



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 17-01821

**Appearances**

For Government: Allison Marie, Esq., Department Counsel

For Applicant: *Pro se*

01/31/2018

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate the security concerns regarding his personal conduct. Eligibility for access to classified information is denied.

**Statement of Case**

On June 15, 2017, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 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 (AGs) implemented by DoD on September 1, 2006.

The Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs). They apply to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. Procedures for administrative due process for contractor personnel continue to be governed by DOD Directive 5220.6, subject to the updated substantive changes in the AGs, effective June 8, 2017. Application of the AGs that were in effect for the issuance of the SOR would not affect my decision in this case.

Applicant responded to the SOR on July 7, 2017, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on August 22, 2017, and did not object to any of the exhibit items in the FORM or provide additional information. The case was assigned to me on December 19, 2017.

### **Summary of Pleadings**

Under Guideline E, Applicant allegedly (a) in March 2014 paid a third party \$1,000 via PayPal to have the third party create a falsified resume with erroneous DoD certifications, including an Army certificate, and act as Applicant in all matters concerning the hiring process with Company A, which hired him in April 2014 based on the false interactions; and (b) in September 2014 used the falsified resume he had paid the third party to apply for and obtain employment with Company B, who upon learning of his false resume and lack of DoD certifications, fired applicant in April 2015

In his response to the SOR, Applicant admitted each of the SOR allegations. He provided no explanations or affirmative defenses for his alleged actions.

### **Findings of Fact**

Applicant is a 46-year-old air and ground services technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married in March 1991 and divorced in May 1997. (Items 4-5) He has one adult child from this marriage. (Item 4) He remarried in January 2000 and has no children from this marriage. Applicant earned a high school diploma in June 1990 and reported no college credits. (Item 4)

He enlisted in the Army in May 1993 and served three years of active duty. He received an honorable discharge in June 1996. Between October 1997 and April 2001, Applicant served in the Army National Guard of his state. (Item 4)

Since October 2015, Applicant has worked for his current employer. (Items 3-4) Between October 2014 and April 2015, he held various jobs. (Item 3) He reported periods of unemployment between April 2015 and October 2015 before being terminated for cause. Between September 2014 and March 2015, he was employed by another defense contractor as a deputy country manager before being terminated for his involvement in a heavy equipment accident. (Items 4-5) Prior to this employment, he was employed as a transportation coordinator for a defense contractor. Previously, he was employed by multiple employers between March 2001 and March 2014 (Items 4-5) His employments included various overseas assignments in Iraq and Afghanistan. (Item 4)

### **Falsified employment resumes**

Desperate to find work, Applicant engaged a third party for profit in March 2014 to create a falsified resume for him with erroneous DoD certifications, including an Army specialization certificate. (Items 4-6) He paid this person \$1,000 via PayPal to create the false resume and act in Applicant's behalf in all matters concerning the hiring process with a defense contractor (Company A) based on the submitted false resume. Relying in material part on the strength of this resume with the false DoD certifications, Applicant was hired by Company A in April 2014. (AEs 4-5)

Months later, in September 2014, Applicant used the same described falsified resume to apply for a position with another employer (Company B). Claiming mistaken submission of the falsified resume to Company B, he used the resume to gain employment with this new employer and failed to correct it before being confronted with it by his supervisor. (GEs 4-6) When the supervisor learned of the false resume and lack of DoD certifications, he summarily fired Applicant on the spot in April 2015. (Items 4-6) Applicant provided no additional explanations for his obtaining and using a false resume to gain employment with these two employers in 2014.

Asked to complete an electronic questionnaires for investigations processing (e-QIP) in October 2015, Applicant acknowledged his being fired by Company C for not having a DoD certification on his resume, without explaining all of the circumstances surrounding his creation of the false resume. (Item 4) When interviewed by an agent of the Office of Personnel Management (OPM) in October 2017, he fully disclosed all of the circumstances of how he approached the individual through PayPal and engaged this person for pay (\$1,000) to create the false resume for use in his job application with Company A. (Item 5) Applicant made his disclosures voluntarily without any apparent prompting or confrontation.

### **Policies**

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could

raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A, AG ¶ 2(c). In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App. A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Personal Conduct**

*The 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 adjudicating processes . . . AG E.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Security concerns over Applicant's judgment, reliability, and trustworthiness are raised under Guideline E as the result of his paying a third party a \$1,000 in advance to falsify his resume for use in job applications. With this false resume, Applicant was able to successfully procure employment with Company A in April 2014, and with Company B in September 2014. Once Company B learned of his false resume, it promptly fired him.

Applicant acknowledged his creation and use of a false resume to gain employment with Company A and with Company B. Applicable to Applicant's situation is DC ¶ 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 government representative.'

Applicant's admissions of his involuntary termination from Company B in his e-QIP and ensuing voluntary explanations of the circumstances surrounding his engaging of a third party to create a false resume for Applicant's use in his employment applications, while welcomed, is not to mitigate his intentional engaging of a third party to falsify his resume for use in his employment application with Company A and additional use with inferred knowledge of the false contents of the same resume in his application for employment with Company B.

To his credit, Applicant acknowledged his involuntary termination from Company B after the employer first learned of his falsified resume. And he fully disclosed the circumstances surrounding his creation and use of the falsified resume to obtain employment with Company A and inferentially with Company B. Although his acknowledgments entitle him to some mitigating credit under MC ¶ 17(a), “the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts,” the benefits available to him under MC ¶ 17(a) are very limited considering the severity of Applicant’s falsification actions as they pertain to his security clearance application.

While Applicant’s candor is welcomed, it is not enough under these circumstances to overcome reasonable doubts about his overall trustworthiness, candor, and reliability. Personal conduct concerns are not mitigated considering all of the developed facts and circumstances associated with Applicant’s creation and use of a falsified resume to obtain employment with two defense contractors.

### **Whole Person Assessment**

Whole-person assessment is unfavorable to Applicant. He has not demonstrated evidence of overall trustworthiness, candor, and reliability to date to surmount major candor questions associated with his engaging and using a false resume to obtain employment with two successive employers in 2014. His actions to date reflect a lack of trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18.

Taking into account all of the documented facts and circumstances surrounding Applicant’s creation and use of a falsified resume to obtain employment with successive employers in 2014, there is insufficient probative evidence of restored trustworthiness, reliability, and judgment on Applicant’s part to mitigate personal conduct concerns. Reasonable doubts remain about Applicant’s trustworthiness, reliability, and judgment.

Unfavorable conclusions are entered with respect to the personal conduct allegations covered by ¶¶ 1.a-1.c of the SOR. Overall, eligibility to hold a security clearance under the facts and circumstances of this case is inconsistent with the national interest.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant

## **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge

