



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



In the matter of: )  
)  
) ISCR Case No. 17-00961  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

05/10/2018

---

**Decision**

---

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On April 27, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct). Applicant responded to the SOR on May 10, 2017, and elected to have the case decided on the written record in lieu of a hearing. On June 28, 2017, Department Counsel requested a hearing before an administrative judge.

The case was assigned to me on November 9, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 18, 2017, scheduling the hearing for January 30, 2018. The hearing was convened as scheduled. Government Exhibit (GE) 1 was admitted in evidence without objection. GE 5 was admitted in evidence over Applicant's objection.<sup>1</sup> Department Counsel withdrew GE 2

---

<sup>1</sup> GE 5 is a report of investigation (ROI) summarizing background interviews of Applicant conducted by the Office of Personnel Management (OPM). I admitted GE 5, but I am only considering the parts of the

through 4, and they were not admitted. Applicant testified, but he did not submit any documentary evidence. The record was held open for Applicant to submit additional information. He submitted documents that I have marked Applicant's Exhibits (AE) A through D and admitted without objection. DOHA received the hearing transcript (Tr.) on February 7, 2018.

### **Findings of Fact**

Applicant is a 38-year-old employee of a defense contractor. He has worked for his current employer since January 2016. He served on active duty in the U.S. military from 1999 until he was honorably discharged in 2005. He deployed to Iraq while in the military. He has a bachelor's degree, which was awarded in 2011. He married in 1999 and divorced in 2015. He has three children.<sup>2</sup>

Applicant was arrested in 1999 and charged with driving under the influence (DUI). The result of the charge is unclear, but it included a suspended driver's license and a fine. He was arrested in 2015 for domestic violence. No charges were ever filed.<sup>3</sup>

Applicant worked for a defense contractor and held a security clearance from 2008 to 2012 (Job 1). He worked in Iraq on three occasions for this contractor. He left the job because he wanted to spend more time with his family. He had several later jobs, some of which ended under less than favorable circumstances. He worked for a city for several months in 2012 (Job 2). He was in a car accident while working. He was still in a probationary period, and he went to an employment hearing to determine whether he would continue with the job. He did not feel that he was being treated fairly, and he resigned from his position. There is no evidence that he was threatened with termination if he did not resign.<sup>4</sup>

Applicant was unemployed for a period and then went to work at another company (Job 3). He was still married at the time, and his ex-wife's brothers worked at the company in management positions. When he and his ex-wife started having marital difficulties, he felt that it affected how the brothers treated him at the company. He resigned from the company. He does not feel that he would be eligible for rehire. His supervisor at the company wrote a letter stating that Applicant was an "exceptional technician" who provided a great service to her team. She wrote that she "would recommend [Applicant] be hired to any position."<sup>5</sup>

---

ROI that were authenticated by Applicant. Statements made in the ROI by the OPM investigator that were not adopted by Applicant were not considered. See Directive ¶¶ E3.1.20 and E3.1.22.

<sup>2</sup> Tr. at 29-34; GE 1.

<sup>3</sup> GE 5.

<sup>4</sup> Tr. at 29, 32, 37-40; Applicant's response to SOR; GE 1, 5.

<sup>5</sup> Tr. at 48; GE 1, 5; Applicant's response to SOR; AE C.

Applicant worked at another company for a few months in 2015 (Job 4). He had an accident with a company truck. He was terminated because of the accident.<sup>6</sup>

Applicant pays his ex-wife child support for their children. He fell behind on his payments while he was unemployed in 2015. After he started working, he paid extra every month to make up the arrearages.<sup>7</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) in February 2016. Most of the police record questions required answers for the previous seven years. Applicant reported his 2015 domestic violence arrest. He answered "No" to the section that included the question: "Have you **EVER** been charged with an offense involving alcohol or drugs."<sup>8</sup>

Under the employment activities section of the SF 86, Applicant listed the jobs described above. After each employment, the SF 86 asked:

For this employment have any of the following happened to you **in the last seven (7) years**?

- Fired
- Quit after being told you would be fired
- Left by mutual agreement following charges or allegations of misconduct
- Left by mutual agreement following notice of unsatisfactory performance

He answered "No" to the above questions after each of the listed jobs. I find that his negative answer relating to Job 2 was a reasonable interpretation of the question because he was not fired; he was told that he could be fired after the hearing, not that he would be fired; and he left on his own accord, not by mutual agreement. His answer for Job 3 was accurate. His answer for Job 4 was inaccurate because he was terminated from the position. However, he added that the reason for leaving Job 4 was "car accident."

Applicant answered negatively to all the financial questions on the SF 86, including the section that asked: "**In the last seven (7) years**, [have you] been delinquent on alimony and child support payments[?]" He failed to list that he had fallen behind on his child support payments while he was unemployed.

---

<sup>6</sup> Tr. at 41; Applicant's response to SOR; GE 1, 5.

<sup>7</sup> Tr. at 34-35, 50-51; Applicant's response to SOR; GE 5.

<sup>8</sup> GE 1.

Applicant was interviewed for his background investigation in July and August 2016. He discussed his termination and his child support arrearages without being confronted with them. He discussed his 1999 DUI arrest after he was confronted with it.<sup>9</sup>

Applicant credibly denied intentionally providing false information on the SF 86. He stated that he completed the questionnaire in a hurry, and he missed several questions. He thought the criminal questions had a time limitation, and the DUI was outside that limitation. The DUI did not affect his security clearance when he reported it during previous investigations, and he had no reason to try and hide it. While he did not report that he was fired from Job 4 because of his accident in the truck, he did report that his reason for leaving was “car accident.” He indicated that he did not report his child support arrearages because he was paying his ex-wife directly, and he had already started paying the arrearages.<sup>10</sup>

Applicant submitted letters attesting to his excellent job performance, honesty, dedication, courtesy, work ethic, trustworthiness, and integrity.<sup>11</sup>

### **Policies**

This case is adjudicated 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 (AG), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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(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.

---

<sup>9</sup> GE 5.

<sup>10</sup> Tr. at 36-37, 41-44, 50-55; Applicant’s response to SOR.

<sup>11</sup> AE B-D.

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.”

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 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 the 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.

Section 7 of EO 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 clearance investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

The SOR alleges that Applicant intentionally falsified the SF 86 when he failed to disclose his DUI; leaving Jobs 2 to 4 under unfavorable circumstances; and his child support arrearages. I have considered all the evidence, including the character evidence, the derogatory information that was reported on the SF 86, the fact that the DUI was reported during previous investigations, and Applicant's credible testimony. I do not believe Applicant was attempting to hide the information. Indeed, none of the omitted information was significant enough to form the basis of an SOR allegation. I conclude that he did not intentionally falsify the SF 86. AG ¶ 16(a) is not applicable. Personal conduct security concerns are concluded for 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 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.

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 have incorporated my comments under Guideline E in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns.

### **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.c:	For Applicant

## **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

---

Edward W. Loughran  
Administrative Judge