38) He has worked for this company for nearly five years. (Tr. 38)

From August 2003 to August 2007, Applicant worked for an industrial manufacturing company that manufactures doors and windows. (GE 1 at 13) He was an upper-level manager who supervised 16 people. (Tr. 33, 40-41) Applicant's stint with this company became troubled shortly after a rival coworker was promoted to a supervisory position over Applicant. They had never gotten along before the promotion, and their relationship worsened afterwards. (Tr. 43) In August 2007, Applicant was fired. (Tr. 43)

In September 2011, Applicant completed a security clearance application. He was required to answer the following question under Section 13C regarding his employment record, which reads as follows:

Has any of the following happened to you in the last 7 years?

1. Fired from a job;
2. Quit a job after being told you would be fired;
3. Left a job by mutual agreement following charges or allegations of misconduct;
4. Left a job by mutual agreement following notice of unsatisfactory performance;
5. Left a job for reasons under unfavorable circumstances; [or]
6. Laid off by an employer.

Applicant answered "Yes" and noted that he was laid off from his employer as part of a "reduction in force due to a downturn in [the] housing construction market," and that "a new plant manager came in and made changes in the management structure." (GE 1 at 14)

During a subject interview, Applicant told the agent that he was laid off. (GE 2 at 3) When confronted with information that indicated that he was fired, Applicant then acknowledged that he was fired, and said that he listed that he was laid off on the security clearance application because that is what the human resources manager told him was reflected in his employment records. (GE 2 at 4)

Applicant testified that on the day that his former employer released him, it was “crystal clear it wasn’t a reduction-in-force.” (Tr. 43) However, he contends that he decided to contact the human resources manager to ask her how his termination was characterized in his ex-employer’s personnel records because employers sometimes characterize terminations for cause as reduction-in-force-related layoffs. According to Applicant, the human resources director described his release as the latter. (Tr. 43-44; 52)

The human resources manager testified. She agreed that she spoke with Applicant a few years after he left the company about the nature of his termination, but denies that she told him his termination was listed as a reduction-in-force-related layoff in his personnel file. Instead, she contends that he told her that he was applying for a security clearance, and asked her to tell anyone who might contact her about his employment history that his termination occurred because of a change in plant management. (Tr. 28) The human resource manager agreed, and subsequently told an investigator what Applicant asked her to tell him. (Tr. 29) The investigative agent then showed her information from Applicant’s personnel file that indicated he was fired. (Tr. 29) She then confirmed that Applicant was fired. (Tr. 29)

### **Policies**

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together 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 to obtain a security clearance.

## Analysis

### Guideline E, Personal Conduct

The security concern under this guideline is as follows:

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 ¶ 15)

The Government presented no evidence that the reasons surrounding Applicant's termination from his employer in 2007 generated a security concern. Consequently, I resolve SOR subparagraph 1.a in Applicant's favor.

There is no record evidence that the human resource manager of Applicant's former employer checked his personnel file and advised him that it reflected that he had been fired when he contacted her a few years after leaving the company, as alleged in SOR subparagraph 1.d. In fact, she told him that she would characterize his dismissal as due to a change in plant management. I resolve this allegation for Applicant.

Applicant's explanation of the circumstances surrounding his departure from the company where he worked in 2007 provided throughout the investigative process raises the issue of whether the following disqualifying conditions under AG ¶ 16 apply:

(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; and,

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

I conclude that both disqualifying conditions apply. Applicant testified that it was "crystal clear" on the day he was dismissed from employment that it was involuntary. However, during the investigative process, he attributed his dismissal to a reduction-in-force and a management change. The nature and seriousness of the falsification was compounded because Applicant, after completing the security clearance application, called his ex-employer's human resource manager, told her he was undergoing a security clearance investigation, and asked her to tell any investigative agent who inquired into his work record that he left the company because of a management change.

Applicant contends that it not unusual for employers to fire people for cause, but provide non-cause related explanations on file such as reductions-in-force or change in management. Because he was uncertain how his ex-employer characterized the status of his departure, Applicant argues that his response on his security clearance application and to the investigator do not constitute intentional omissions.

Applicant's argument has no merit. Security clearance applicants are required to provide full, frank and truthful answers to questions at all phases of the investigative process. Consequently, he had a duty to disclose the circumstances of his termination regardless of how his employer characterized his termination in his personnel file. I conclude that none of the mitigating conditions 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 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.

I considered the whole-person factors in my evaluation of the disqualifying conditions and they do not merit a favorable conclusion.

### **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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, 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.

MARC E. CURRY  
Administrative Judge