



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



In the matter of: )  
)  
) ISCR Case No. 12-04191  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

01/29/2015  
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**Decision**  
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COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline E, personal conduct. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

On June 4 2014, the Department of Defense Office Consolidated Adjudication Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct. DOD CAF acted 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 (Ans.) the SOR on July 22, 2014. He requested a hearing before an administrative judge. The case was assigned to me on September 17, 2014.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 28, 2014, with a hearing date of December 4, 2014. The hearing was convened as scheduled. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government's exhibit list was marked as a hearing exhibit (HE I). Applicant testified and offered exhibits (AE) A and B, which were admitted into evidence without objection. The record was kept open and Applicant timely submitted AE C and D, which were admitted into the record without objection. DOHA received the hearing transcript (Tr.) on December 16, 2014.

### **Findings of Fact**

In Applicant's answer to the SOR, he denied the allegations listed in ¶¶ 1.a – 1.c, but admitted the allegations listed in ¶¶ 1.d and 1.e. After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact.

Applicant is 40 years old. He is single with no children. He holds a high school diploma and has received some college credit for courses taken. He currently works for a government contractor in the security field. He began working for his current employer in 2002. He was promoted to supervisor in 2003. He has no military background. He has never held a security clearance.<sup>1</sup>

Applicant's conduct raised in the SOR includes: (1) claiming that he obtained an associate's degree when he did not earn such a degree in an application for a position of trust dated August 2003, in a security clearance application dated November 2011, and during an interview with a defense investigator in February 2012 (SOR ¶¶ 1.a – 1.c); (2) filing for Chapter 13 bankruptcy in December 2010 (SOR ¶ 1.d); and being arrested and convicted of driving under the influence (DUI) in August 2008. (SOR ¶ 1.e).

From 1992 through 1997, Applicant attended a state university. He also attended a second college during the summer periods of 1993 and 1995. Overall, Applicant earned 79 credit hours and had a grade point average (GPA) of 1.706 (on a 4.0 scale, this GPA was below a "C" average). Since his major was electronics technology, he was eligible to receive an associate's degree upon completing 72 hours of courses, including certain required courses. He did not achieve a degree.<sup>2</sup>

Applicant mistakenly believed he had achieved an associate's degree. He believed this because while he was in school an indicator on his report cards changed from "undergraduate" to "associate of applied science." When this change happened, he assumed he had taken enough courses to qualify for an associate's degree. He acknowledged that he did not receive a diploma. When he filled out his position of trustworthiness application in 2003, his security clearance application in 2011, and

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<sup>1</sup> Tr. at 4, 20-21, 29; GE 1.

<sup>2</sup> Tr. at 21; GE 3-4; AE A-B; Ans.

when he was interviewed by an investigator in 2012, he was still under the mistaken belief that he had achieved an associate's degree. He had no intention of deceiving or misleading the Government by claiming he was awarded an associate's degree when he really had not received one. He did not benefit in any manner by claiming to have such a degree. His job does not require that he have an associate's degree. I find credible Applicant's testimony that he reasonably believed he had an associate's degree when he did not.<sup>3</sup>

Applicant filed for Chapter 13 bankruptcy protection in 2010. He incurred approximately \$100,000 worth of debts while attending school, commuting to school, and when he underwent a medical procedure that was expensive and caused him to miss work. He entered into a Chapter 13 wage-earner plan and has been paying \$116 per month since October 2010. He will complete the payment plan later this year. His current financial condition is good. He has no delinquent debts and has accumulated \$120,000 in his retirement account.<sup>4</sup>

Applicant was arrested for DUI in August 2008. He was drinking at a bar with a friend and after the evening out he followed the friend home in his car. He was stopped by law enforcement for running a stop sign. He was given field sobriety tests and asked to take a breathalyzer test. His test result was above the legal limit and he was arrested. He pleaded guilty and was sentenced. He paid his fine and completed all his court-ordered requirements. He has not had another alcohol-related incident since then. He continues to drink socially, but does not drink and drive.<sup>5</sup>

Applicant presented a character statement from his work operations manager. She described him as a trusted and selfless supervisor who looks after the best interests of his employees. She also knows that he is a devout person in his personal life.<sup>6</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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the

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<sup>3</sup> Tr. at 22, 29, 31, 36-38; GE 1-3; Ans.

<sup>4</sup> Tr. at 24-25, 33, 39-40; GE 3; AE C.

<sup>5</sup> Tr. at 27-28; GE 3.

<sup>6</sup> AE D.

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 contained in the record.

Under 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 applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to 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.

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).

## **Analysis**

### **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. 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 ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying conditions are potentially applicable:

(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; and

(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.

Applicant was under the mistaken belief that he had obtained an associate's degree. He did not intend to deceive or mislead the Government when he supplied this information on the two forms and during the investigative interview. He had no motive to deceive because he had nothing to gain by claiming this degree. AG ¶¶ 16(a) - 16(b) do not apply to SOR ¶¶ 1.a – 1.c. Applicant's 2008 DUI and 2010 bankruptcy, considered as a whole, support an assessment of questionable judgment. AG ¶ 16(c) applies to SOR ¶¶ 1.d and 1.e.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(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's DUI was seven years ago and there has been no similar recurrence since then. He has made all of his required bankruptcy plan payments over the past four years and is on track to complete the plan later this year. His current financial status is good. His operations manager attests to his trustworthiness. Given these circumstances, I find sufficient time has passed to reasonably conclude that such future behavior is unlikely to recur. AG ¶ 17(c) applies.

## **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.

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 the facts and circumstances surrounding this case. I considered Applicant's service to his company. I also considered his demeanor and credibility while testifying about his mistaken belief concerning his degree status. Additionally, I considered the strong recommendation he received from his manager concerning his trustworthiness. I also considered that the DUI and bankruptcy occurred years ago and that he has taken appropriate mitigating action in each case. Applicant met his burden to provide sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline E, personal conduct.

## **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
Subparagraphs 1.a-1.e:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert E. Coacher  
Administrative Judge