



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



In the matter of: )  
)  
) ISCR Case No. 15-03785  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Bayard Glendon, Esquire, Department Counsel  
For Applicant: *Pro se*

March 23, 2017

---

**Decision**

---

MOGUL, Martin H., Administrative Judge:

On January 19, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines K and E for Applicant. (Item 1.) 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) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On February 3, 2016, Applicant replied to the SOR (RSOR) in writing, and he requested that his case be decided on the written record in lieu of a hearing. (Item 2.) On April 4, 2016, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant on April 4, 2016. In the FORM, Department Counsel offered seven documentary exhibits. (Items 1-7.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due by May 8, 2016. Applicant submitted a three page letter, which has been identified and entered into evidence

without objection as Item A. The case was assigned to this Administrative Judge on November 1, 2016. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record discussed above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 39 years old. He is married. He received a Bachelor of Arts degree in 1989. Applicant has been employed by his present employer, a defense contractor, since 1990, and he seeks a DoD security clearance in connection with his employment in the defense sector. (Item 4.)

### **Guideline K - Handling Protected Information**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that shows deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information, which raises doubt about an individual's trustworthiness, judgement, reliability, or willingness and ability to safeguard such information.

1.a. It is alleged in the SOR that in approximately 1991, Applicant committed a security violation when he failed to properly secure a Sensitive Compartmented Information Facility (SCIF) work area. Applicant admitted the allegation in his RSOR, and he wrote that the area was not a SCIF, but he forgot to secure the area with a padlock. He further wrote that in 1991, he was new to working in a secure area. (Item 2.)

1.b. It is alleged in the SOR that in approximately 1991, Applicant committed a security violation when he failed to properly secure a classified document in an area not designated as open storage, and he subsequently failed to report this to his Special Security Officer (SSO). Applicant admitted the allegation in his RSOR, and he wrote that the document was not locked in a safe but was inadvertently left on a desk in the closed area. It was discovered and he was informed by the SSO, so he could not have informed the SSO since the SSO knew of the violation before Applicant. (Item 2.)

1.c. It is alleged in the SOR that in approximately 1997, Applicant committed a security violation when he failed to properly safeguard proprietary information. Applicant admitted the allegation in his RSOR. (Item 2.)

1.d. It is alleged in the SOR that in approximately 2005, Applicant committed a security violation when he disclosed classified information to unauthorized foreign nationals while in a foreign country and he failed to timely report this to his Facility Security Officer. Applicant admitted the allegation in his RSOR, and he wrote that he disclosed a DOD Confidential parameter during a discussion with foreign officials but at

the time of the disclosure he believed the parameter had been declassified. When he learned that it had not been declassified he reported the incident to his program manager, but not to his SSO. Applicant admitted he should have reported this incident to his SSO. (Item 2.)

1.e. It is alleged in the SOR that in approximately 2010, Applicant committed a security violation when he took a cellular device into a SCIF. Applicant admitted the allegation in his RSOR, and he wrote that the violation was inadvertent. He also averred that he immediately reported the incident to his SSO, who told him to never do it again, and Applicant wrote that he never has done it again. (Item 2.)

1.f. It is alleged in the SOR that in approximately 2010, Applicant committed a security violation when he attended a meeting for a classified program for which he had not been granted program access, and he did not leave the meeting even after he realized that he did not have the proper access. Applicant admitted the allegation in his RSOR, and he wrote that he believed that the meeting was a general SCI level discussion, which was a clearance that he held at the time. He further wrote that only after the meeting did he learn that he did not hold the proper clearance, and when he learned this he reported it to his SSO. (Item 2.)

In his Post-FORM letter, Applicant wrote that while he does not dispute that he was involved with the six security violation incidents described on the SOR during his employment, he has only been issued three actual security violation citations. He argues that he was not issued security violations for the two incidents in 2010. (Item A.)

### **Guideline E - Personal Conduct**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness. The following allegations are cited in the SOR as tending to show that:

2.a. The SOR alleges that Applicant's conduct, as set forth in paragraph 1., above, constitutes a violation of Guideline E.

Applicant further wrote that he takes his responsibilities in safeguarding information very seriously, and the incidents above were not the result of a disregard of procedures, and he has learned from his mistakes, and he is much more careful today. Finally, he wrote, "Since the issues in 2010, I make much better use of others in a checks and balances [sic] for all security activities, and I have had no issues since the occurrences in 2010."

## Policies

When evaluating an 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 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.

A person who applies for access to classified information seeks to enter 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.

Section 7 of Executive Order 10865 provides that adverse 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline K - Handling Protected Information**

The security concern relating to the guideline for Handling Protected Information is set out in AG ¶ 33:

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

The guideline notes several conditions that could raise security concerns. Based on Applicant's conduct as a whole, disqualifying conditions ¶ 34(a), "deliberate or negligent disclosure of classified or other protected information to unauthorized persons, including but not limited to personal or business contacts, to the media, or to persons present at seminars, meetings, or conferences" and ¶ 34(g), "any failure to comply with rules for the protection of classified or other sensitive information" are applicable. The evidence of Appellant failing to properly follow the rules for handling protected information, on at least six occasions over the course of 20 years, whether or not he was issued citations, is sufficient to raise these disqualifying conditions.

AG ¶ 35 provides conditions that could mitigate security concerns arising from improperly handling protected information. While it has been several years since Applicant was last cited or involved with security violations, no independent evidence, such as character letters, employment evaluations, or counselling or remedial security training reports, has been introduced to establish that Applicant has significantly changed his conduct to insure that these violations will not occur in the future, and I do not find that any of the mitigating conditions is applicable in this case. Therefore, I conclude that Appellant has not mitigated the Handling Protected Information concerns.

### **Guideline E - Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgement, 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 Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, lack of candor, dishonesty, unreliability, and untrustworthiness.

The guideline notes several conditions that could raise security concerns and could potentially apply in this case. Because Applicant was involved in several incidents that do raise an issue about his judgment and reliability, I find that Applicant's conduct supports disqualifying conditions ¶ 16(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 judgement, 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." ¶ 16(d) is also applicable, "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 judgments . . . or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . (3) a pattern of dishonesty or rules violations."

For the same reasons cited above, as to why no mitigating conditions apply under AG ¶ 35, I find that no mitigating conditions are applicable under AG ¶ 17. I, therefore, resolve Guideline E against Applicant.

### **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. Based on all of the reasons cited above as to why the disqualifying conditions apply and are controlling under Guidelines K and E, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

### **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 K:	AGAINST APPLICANT
Subparagraphs 1.a. -1.f.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	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.

Martin H. Mogul  
Administrative Judge