DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-07147
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: Lori M. Brown, Personal Representative

06/12/2017

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Decision

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MENDEZ, Francisco, Administrative Judge:

Applicant did not present sufficient evidence to mitigate security concerns raised by his lack of candor during a security clearance interview. Clearance is denied.

Statement of the Case

On August 20, 2016, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the personal conduct guideline.[1] Applicant answered the SOR and requested a hearing.

On February 23, 2017, a date mutually agreed to by the parties, the hearing was held. Applicant testified and called two witnesses. The documentary evidence offered by the parties was admitted into the administrative record. (Government Exhibits 1 – 4 and

[1] The DOD CAF took this action under Executive Order (E.O.) 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). DOD CAF adjudicators reviewed the case using the previous version of the adjudicative guidelines, dated September 1, 2006, which were in effect at the time.

Applicant's Exhibits A – I.)[2] Post-hearing, Applicant submitted additional exhibits, which were also admitted into the record. (Exhibits J and K.)[3] The transcript (Tr.) was received on March 2, 2017, and the record closed on March 24, 2017.[4]

Procedural Issues

New Adjudicative Guidelines

On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position."[5] The National Security Adjudicative Guidelines (hereinafter "new adjudicative guidelines" or "AG"), which are found in Appendix A to SEAD-4, are to be used in all security clearance decisions issued on or after June 8, 2017.[6] In light of this explicit direction (and absent lawful authority to the contrary), I have applied the new adjudicative guidelines.[7] ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).[8]

SOR Amendment

Pursuant to ¶ E3.1.17 of the Directive and without objection, the SOR was amended to correct a minor typographical error. (Tr. 165-171; Exhibit 3.)

[2] Applicant's objection to Exhibit 3 was overruled. Tr. 22-26. No further objections, except as further discussed herein, were raised. ISCR Case No 03-21434 at 5 (App. Bd. Feb. 20, 2007) ("the DOHA process encourages Judges to err on the side of initially admitting evidence into the record, and then to consider . . . what, if any, weight to give to that evidence.").

[3] Exhibit J consists of Applicant's February 24, 2017 email and two attachments. Exhibit K consists of Applicant's March 17, 2017 email and two attachments, as well as Department Counsel's response noting no objection to the admission of the Applicant's post-hearing exhibits.

[4] Correspondence, the notice of hearing, and case management order are attached to the record as Appellate Exhibits I – III.

[5] SEAD-4, ¶ B, *Purpose*.

[6] SEAD-4, ¶ C, *Applicability*.

[7] Nonetheless, I have considered the previous version of the adjudicative guidelines and my ultimate decision in this case would have been the same.

[8] *See also* ISCR Case No. 07-00029 at 3 (App. Bd. Dec. 7, 2007) (when the guidelines were last revised, the Board stated the following, "Quasi-judicial adjudications must be made within the bounds of applicable law and agency policy, not without regard to them.")

Reconsideration of Evidentiary Ruling

Directive, ¶ E3.1.13, states, in pertinent part:

> As far in advance as practical, Department Counsel and the applicant shall serve one another with a copy of any pleading, proposed documentary evidence, *or other written communication to be submitted to the Administrative Judge*.[9]

On December 13, 2016, I issued an order, requiring the parties to exchange documents before the hearing. (Appellate Exhibit III.) Department Counsel submitted proof that the Government forwarded Exhibits 1 – 4 to Applicant before the hearing. (Exhibit 4.)[10]

During cross-examination, Department Counsel offered documentary evidence of purported misconduct allegedly committed by Applicant at a different job. Specifically, a 2012 internal corporate email complaining about Applicant's purported unprofessional conduct and unsatisfactory work. This email from a third-party witness who did not testify at hearing was marked and is included in the record as Appellate Exhibit IV.[11]

Applicant had not been provided or seen a copy of this internal corporate email before Department Counsel attempted to cross-examine him with it at hearing. No witness was called by the Government to authenticate the email or to vouch for its veracity. This new allegation of employee misconduct is not related to the SOR allegations and it purportedly occurred *after* the alleged events referenced in the SOR.

Department Counsel offered Appellate Exhibit IV to show conduct consistent with or in conformity with the employee misconduct alleged in SOR 1.a. It was also offered to rebut Applicant's claim that the alleged misconduct was a one-time incident and a fabrication by a former employer to justify his unlawful firing.[12] (Answer; Exhibit A.)

[9] (emphasis added). *See also* Directive, ¶ 4.3; ISCR Case No. 12-11375 at 6 (App. Bd. June 17, 2016) ("While non-alleged conduct may be relevant in establishing an SOR allegation, it may not become the basis for denying or revoking a security clearance.").

[10] Applicant also complied with the case management order, forwarding his hearing exhibits to Department Counsel a week before the hearing. Applicant's email forwarding his hearing exhibits and a copy of each of the attached documents (with notation as to their corresponding Exhibit letter) was included in the record as App. Exh. VI.

[11] Directive, ¶ E3.1.22 (prohibiting the admission of third-party statements in DOHA proceedings, unless the party-opponent is given an opportunity to cross-examine the declarant of the statement or if the proponent of the evidence establishes the two listed exceptions).

[12] The Federal Rules of Evidence (Fed. R. Evid.) serve as a guide in DOHA proceedings, and can be relaxed by a judge to allow for the development of a full and complete record regarding a person's suitability for access to classified information. Directive, ¶ E3.1.20. The Appeal Board has generally found this type of Fed. R. Evid. 404(b)-type evidence admissible in DOHA proceedings. *See e.g.* ISCR Case No. 14-00978 (App. Bd. Jun. 16, 2016); ISCR Case No. 08-06334 (App. Bd. Jan. 15, 2010). *See also* Fed. R. Evid. 608(b) (permitting cross-examination with extrinsic evidence of a witnesses' conduct if such conduct is probative

Applicant objected to the admission of Appellate Exhibit IV or its consideration on several grounds, including lack of proper notice.

The alleged unprofessional conduct described in the internal corporate email (Appellate Exhibit IV) post-dates the employee misconduct alleged in the SOR, and involves a different employer on an unrelated government contract. Applicant was not aware of this email before it was handed to him on the stand during cross-examination. Department Counsel did not send the document to Applicant before the hearing, and did not provide notice of his intent to use the document at hearing. In response to questions as to why the Government had not provided such notice or amended the SOR pre-hearing to reflect this new potentially disqualifying information, Department Counsel stated that the document was received after the SOR was issued. Department Counsel declined the opportunity to amend the SOR to reflect the information set forth in Appellate Exhibit IV. Based on the lack of proper notice, I sustained Applicant's objection to the admission of Appellate Exhibit IV.[13] (Tr. 88-104, 185-186.)

At the same time, over Applicant's objection, I permitted Department Counsel to cross-examine Applicant regarding the unalleged conduct described in the email for the limited purpose of impeachment.[14] The cross-examination did not elicit any relevant evidence that would substantiate the allegations of employee misconduct set forth in the internal corporate email or which would tend to substantially undermine Applicant's testimony. At most, the evidence adduced at hearing reflects that Applicant's work was deficient and he was placed on an employee performance plan.[15]

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as to truthfulness); Fed. R. Evid. 806 (the credibility of a declarant may be attacked through "evidence of a declarant's inconsistent statement *or conduct*, *regardless of when it occurred*. . . .") (emphasis added).

[13] Generally, an adverse party is not entitled to advanced notice of rebuttal evidence, as the proponent of such evidence would not be aware of its necessity. *See generally* ISCR Case No. 00-0433, 2001 DOHA LEXIS 349, * 8 (App. Bd. Sep. 6, 2001) ("An applicant is not entitled to written notice that Department Counsel wants to present evidence to impeach or rebut documentary or testimonial evidence that applicant presents at a hearing.") Here, the Government was on clear notice well before the hearing as to Applicant's position and the evidence he would be presenting. Counsel affirmatively chose not to provide notice regarding Appellate Exhibit IV until well into his cross-examination. The Government's attempt to use the proverbial "shield" as a "sword" does not square with the explicit notice and liberal disclosure requirements of the Directive, applicable executive orders, and fundamental notions of fairness.

[14] ISCR Case No 96-0360, n. 2 (App. Bd. Sep. 25, 1997) ("The Board rejects Department Counsel's argument that impeachment is limited to actual witnesses at a DOHA hearing. . . . Either party can seek to impeach the testimony of a witness, or any written statement or other documentary evidence that is admitted into evidence during the proceedings below.") *See also* ISCR Case No. 00-0433, 2001 DOHA LEXIS 349, * 5 (in finding that the judge erred in not allowing the cross-examination of an applicant with extrinsic evidence of similar conduct alleged in the SOR, the Board stated: "[i]mpeachment of a witness's testimony is relevant, even if the testimony being impeached is not directly related to an SOR allegation.")

[15] *Contrast with* ISCR Case No. 08-08085 (App. Bd. Apr. 21, 2010) (where an applicant's prior inconsistent statements, which were summarized in an otherwise inadmissible report of investigation, were effectively used as impeachment and properly considered by the judge in assessing credibility).

After reviewing the entire 200-page transcript and the exhibits, I have reconsidered my evidentiary ruling and now sustain Applicant's objection. The evidence adduced at hearing regarding the unalleged conduct is of limited probative value and is substantially outweighed by the unfairness resulting from the lack of proper notice and late, unexcused disclosure of Appellate Exhibit IV.[16] In explaining the purpose behind the disclosure requirement in E3.1.13, the Appeal Board has previously stated the following:

> Although DOHA proceedings are adversarial in nature, they are not supposed to be "hearing by ambush." . . . The purpose of Directive, Item E3.1.13 is not to ensure that only admissible documents are entered into evidence. Rather, the purpose of Item E3.1.13 is to provide the parties with a reasonable opportunity to prepare for a hearing, and to avoid undue surprise and needless delay.[17]

Accordingly, I have not considered this unalleged conduct in reaching my decision regarding Applicant's suitability for continued access to classified information.

Findings of Fact

General Background

Applicant, 64, immigrated to the United States in 1981 and became a U.S. citizen in 1994. He is divorced and has a child, who lives with her mother overseas. He states that he has been supporting the federal government as a contractor for nearly 30 years and reports first receiving a security clearance in about 1995. A number of former coworkers and supervisors provided favorable recommendations, noting Applicant's professionalism in the workplace. Applicant has received awards and recognitions for his work as a federal contractor, including a recent award for going "above and beyond" by traveling out-of-state late on a Friday evening to install critical upgrades for a client's information systems over a holiday weekend. He has been with his current employer for at least two years.[18]

Alleged Employee Misconduct

Applicant worked for Contractor A on two separate occasions. He was employed as an information assurance specialist from November 2009 to June 2010.[19] His supervisor at the time told an investigator conducting Applicant's security clearance investigation that Applicant "was a good worker, he was by the book."[20] His team lead

[16] *Cf*. Fed. R. Evid. 403.

[17] ISCR Case No. 01-23356 (App. Bd. Nov. 24, 2003).

[18] Tr. 7-8, 19, 32-70, 82-86; Exhibits 1, 2, A, B, G, H.

[19] Exhibit 1 at 13-17.

[20] Exhibit G at 2.

and the program manager testified at hearing, and provided favorable information regarding Applicant's work, reliability, trustworthiness, and the manner in which he handled his security obligations.[21] Applicant's former program manager testified that Applicant "did what he was told to do."[22]

Applicant reports resigning from his position with Contractor A in June 2010 for a better job opportunity. Specifically, he was hired as a direct federal employee of a U.S. Government agency. He lasted four months in the new job before resigning due to a lack of "guidance or support." He was then unemployed for about three months before rejoining Contractor A in June 2010.[23]

The employee handbook that Applicant signed states that Applicant's employment with Contractor A was "At-Will." As an at-will employee, Contractor A had the "right to terminate [Applicant's] employment at any time, regardless of any verbal or written statements issued by [Contractor A] and with or without cause or advance notice."[24]

Applicant's second tour with Contractor A did not end well. He and his first-line supervisor did not get along after Applicant refused to report to work to fill in for another employee who could not make it into work due to an emergency.[25] The supervisor discussed with Human Resources (HR) her frustrations with Applicant. HR advised Applicant's former supervisor that her failure to document Applicant's purported workplace issues in writing could potentially cause a legal issue for the company if Applicant were subsequently fired.[26] The supervisor was specifically advised by HR to provide Applicant written counseling on a HR-prepared counseling form. No such documentation is reflected in the employment records admitted into the record.

The workplace issues between Applicant and his former supervisor came to a head between late December 2011 and early January 2012. She fired Applicant via email on January 4, 2012. Applicant immediately replied to the email, requesting an explanation for the firing. Two days later, Applicant's former supervisor sent him another email setting forth a number of reasons for the firing, principally dealing with her view that he was not a team player. The supervisor also claimed for the first time that following an internal review it was uncovered that Applicant had committed timecard fraud.[27] (No

[21] Tr. 32-70.

[22] Tr. 52.

[23] Exhibit 1 at 13-17.

[24] Exhibit 3 at 21.

[25] Exhibit 3; Tr. 40-46, 79-81.

[26] Exhibit 3 at 14 (HR email to Applicant's former supervisor: "we need documentation that [Applicant] was counseled. . . . if we eventually terminate [him], he could always claim that he was not counseled. This may become a problem or it may not, but this is the body armor we would need.").

[27] Exhibit 3 at 9-16.

documentation was contained in the employee records and no credible evidence was offered to substantiate this allegation of employee misconduct.)

Applicant acknowledges that he received both emails from his former supervisor, understood the reasons she gave for firing him, and that both emails clearly state he was not eligible for rehire. Applicant adamantly denies he committed timecard fraud or any other misconduct alleged by his former supervisor. He disagrees with the written reasons given by his former supervisor for his firing, and suspects the true reason(s) for his firing was something else.[28]

After being fired, Applicant filed for unemployment compensation. A state agency conducted an independent investigation to determine Applicant's eligibility for unemployment compensation.[29] A memo that Contractor A's HR Director wrote during the course of this independent investigation was included with Applicant's employment records. In the memo, the HR Director stated that Applicant was terminated because the government client complained about Applicant's "rude and unprofessional behavior and refusal to follow directives."[30] (The memo from the HR Director makes no mention of timecard fraud.) The HR Director also stated in the memo that he would attend the hearing before the state agency and an internal email from the company shows that the HR Director requested written documentation from Applicant's former supervisor showing the counseling she had purportedly accomplished.[31] No one from the company attended the unemployment compensation hearing. The state agency determined that Applicant was not fired for cause and granted Applicant's request for unemployment compensation.

The HR Director also states in the memo that Applicant "was verbally counseled prior to [his termination]" by RM, a different supervisor.[32] RM provided a letter that was admitted into the record without objection. RM makes no mention of this supposed counseling. Instead, RM states that:

> During my time as the [ ] team lead, [Applicant] put forth great effort . . . [he] was generally professional towards me during my time on the team and enthusiastic about his role in supporting the mission.[33]

[28] Tr. 73-76, 104-107, 113-118, 131, 180-181; Exhibits A, D, I – K.

[29] Exhibit C; Tr. 129-132.

[30] Exhibit 3 at 4; Tr. 125.

[31] Exhibit 3 at 4, 9.

[32] Exhibit C.

[33] Exhibit E.

Applicant testified that the only discussion he recalls having with RM before being fired was about the poor relationship with his former supervisor.[34] RM was the employee whose shift Applicant did not cover for when RM was unable to go to work.

Security Clearance Interview

In June 2012, Applicant submitted a security clearance application. In response to questions about his employment history, Applicant reported that he had been fired by Contractor A six months earlier. He went on to say that he was "not sure to this day" the reason for his firing. He further stated:

> I am still unsure why I and several other people were cut from the contract as there were different contractors working on same project. It appears that there is infighting between the contracting companies involved in the project.[35]

Applicant testified that he understood the importance of the security clearance application, and the need to be "truthful, accurate, and complete" in his responses to the questions asked on the application.[36] He maintains that he is uncertain as to the true reasons he was fired from his position with Contractor A.[37]

In September 2012, an investigator interviewed Applicant as part of the clearance reinvestigation process. Regarding his firing from Company A, Applicant stated that he received an email from his supervisor informing him that he had been fired, and "telling him to report to the security building and return his [ ] badge." He went on to say that "the email did not say why [he] was being fired." He further told the investigator that: (1) "he did not ask why he was being fired," (2) "had experienced no problems while working for [Contractor A];" and (3) "would be eligible for rehire."[38]

Applicant also told the investigator that he was fired around the same time that a competing firm won the government contract he had been working on while employed by Contractor A. He noted that his supervisor "may have thought" that he was one of several employees talking about leaving Contractor A to join the other firm.[39]

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[34] Tr. 125-129.

[35] Exhibit 1 at 14; Tr. 77-78.

[36] Tr. 146-147.

[37] Tr. 173.

[38] Exhibit 2 at 4-5. *But see* Tr. 73-76, 104-107, 113-118; Exhibits A, D (Applicant received both emails from his former supervisor, which, in part, state that he is not eligible for rehire. He also received the second longer email from his former supervisor after requesting an explanation for why he was fired.)

[39] Exhibit 2 at 4-5; Tr. 153-165.

Applicant testified that he was not trying to mislead the security investigator. He acknowledges that he may not have been "forthcoming in [his] answers' to the investigator, since he had read the emails from his former supervisor and did not expand upon the reasons given for his termination. He insists, however, that he was "being very open with that investigator."[40]

Law & Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individuals are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2; SEAD-4, ¶ E.4.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. SEAD-4, Appendix A, ¶¶ 2(c), 2(d).

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant's eligibility, "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." SEAD-4, Appendix A, ¶ 2(b). *See also* SEAD-4, ¶ E.4. Moreover, the Supreme Court has held that officials making "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

[40] Tr. 181-182.

Analysis

Guideline E, Personal Conduct

The crux of the security concerns alleged in the SOR are that Applicant was fired from his job with Contractor A for serious employee misconduct, namely, timecard fraud, and that he then lied during the course of a security clearance investigation about the facts and circumstances surrounding his job termination. The weight of the evidence tends to favor Applicant's position that he was not fired for misconduct, but instead due to a caustic work relationship with his former supervisor. At the same time, however, the evidence shows that Applicant was not fully candid during his security clearance interview when discussing this job termination.

The record evidence raises the personal conduct security concern, which is explained at AG ¶ 15:

> 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. The following will *normally result in an unfavorable national security eligibility determination* . . . 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.

In assessing Applicant's case, I have considered all the applicable disqualifying and mitigating conditions, including the following pertinent ones:

> AG ¶ 16(b): deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;
>
> AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
>
> AG ¶ 17(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;

AG ¶ 17(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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(f): the information was unsubstantiated or from a source of questionable reliability.

Alleged Employee Misconduct (SOR 1.a)

The Government did not supply sufficient evidence to meet its burden of proof as to the allegation of employee misconduct referenced in SOR 1.a. The evidence suggests that the actual reason for Applicant's termination from Contractor A was related to the acrimonious workplace relationship between Applicant and his former supervisor. A job termination under such circumstances does not raise a security concern.

In reaching this conclusion, I have considered the employment records from Contractor A relating to Applicant's firing, including the unsigned, undated, post-termination memorandum purportedly prepared by Applicant's former supervisor, and given it little weight. The documents making up the employment records are internally inconsistent and contradictory, and were clearly prepared with an eye towards litigation. The HR Director, in the memo that he prepared for the state unemployment agency, did not support the former supervisor's unsubstantiated claim of timecard fraud. After conducting its own investigation and holding a hearing, the independent state agency determined that Applicant was eligible for unemployment compensation, as he was not fired for cause.[41] AG ¶ 17(f) applies to this SOR allegation.

Security Clearance Interview (SOR 1.b)

Applicant's claim that he was candid (or, in his words, "very open") with the investigator is not credible. At the time of the clearance interview, which took place a few months after he was fired, Applicant had received, read, and understood the two emails his former supervisor sent him explaining why she, his boss, had fired him. Even though he disagreed with the reasons she gave in those emails for his firing, he was not at liberty to simply disregard them when asked by the investigator about the job termination.

Moreover, Applicant attempted to mislead the investigator as to the details surrounding the job termination. He weaved a story that left the clear impression that he was likely fired for being a disloyal employee who was going to jump ship to a competitor. He falsely told the investigator that he was eligible for rehire by Contractor A. This was contrary to what his former supervisor explicitly told him in both emails (objectively false

[41] *Contrast with* ISCR Case No. 10-03886 at 3 (App. Bd. Apr. 26, 2012) (judge's acceptance of applicant's version of events for his firing over the employer's version undermined, in part, by "the evidence that a state authority had denied Applicant's unemployment claims because they believed he had been fired for fraud.")

statement). He also had no factual basis upon which he could subjectively believe that his statements to the investigator, including that he was eligible for rehire, were true.

The security clearance process is contingent upon the candor of all applicants. It begins with the answers provided in the security clearance application and continues throughout the security clearance process. However, the omission of material, adverse information standing alone is not enough to establish that an applicant deliberately falsified his or her response to a question on an application or asked by a security investigator. Instead, an administrative judge must examine the facts and circumstances surrounding the omission, including a person's age, level of education, work experience, and familiarity (or lack thereof) with the security clearance process, in assessing intent.[42]

Persons seeking to obtain or maintain a security clearance are required to provide full, frank, and truthful answers in response to questions asked by a security investigator, including providing information that might put them in a potentially bad light. Otherwise, a concern arises that the person cannot be trusted to divulge all relevant information in other settings, such as a security breach or violation.[43] Here, Applicant failed to show that he can be trusted by the Government.

Applicant provided half-truths and deliberately held back pertinent material information during his security clearance interview. He did so because he disagreed with the reasons his former supervisor provided him for his firing. Although the record evidence does not support the serious misconduct alleged by his former supervisor, such does not excuse Applicant's decision to not divulge critical and potentially derogatory information to the clearance investigator. Nor does it justify Applicant's attempt to mislead the investigator about the reasons for his firing by Contractor A. AG ¶ 16(a) applies.

Additionally, I find that none of the mitigating conditions fully apply. Although the falsification occurred five years ago, Applicant still fails to accept responsibility for his security-significant conduct. The passage of time alone without evidence of true reform and rehabilitation is of limited mitigating value. Therefore, Applicant's lack of candor during the security clearance process continues to raise a security concern.[44]

[42] *See generally* ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005).

[43] SEAD-4, Appendix A, ¶ 2(i) ("the adjudicative process is predicated upon individuals providing relevant information pertaining to their background and character for use in investigating and adjudicating their national security eligibility. Any incident of intentional material falsification . . . raises questions about an individual's judgment, reliability, and trustworthiness and may be predictive of their willingness or ability to protect the national security.")

[44] ISCR Case No. 15-04856 (App. Bd. Mar. 9, 2017) (Board affirms denial of an applicant who provided false statements during the processing of his 2002 security investigation, some 15 years earlier); ISCR Case No. 10-05909 (App. Bd. Sep. 27, 2012) (affirming denial where applicant deliberately sought to conceal the details behind his past job terminations).

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the whole-person factors listed at SEAD-4, Appendix A, ¶¶ 2(d) and 2(f). I hereby incorporate my above analysis and highlight some additional whole-person factors.

Applicant has held a security clearance for many years without apparent issue beyond those discussed herein. He has generally been considered a good, hardworking, conscientious employee. This evidence raises favorable inferences regarding his suitability. However, the favorable record evidence is insufficient to outweigh the serious security concerns raised by his lack of candor and attempt to mislead the security investigator during his clearance interview. Overall, the record evidence leaves me with doubts as to Applicant's eligibility for continued access to classified information.[45]

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 (Personal Conduct):	Against APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant

Conclusion

In light of the circumstances presented by the record in this case, it is not clearly consistent with the interest of national security to grant Applicant eligibility for continued access to classified information. Applicant's request for a security clearance is denied.

_____
Francisco Mendez
Administrative Judge

[45] I considered the exceptions in Appendix C to SEAD-4 and do not find that any of the exceptions are warranted in this case. Applicant's disqualifying conduct was deliberate and serious, and he has yet to accept responsibility for it. *See* SEAD-4, ¶ E.3 and Appendix A, ¶ 2(h); *contrast with* ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011) (under previous version of the guidelines, judges had "no authority to grant an interim, conditional or probationary clearance.")