



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



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)

ISCR Case No. 12-00740

**Appearances**

For Government: Braden C. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

06/05/2014

**Decision**

HOWE, Philip S., Administrative Judge:

On May 8, 2011, Applicant submitted his electronic version of the Security Clearance Application (e-QIP). On August 26, 2013, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E. 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on September 30, 2013. Applicant requested his case be decided on the written record in lieu of a hearing.

On December 18, 2013, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on December 30, 2013. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on January 8, 2014. Applicant filed a Response to the FORM within the 30-day time allowed that would have expired on February 7, 2014. I received the case assignment on May 12, 2014. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant denied the allegations in Subparagraphs 1.b, 1.g, 1.h., 1.i, and 1.j. He admitted the allegations in Subparagraphs 1.a, 1.c to 1.f, and 1.k. (Items 1-3)

Applicant tested positive on a urinalysis test before his entry into the U.S. Army in September, 2005. He claims the Army discounted the test results because other new recruits also tested positive, including some of the recruiters. Applicant admitted this allegation in Subparagraph 1.a. of the SOR. Applicant enlisted in 2006 in the Army and served in the Reserves up to and including the present time. His command approved an exception as noted in his records. Applicant denied on his enlistment papers any prior use of a controlled substance. He currently serves as a military policeman. (Items 4-7)

Applicant denied the allegation in Subparagraph 1.b. that he received non-judicial punishment for a violation of Article 134 of the UCMJ by communicating a threat on July 6, 2006 when he stated, "If I could bring a round back from the range, I would kill Drill Sergeant ----" The punishment imposed by his commander was 45 days extra duty, a reduction in rank to E-2 from E-3, and 45 days restriction. Applicant contends he made a silly remark at the range one day to other trainees and a few days after that comment a live round was found in the company area while he was away. He asserts the round was not his and he had nothing to do with it. In the personal subject interview in September 2011 for his security clearance Applicant was vague about the details of the incident and attributed his comment to his sarcastic nature. The evidence in the file shows the allegation to be true. (Items 3-7)

Applicant admits he was terminated from employment in May 2007 from one department store (Subparagraph 1.c), and in June 2008 and February 2009 from another store (Subparagraph 1.d), for disciplinary reasons. Applicant worked as a security investigator against store theft for both businesses. The first termination occurred allegedly because Applicant was not the type of person the company wanted in that position at the age of 19. The second and third terminations happened after

Applicant followed a shoplifter into the parking lot without calling for support, contrary to company policy. (Items 3-9, Answer)

Applicant had several disciplinary issues while working for another employer from November 2009 to June 2011. Those problems included verbal and written warnings for speed alerts, attendance issues, displaying an attitude, not following instructions, and not clocking out on time (Subparagraph 1.e). He admitted this allegation as it pertains to attendance and failure to follow instructions. When interviewed on October 20, 2011, Applicant initially denied having employment issues with this employer. The government investigator then confronted Applicant with the information from the company about his employment. Applicant told the investigator that someone at that employer told him nothing would be in his employment file (Subparagraph 1.g). Applicant denied this allegation as it pertains to receiving a written warning for failure to clock out of work properly. The evidence in the file shows this allegation to be true. (Items 3-9)

Applicant had several disciplinary issues at a company that provided security services to businesses. Applicant walked past one store and saw people in it on April 19, 2011, at about 1:30 in the morning. He continued on his rounds and did not report their presence because he thought they worked there and were rearranging the inventory. Later it was discovered by the owner that those persons were burglarizing the store. Applicant also provided unacceptable services to a client. He was also counseled for attendance and tardiness (Subparagraph 1.f). Applicant admitted this allegation. (Items 3-9, Answer)

Applicant's interview with a government investigator on October 20, 2011, also concerned any employment issues he had with other employers. Applicant claimed he only had a few tardiness issues with the employer discussed in Subparagraph 1.e above and possibly the Army Reserves when he served on duty. However, he failed to disclose all the employment issues with the companies for whom he worked as set forth in Subparagraphs 1.e and 1.f previously. Applicant denied this allegation. The evidence in the file shows the allegations to be true. (Items 3-9)

During the same October 20, 2011 interview, Applicant admitted to the government investigator and security clearance adjudicator that he was making statements he thought they wanted to hear (Subparagraph 1.i). He also told the investigator that he told his employers things he thought they wanted to hear to help him get through any unpleasantness that occurred at that time whether he meant the statements or not (Subparagraph 1.j). Applicant denied both of these allegations. However, the evidence in the file shows the SOR allegations to be accurate. (Items 3-9)

Applicant certified as true and accurate on his SF-86 form on August 5, 2011, his negative answer to Question 13C, "Have you received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace?" Applicant failed to disclose his employment disciplinary actions with the two employers set forth in Subparagraphs 1.e and 1.f. Applicant admitted this SOR allegation. (Items 3-9, Answer)

### **Policies**

When evaluating the 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 useful in evaluating the applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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 contained in the record.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 or

safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

AG ¶ 15 expresses the security concern pertaining to 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. 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 following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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;

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

(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;

(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 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 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 workplace;

(3) a pattern of dishonesty or rule violations; and,

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant had various performance issues with his four private employers while working for them as a security and loss prevention investigator from 2007 to 2011. Three employers terminated Applicant because he did not meet performance standards, failed to follow warnings for various employment related violations, and for not stopping a burglary at a store on his security route.

Applicant also had two security concerns when he joined and was in basic training for the Army. He tested positive on an enlistment drug test, but it was excused by the induction center commander because there may have been a bad batch of testing materials. While in basic training, Applicant accepted non-judicial punishment for communicating a threat on July 6, 2006. Applicant allegedly stated that, if he could bring back a round of ammunition from the firing range, he would use it to kill his drill instructor.

All of these events satisfy the requirements under AG ¶ 16(c), 16(d), and 16(e) as disqualifying security concerns. They are credible adverse information under the drug involvement, personal conduct, psychological conditions, and criminal conduct guidelines. Considered as a whole they support a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, and other characteristics showing the Applicant may not properly safeguard protected information under AG ¶ 16(c). The same facts apply to AG ¶ 16(d) with the same determination because of Applicant's inappropriate behavior in the workplace, a pattern of rule violations, and misuse of the employer's time or resources. Finally, Applicant's personal conduct between 2005 and 2011 creates a vulnerability to exploitation, manipulation, or duress because it affects his community standing along with his personal and professional reputation.

Next, Applicant failed to disclose on his SF-86 his employment issues with two former employers, did not inform the government investigator of the accurate information regarding his employers until confronted by that person during an interview on October 20, 2011, and admitted he told the investigator and his former employers what they wanted to hear to avoid unpleasantness. All these allegations as set forth in SOR allegations Subparagraphs 1.g to 1.k support the disqualifying conditions of AG ¶¶ 16(a) and 16(b) because of the deliberate omissions of relevant facts on the personal security questionnaire and deliberately providing false information to a government investigator.

AG ¶ 17 provides conditions that could mitigate security concerns:

(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;

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

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of these mitigating conditions apply. Applicant did not attempt at any time to make prompt efforts to correct any and all omissions or falsifications in the relevant documents or to the government investigator. No authorized personnel told Applicant what to answer on the SF-86 nor did he cooperate fully and truthfully. The offenses and incidents are not minor or infrequent. There is a pattern of this type of conduct. Applicant has not obtained any counseling to correct his past behavior. He has not taken positive steps to reduce or eliminate his vulnerability to coercion or exploitation. The information about Applicant is substantiated and he admitted most of it. Association with criminals is not relevant in this case. Consequently, there is no mitigation to alter the outcome of this security determination.



## **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.

Under AG ¶ 2(c), 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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant demonstrated a pattern of inappropriate and questionable conduct from 2005 to 2011 that calls into question his ability to safeguard classified information. He could not confine his conduct to accepted employment norms or complete his work assignments in accordance with his employer's requirements. Applicant also could not fully disclose accurately and honestly information the government sought upon which to make an informed judgment about his security eligibility. The government had to investigate Applicant to find the truth and expose the serious discrepancies between the information he disclosed and what actually occurred.

Overall, the record evidence leaves me with serious questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns under the guideline for Personal Conduct. I conclude the whole-person concept against Applicant.

## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a to 1.k:	Against 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.

---

PHILIP S. HOWE  
Administrative Judge