



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



In the matter of:

ISCR Case No. 16-00979

Applicant for Security Clearance

**Appearances**

For Government: Caroline Heintzelman, Esq., Department Counsel  
For Applicant: Cheryl Van Ackeren, Esq.

09/26/2018

**Decision**

WHITE, David M., Administrative Judge:

Applicant failed to mitigate the security concerns arising from his attempt to conceal his felony arrest for aggravated assault while applying to renew his clearance. National security eligibility for access to classified information is denied.

**History of Case**

Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) on February 27, 2015, seeking to renew his eligibility for a security clearance. On October 4, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DoD after September 1, 2006.

Applicant answered the SOR in writing on October 25, 2016 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on February 13, 2017. DOHA issued a Notice of Hearing on July 11, 2017, setting the hearing for July 27, 2017. On that date, Department Counsel offered Government Exhibits (GE) 1 and 4 through 9, which were admitted into evidence without objection. Department Counsel also offered proposed GE 2 and 3, comprising two Report of Investigation interview summaries that were not admitted, in the absence of an authenticating witness, over Applicant's Directive ¶ E3.1.20 objection. Applicant testified and offered exhibits (AE) A through N into evidence. Applicant's exhibits were admitted without objection. Two other witnesses testified for Applicant. DOHA received the hearing transcript (Tr.) on August 4, 2017

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implemented new adjudicative guidelines that came into effect on June 8, 2017. All national security eligibility determinations issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as promulgated in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. This decision is issued pursuant to, and cites, the new AG; but my decision would be the same under either set of guidelines.

### **Findings of Fact**

Applicant is 57 years old. He is seeking to renew the security clearance he held while serving on active duty in the U.S. Army for 22 years, in connection with his post-retirement civilian employment. He was honorably discharged and retired as a first sergeant (E-8) on June 1, 2012. Applicant was awarded the Meritorious Service Medal and the Army Commendation Medal three times each, the Army Achievement Medal five times, the Army Good Conduct Medal four times, and various unit, campaign, and service awards. He earned a bachelor's of science degree in business administration (sports management) from a for-profit online university on September 30, 2013. He was unemployed from June 2012 until beginning his current employment in February 2015. He is divorced, with two adult children. (Answer; GE 1; AE K; AE L; Tr. 13, 67.)

Applicant was arrested on June 14, 2014, after he and his son were involved in a series of alcohol-fueled confrontations with his next door neighbors. The neighbors called the local police and reported that Applicant confronted and threatened to shoot them with his shotgun after their complaints resulted in his son's arrest for involvement in an earlier fight at the neighbor's house. Applicant claims that his shotgun was located at his mother-in-law's house some ten minutes away, and that the neighbors fabricated their complaint against him. Nevertheless, the arresting officer reported that Applicant was, "very intoxicated and quickly became belligerent." He was arrested and charged with two counts of felony aggravated assault. (Answer; GE 8; Tr. 69-71, 119-121.)

Applicant was released from jail after posting a \$10,000 bond, and was arraigned on two felony charges of aggravated assault in a court hearing on June 16, 2014. He attended two more court hearings concerning these charges on July 3, and August 7, 2014. During the final hearing, mutual restraining orders were issued to Applicant and his neighbors, and the assault charges were dismissed due to the lack of credibility of any of the witnesses. (GE 8; AE G.)

On January 3, 2015, Applicant was arrested and charged with Driving Under the Influence (DUI). He refused to participate in the field sobriety test or the breathalyzer test when requested to do so by the arresting officer. He admits that he was intoxicated at the time. On January 11, 2016, he pled, "no contest," to the DUI charge, and was given a six-month continued sentence with unsupervised probation and fined \$719. He was also fined \$119 for the citation that led to his initial traffic stop. He successfully completed his probationary period and all other court-ordered DUI evaluations and classes. After imposing an additional \$150 in administrative fees, the municipal court handling this case dismissed the charges on June 28, 2016. (Answer; GE 7; AE H; Tr.95-105.)

When Applicant applied for his current position with the defense contractor, he did not disclose his recent arrest history to avoid adversely affecting his chances of being hired. At the time of his hearing, he had still not informed his supervisors or workplace security personnel about these incidents. When he completed Section 22 (Police Record) of his February 2015 e-QIP (GE 1), he disclosed that during January 2015 he had been, "Pulled over for suspected DUI," but checked, "No," when asked if he had been charged, convicted, or was currently awaiting trial and/or ordered to appear in court as a result of that DUI offense. He explained, "I have not been cited, nor convicted, nor am I awaiting trial. I am waiting to see what they want me to do." He then responded, "No," to the subsequent question that asked if he had any other offenses in the past seven years for which he had, among other things, been issued a summons to appear in court, been arrested, or been charged. He also responded, "No," to the next question that asked if, other than the offense already listed (the DUI), he had ever been charged with any felony offense or charged with any offense involving firearms. He claimed that he was not deliberately falsifying or omitting relevant information in these responses because he had called some unidentified group of security clearance lawyers he found on the internet and was advised that he should answer these questions in this manner after he explained the status of his charges. This testimony was not credible. (Answer; GE 1; Tr. 69-74, 82-86, 95-105, 107-128.)

The SOR also alleged that Applicant had a charged-off \$7,045 credit card account that remained delinquent. Applicant denied that this was his account, and claimed it probably belonged to one of several other of his family members with the same or very similar names. He successfully disputed the debt to the credit reporting agency that issued the report on which the allegation was based, and provided documentation corroborating this fact. (Answer; GE 5; GE 6; AE D; Tr. 75-78, 87-95.)

Two witnesses, who worked with Applicant a number of years ago and have kept in touch with him, described their high opinions of his character and integrity. They also provided letters expressing similar sentiments. Applicant's supervisor also wrote a letter on his behalf, expressing her excellent opinion of his honesty, dependability, and trustworthiness. She expressed that, to the best of her knowledge, he had never broken any laws and had always been mindful of other people's need for space, quiet, assistance, and privacy. She has trusted him with sensitive information and has found no reason to doubt or question him. Applicant confirmed during his testimony that this was one of the supervisors from whom he had deliberately concealed his 2014 felony aggravated assault arrest and his 2015 DUI offense. (AE J; Tr. 32-64, 104-107, 112.)

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 establishes that 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 applying for national security eligibility 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 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 concerns 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security investigative or adjudicative processes.

AG ¶ 16 describes two conditions that could raise security concerns and may be disqualifying in this case:

(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 national security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant had a successful military career in the Army, but remained unemployed after his retirement until obtaining his current position in February 2015. He had been arrested for a DUI offense less than two months earlier, and for felony aggravated assault within the preceding nine months. He was concerned that this information about his conduct, if known, would affect his personal, professional, and community standing with respect to his prospective employment. He remained so concerned through the

date of his hearing, as evidenced by his continuing concealment of the information from his supervisors and company security officials. When he completed and certified the truth of his e-QIP in February 2015, he provided minimal disclosure concerning his admittedly valid and pending DUI charges, and completely omitted any information about his June 2014 felony aggravated assault arrest and charges. This evidence establishes that his omission and concealment of relevant facts on the security questionnaire were deliberate, and his conduct made him vulnerable to exploitation, manipulation, or duress. Substantial security concerns under AG ¶¶ 16(a) and 16(e) were accordingly raised, shifting the burden to Applicant to mitigate such concerns.

AG ¶ 17 includes five conditions that could mitigate security concerns arising from Applicant's personal conduct:

(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 advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. 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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant did not provide evidence that would support mitigation under any of the foregoing conditions. Within the nine months preceding his e-QIP submission, he was arrested and charged with felony aggravated assault and DUI. This is serious misconduct with respect to his national security eligibility, which he knew placed his personal and professional standing in jeopardy. He has concealed the information from his employer, creating serious and ongoing vulnerability to exploitation, manipulation, and duress. He completely omitted the felony aggravated assault arrest and charges from the e-QIP, and made neither prompt nor good-faith efforts to disclose it before being confronted during OPM interviews, as admitted during his hearing testimony. Applicant asserted that some unidentifiable source of free legal advice concerning

security clearance issues advised him that he need not disclose this information. His testimony in this regard was not credible, and was insufficient to demonstrate that the source undertook his legal representation or was otherwise professionally responsible for providing him such advice. These were serious offenses, concerning which his attempted concealment is ongoing, casting doubt on his present reliability, trustworthiness, and judgment. He demonstrated no positive steps to alleviate these circumstances or reduce the resulting vulnerability to exploitation and duress.

## **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant had one allegedly delinquent \$7,045 credit card debt that had been reported by one credit reporting bureau. He did not repay or otherwise satisfy this alleged debt. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline contains one condition in AG ¶ 20 that mitigates the security concerns arising from Applicant's alleged delinquent debt:

- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant successfully disputed the alleged delinquent debt on the basis that it had mistakenly been attributed to him. He provided documentation demonstrating that the credit bureau that had previously reported this delinquency accepted his position and deleted the account from his report. Potential security concerns arising from this debt were mitigated under AG ¶ 20(e).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature and educated adult, who is accountable for his choices that resulted in criminal charges that he attempted to conceal due to their adverse effects on his personal and professional standing. His friends provided strong character references, but their regular contact with him ended many years ago. His supervisor also praised him, but her opinion rested in substantial part on her ignorance of his recent criminal history. He had a successful military career, but there is insufficient evidence of rehabilitation or acceptance of his obligation to be forthright concerning those personal issues that affect him professionally. The potential for pressure, exploitation, or duress remains undiminished. Overall, the evidence creates significant doubt as to Applicant's judgment, eligibility, and suitability for a security clearance.



### **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

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

DAVID M. WHITE  
Administrative Judge