



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



In the matter of: )  
)  
) ISCR Case No. 14-04863  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

07/06/2017  
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**Decision**  
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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On February 10, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct. DOD CAF acted under Executive Order (EO) 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).<sup>1</sup>

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<sup>1</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant answered the SOR on April 7, 2015, and requested a hearing. The case was assigned to me on January 18, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 18, 2017, and the hearing was convened as scheduled on February 22, 2017. The Government offered exhibits (GE) 1 through 3, 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 through F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on March 1, 2017.

### **Findings of Fact**

In Applicant's answer, he denied the allegations in the SOR. After a thorough and careful review of all the pleadings and evidence, I make the following findings of fact.

Applicant is 41 years old. He is married for the second time and has four children. He currently works in the private sector in a position not requiring a security clearance. He is seeking a clearance for a position with a government contractor. From August 2003 to December 2012, he worked for two different contractors as a security clearance investigator. He has a bachelor's degree.<sup>2</sup>

The allegations raised in the SOR include: (1) Applicant was removed from a contract a government agency had with his employer in December 2012, as a result of a quality control investigation (See SOR ¶ 1.a); and (2) Applicant resigned from his government contractor job in March 2012, while undergoing an integrity investigation. He is not eligible for rehire. (See SOR ¶ 1.b)

From August 2003 to March 2012, Applicant worked for a government contractor (Contractor A) as an investigator. His job was to perform background investigations on people seeking security clearances or trustworthiness determinations. In 2005, he was promoted to a senior investigator position. He claimed that he was given the complex cases and that he was chosen to train other investigators. In his 2011 job performance appraisal, he was counseled for not meeting quality goals for the year. He received an overall rating of 2.0 (partially meets performance expectations). When he left his position in March 2012, he claimed it was to seek a better opportunity and because he felt that the deadlines established by Contractor A were unreasonable. He was hired by another government contractor (Contractor B) to conduct background investigations. He took a \$5,000 pay cut to take this position. He remained with Contractor B until December 2012 when he was fired.<sup>3</sup>

In February 2012, Applicant's employer (Contractor A) conducted a random audit of his case files. The audit revealed that the files contained inconsistencies in Applicant's reporting as compared to his case notes. Because of what the audit

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<sup>2</sup> Tr. 6, 30; GE 1.

<sup>3</sup> Tr. 30-32, 57, 71, 73; GE 1.

revealed, Contractor A initiated a three-case sampling of Applicant's work product. Before the review was completed, Applicant resigned his position. He claims he was unaware of the investigation at the time of his resignation. The record does not contain evidence that he was formally notified about the investigation before he resigned.<sup>4</sup>

Contractor A concluded its review in April 2012. Of 19 total items reworked, 15 were validated, but 4 were "undetermined." Several minor discrepancies were noted, but nothing was found that affected the adjudication of the cases. Contractor A's findings were sent to the responsible government agency under the contract. That agency was aware Applicant began work for Contractor B in April 2012 doing similar type work. The agency closed the case with Contractor A, but initiated a three-case review of Applicant's work under Contractor B's employment in July 2012. In August 2012, those results revealed that out of 30 cases, 27 were validated and three were "undetermined." No integrity concerns were found, but quality concerns were noted, such as, discrepant information between the rework investigation and Applicant's case notes or report of investigation (ROI); notes that did not support the ROI; sources not given an opportunity to meet Applicant in person; instances of information obtained, but not reported; five instances of missing case notes; and other minor quality concerns. Contractor B proposed to the government agency that it would discuss the results with Applicant, which it did in August 2012. The investigation was reopened in November 2012, for a three-case follow-up. In two cases Applicant reported that he received physical records from interviewees when they reported to the follow-up investigator that they did not provide Applicant with the described records. Because of these continuing problems, Applicant was removed from the contract by the government agency in December 2012. Shortly thereafter, he was terminated by Contractor B. An additional audit of cases was conducted after Applicant's termination covering the period of November 19 to December 19, 2012. Thirty cases were reworked by new investigators. Numerous problems and concerns were discovered including integrity issues, interviewing the wrong person, claiming he received physical records when he did not, employment record information misrepresented, unreported subject contacts, notes not supported by the ROI, and numerous professionalism concerns.<sup>5</sup>

Applicant testified that any discrepancies in his reports were unintentional. He denied taking short cuts in his investigations to complete the process in a timely manner. He stated he believed an investigator for Contractor B was biased against him for personal reasons. He also stated that he was part of a successful class action lawsuit against Contractor A based upon unsuitable working conditions and believed that could be a motive behind the company's investigation of him. I did not find Applicant's testimony credible and the record does not support bad faith by either Contractor A or B concerning each's investigation into Applicant on this matter.<sup>6</sup>

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<sup>4</sup> GE 2 (p. 1 of 338, p. 23 of 338).

<sup>5</sup> GE 2 (p. 16 of 338, pp 23-28 of 338, pp. 82-86 of 338, p. 87 of 338).

<sup>6</sup> Tr. 33-34, 53, 69, 88-89, 96-97, 100; AE B-D.

Applicant produced two summary interviews from former supervisors who worked with him at either Contractor A or B. Both persons recommended Applicant for a security clearance.<sup>7</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 factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a careful weighing 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 national security eligibility will be resolved in favor of the 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 about potential, rather than actual, risk of compromise of classified information.

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<sup>7</sup> AE E.

Section 7 of EO 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 personal conduct 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(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.

Applicant worked for two contractors where he performed similar investigative duties. His work was reviewed in both settings and the results showed a lack of integrity and quality problems with his investigations. His work was deemed so deficient that the controlling government agency had him removed from working on the contract with

contractor B. Although he was investigated by Contractor A, there was no record evidence showing that he was ineligible for rehire. I did not find Applicant's explanations for his actions credible. AG ¶ 16(d) applies.

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.

I considered all of the facts and circumstances of the two investigations into Applicant's work product as a security clearance investigator. Several series of problems were discovered concerning his work. Some of those problems involved integrity issues. The problems were not limited in time or scope and covered a significant period of time. He was ultimately terminated from a contract because of his deficient investigations. For a security clearance investigator, his actions did not constitute a minor offense. His deficient investigations create doubt about his overall trustworthiness, reliability, and good judgment as an investigator, and ultimately on his worthiness to hold a security clearance. AG ¶ 17(c) does not 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(d):

(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 years of contractor service. However, I also considered that he conducted deficient security

clearance investigations that ultimately had him removed from performing duties under the contract and fired. Some of the deficiencies involved integrity issues. Applicant failed to provide sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the Guidelines.

### **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:	Against Applicant
Subparagraph 1.b:	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.

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Robert E. Coacher  
Administrative Judge