



**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. 17-01822

**Appearances**

For Government: David F. Hayes, Esquire, Department Counsel

For Applicant: *Pro se*

06/26/2018

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding personal conduct. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On March 12, 2016, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On October 13, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), (December 10, 2016), *National Security Adjudicative Guidelines* (AG) for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guideline E (Personal Conduct), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. Applicant's responses to the SOR are confusing. On an unspecified date, he submitted an unsigned statement; on another unspecified date, he submitted an incomplete statement in which he responded to most of the SOR allegations; and he also submitted a non-statement notarized on November 16, 2017, in which he elected to have his case decided on the written record in lieu of a hearing. He followed that up with an e-mail on November 22, 2017, in which he responded to the remaining allegations. A complete copy of the Government's file of relevant material (FORM) was provided to Applicant by the Defense Office of Hearings and Appeals (DOHA) on January 31, 2018, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to his case. Applicant received the FORM on February 21, 2018. A response was due by March 23, 2018. Applicant timely submitted a response supported by documentation. The case was assigned to me on May 10, 2018.

### **Findings of Fact**

In his Answers to the SOR, Applicant admitted several of the factual allegations pertaining to personal conduct (¶¶ 1.a., a portion of 1.c., and 1.e.) in the SOR. He denied the remaining allegations. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 29-year-old employee of a defense contractor. He has been serving in an unspecified position in Africa with his current employer since about May 2017. A 2006 high school graduate, Applicant continued his education and earned some college credits, but no degree. He has never served with the U.S. military. He was granted a secret clearance in 2010. He was married in 2008. He has a stepson, born in 2000, and a daughter, born in 2008.

### **Personal Conduct**

In addition to a lengthy employment history involving a number of diverse positions and responsibilities, Applicant's employment history is rather unusual in that it involves terminations (for a variety of reasons) and eventual rehiring by the same employers, as well as terminations by other employers (also for a variety of reasons).

According to Applicant, he was a night stocker at a home improvement store for several months; a curb layer for one month; a dishwasher for two months; a tire changer for three months; a milk stocker for two months; a heating, ventilation and air conditioning

(HVAC) mechanic for seven months (terminated for unsatisfactory performance); an oil changer for six months; an HVAC mechanic, plumber, and electrician for two months; an HVAC installer for four months; an HVAC mechanic in Iraq for 12 months; an HVAC foreman in Afghanistan for seven months and then site manager in Afghanistan for 13 months; a maintenance supervisor for five months; an HVAC foreman for five months; an HVAC mechanic for four months; an HVAC mechanic for two months; an HVAC mechanic for nine months (received a letter of counseling in April 2014); an HVAC mechanic for three months (terminated for performance reason and not happy with management-employee relationship); an HVAC mechanic in Afghanistan for ten months; an unspecified security position for an unspecified period; and in his current unspecified position since about May 2017. He also had two relatively brief periods of unemployment in 2012 and 2013.

The SOR alleged three incidents of termination; one incident of a written warning and counseling; and two incidents of either deliberate falsification or lack of candor regarding some of those incidents:

(SOR ¶ 1.a.): Applicant was employed as an HVAC mechanic in July 2014, when he was hired by the company owner. During the pre-employment interview, the type of work was described, but the discussions related to the equipment were non-specific. Applicant felt confident that he could work with the equipment already in use, but once he was actually hired, he found himself with unfamiliar equipment. He attempted to familiarize himself with the equipment, but the workload was very demanding and other technicians were unable to assist him, so the familiarization process during his probationary period was strictly hands-on. In addition, Applicant had a personality conflict with his supervisor who felt Applicant was superfluous to the company's needs as there was another employee in the same position. In his e-QIP, Applicant noted that he was terminated in October 2014 for performance reasons and not happy with management-employee relationships. During his interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant added comments about his supervisor's alcohol issues. Applicant felt he would be fired for no legitimate reason, so he left. In one of his Responses to the SOR, he said that he and the company mutually decided that he would depart during his probationary period, and the departure would not be due to misconduct. Although Applicant heard that he had been fired due to creating a hostile work environment and an aggressive attitude, he denied those characterizations and called them false. There is no documentation in the case file to support a conclusion that Applicant was actually fired.

(SOR ¶ 1.b.): Applicant was employed as an HVAC mechanic from October 2013 until July 2014. In April 2014, he was issued a letter of counseling based on a complaint from a 50-year-old female administrator who claimed that Applicant had asked her to go to lunch with him "in a non-professional manner," construed by the woman as "sexual advancements" or "sexual harassment." Applicant denied he ever sexually harassed the woman and explained that he was simply being cordial by inviting her to join him at a local fast-food establishment. The purported actions and statements by Applicant are not known, and there is no evidence to support her accusations that they were sex-related. Moreover, there is no report of inquiry or investigation from the employer to support the allegations. Applicant believes the allegation was fabricated to discredit him.<sup>1</sup> During his OPM interview, Applicant

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<sup>1</sup> Item 5 (Letter of Counseling, dated April 18, 2014); Item 3 (Personal Subject Interview, dated December 1, 2016), at 6-7.

disputed the allegations made against him and noted that in July 2014 he left under favorable circumstances and the staff even threw him a farewell party.<sup>2</sup>

The OPM investigator added into the Report of Investigation (ROI) the following:<sup>3</sup>

[Applicant] was informed that it was developed he invited [the woman] to have lunch more than one time; that [Applicant] has honesty issues regarding job qualifications, unwillingness to follow rules and regulations, sexual harassment, and disruptive and dishonest behavior he self-admitted while in Afghanistan.

[Applicant's] qualifications were embellished and highly not accurate. [Applicant] was not considered reliable and was not willing to follow rules, regulations, and procedures. For several weeks between 10/2013 to 2/2014, [Applicant] continued to make sexual advancements to [the woman] after being asked to stop. After discussions [Applicant] was provided with a letter of admonishment and [Applicant] rebutted the letter; [Applicant] advised another coworker to falsify a resume to acquire a better employment. [Applicant] is not eligible to be rehired.

There is no documentation, such as a report of inquiry, any statements from identified individuals, or letters from the employer, in the case file to support any of the characterizations or purported activities described by the OPM investigator, nor is there any comment by the OPM investigator that identifies the source(s) for those characterizations or purported activities.

(SOR ¶¶ 1.c. and 1.f.): Applicant worked for one particular company in Afghanistan on two separate occasions. During the initial period, he was terminated in February 2012 for failing to submit the required security clearance background documentation in a timely manner, claiming simply that he had forgotten to do so. He was home on leave at the time, and he received an e-mail from his employer informing him of the dismissal. Seven months later, he was rehired by the company. Applicant and his HVAC foreman/supervisor did not get along, with each claiming misconduct by the other. But while Applicant never reported his HVAC foreman/supervisor's actions, his HVAC foreman/supervisor did report him. On January 20, 2013, Applicant received a final written warning from his HVAC foreman/supervisor. It accused Applicant of purposely not following the directives provided to him by his HVAC foreman/supervisor; wasting manpower hours, materials, and a misappropriation of government funds; seriously damaging the public relations between the company and its client; a lack of knowledge, experience and skillset to do his job; constant insubordination; and the absence of leadership or skillsets required for his position. Applicant's HVAC foreman/supervisor concluded that Applicant's actions constituted "disorderly, abusive, or indecent conduct; use of abusive or inappropriate language . . . committing immoral, illegal, or violent acts; violating federal, state, or local laws, regulations, or Company procedures;" "making a false statement, either oral or written, to a supervisor, other employees of the

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<sup>2</sup> Item 3, *supra* note 1, at 7.

<sup>3</sup> Item 3, *supra* note 1, at 7.

Company, the Company's customers, or government agencies;" and "failing to perform work of an acceptable standard, being inattentive to job performance."<sup>4</sup>

The HVAC supervisor at the time disputed the above scenario:<sup>5</sup>

Applicant's [HVAC foreman/supervisor] demonstrated ill feelings toward [Applicant] on several occasions. The unfortunate "write up" from [the HVAC foreman/supervisor] against [Applicant] took place under [the HVAC supervisor's] leadership, though [he] was away visiting another camp. This "write up" is considered a verbal write up since the documentation isn't complete and was not submitted through the proper chain of command in [his] absence.

He also added the following glowing comments:<sup>6</sup>

Throughout his time with [the company], [Applicant] demonstrated critical skills, worked with integrity and exceeded expectations. [Applicant] was an excellent employee and asset to our organization during his tenure with [the company]. He has excellent leadership, mechanical skills, written and verbal communication skills, is extremely organized, can work independently, and is able to effectively multi-task to ensure that all projects are completed in a timely manner. . . .

[Applicant] demonstrated excellent leadership skills and effectiveness that I assigned him additional responsibilities. These responsibilities included developing a training program for our employees for the HVAC shop. . . .

[Applicant] was always willing to offer his assistance and had an excellent rapport with the many constituents served by our office including clients, employers, and other professional organizations.

In February 2013, after returning to the United States, and aware that his HVAC foreman/supervisor did not want to continue working with him in the future, Applicant resigned. At the time he did so, there was no indication that he would be, or had been, fired.<sup>7</sup> Although the SOR alleged that Applicant had been terminated "in about 2013," there is no documentation from the company to support that allegation.

(SOR ¶ 1.d.): Applicant worked for another particular company on two separate occasions. During the initial period, he was terminated in October 2007 for unsatisfactory performance. Applicant acknowledged that in 2007 he did not possess the expertise and proficiency to work as an HVAC mechanic. He was called into the office of his supervisor one

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<sup>4</sup> Item 4 (Disciplinary Action Form, dated January 20, 2013).

<sup>5</sup> Letter, dated March 2, 2018, attached to Applicant's Response to the FORM.

<sup>6</sup> Letter, *supra* note 5.

<sup>7</sup> Item 3, *supra* note 1, at 6.

day and simply fired.<sup>8</sup> Once he had gained the knowledge and experience to be an effective HVAC mechanic, the same company hired him back in August 2013.<sup>9</sup>

(SOR ¶ 1.e.): In March 2016, when Applicant completed his e-QIP, he responded to some questions pertaining to his employment record. The questions in § 13C asked if, in the last seven years “at employment activities that you have not previously listed,” he had: been fired from a job; quit a job after being told he would be fired; left a job by mutual agreement following charges or allegations of misconduct; left a job by mutual agreement following notice of unsatisfactory performance; or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy? Applicant answered those questions with a “no.”<sup>10</sup> The SOR alleged that in so doing, Applicant deliberately failed to disclose the relevant information found in SOR allegations ¶¶ 1.a. through 1.c.

In fact, Applicant clearly indicated in § 13A of the e-QIP that he had been terminated from the position discussed in SOR ¶ 1.a. for performance reasons and left by mutual agreement following notice of unsatisfactory performance;<sup>11</sup> and that he had been disciplined in the position discussed in SOR ¶ 1.b. for bothering a female co-worker.<sup>12</sup> As for the allegation associated with SOR ¶ 1.c., as noted above, although the SOR alleged that Applicant had been terminated “in about 2013,” there is no documentation from the company to support that allegation, and Applicant has been steadfast in claiming that he had already resigned and was not aware that he had supposedly been fired.

## **Work Performance and Character References**

The operations chief of base operating support (and primary liaison for the contract in the Horn of Africa), as well as the deputy branch chief (and primary contracting officer’s representative (COR) on the contract), both worked with Applicant during May-November 2017. Applicant’s team provided outstanding support to the five contingency locations in the Horn of Africa and ensured zero mission failure in regards to power generation equipment, food refrigeration units and expeditionary-type air conditioning units for both facilities and communications equipment. Applicant “was extremely reliable and trustworthy, as he was often required to travel alone to repair and/or service vital equipment in austere locations that directly supported Special Operations Forces.” They both highly recommend Applicant for a top secret clearance.<sup>13</sup>

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<sup>8</sup> Item 3, *supra* note 1, at 5.

<sup>9</sup> Item 3, *supra* note 1, at 5.

<sup>10</sup> Item 2 (e-QIP, dated March 12, 2016), at 35-36.

<sup>11</sup> Item 2, *supra* note 7, at 20.

<sup>12</sup> Item 2, *supra* note 7, at 22.

<sup>13</sup> Memorandum, dated May 5, 2018); Memorandum, dated November 9, 2017, both attached to Applicant’s Response to the FORM.

The primary COR on another contract in the Horn of Africa during early 2018 noted that Applicant was the lead power generation general foreman for a critical mission for the contractor. Applicant provided outstanding support to the contingency locations and ensured zero mission failure in regards to power generation equipment. Their day-to-day interaction and experiences were consistently positive and professional. “[Applicant] was extremely reliable and trustworthy. At no point did [he] question [Applicant’s] judgment or capabilities “in a combat environment.”<sup>14</sup>

Numerous other former co-workers over the years have commented favorably on Applicant’s exceptional professional abilities, outstanding skills, positive accomplishments, trustworthiness, dedication, honesty, and thoughtfulness.<sup>15</sup> In addition, Applicant has received a number of certificates of appreciation from various military units, two of which include periods covered by his employment with the company identified in SOR ¶ 1.c.<sup>16</sup>

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”<sup>17</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>18</sup>

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in 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 a number of variables known as the “whole-person concept.” The administrative judge must consider all available,

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<sup>14</sup> Memorandum, dated March 4, 2018, attached to Applicant’s Response to the FORM.

<sup>15</sup> Letters, various dates, attached to Applicant’s Response to the FORM.

<sup>16</sup> Certificates, various dates, attached to Applicant’s Response to the FORM.

<sup>17</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>18</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”<sup>19</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.<sup>20</sup>

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>21</sup>

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”<sup>22</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

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<sup>19</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>20</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>21</sup> *Egan*, 484 U.S. at 531

<sup>22</sup> See Exec. Or. 10865 § 7.



## **Analysis**

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

The security concern relating to the guideline for Personal Conduct is set out in 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, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) 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.

The guideline notes conditions under AG ¶ 16 that could raise security concerns.

(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;

(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;

(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 judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) 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 judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

- (2) any disruptive, violent, or other inappropriate behavior;

- (3) a pattern of dishonesty or rule violations; and

- (4) evidence of significant misuse of Government or other employer's time or resources; 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;

- (2) while in another country, engaging in any activity that is illegal in that country;

- (3) while in another country, engaging in any activity that, while legal there, is illegal in the United States;

- (f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

- (g) association with persons involved in criminal activity.

As noted above, although there are unsupported allegations and speculation that Applicant had been fired from two specific positions and an acknowledgment that he had been fired from a third specific position, with the exception of that third incident, there is no documentation, such as a letter from the employers, to support a conclusion that Applicant was actually fired. Applicant denied that he had been fired on those two occasions, and there is no evidence to rebut his denials. As for the third incident, there is undisputed evidence that Applicant was fired by the employer because he had failed to

timely submit the required security clearance background information. That same company subsequently rehired him.

There are unsupported allegations and speculation regarding Applicant's purported conduct while in Afghanistan that are both denied by Applicant and disputed by the HVAC supervisor. There is also evidence indicating that Applicant received a letter of counseling based on a complaint from a female co-worker who claimed Applicant had asked her to go to lunch with him "in a non-professional manner," construed by the woman as "sexual advancements" or "sexual harassment." Applicant denied he ever sexually harassed the woman and explained that he was simply being cordial by inviting her to join him at a local fast-food establishment. There is no statement in case file from the woman, so the purported actions and statements by Applicant are not known, and there is no evidence to support her accusations that they were sex-related. Moreover, there is no report of inquiry or investigation from the employer to support the allegations. In addition, the OPM investigator reported some purported characterizations and activities about Applicant that are unsubstantiated. There is no documentation, such as a report of inquiry, any statements from identified individuals, or letters from the employer, in the case file to support any of the characterizations or purported activities described by the OPM investigator, nor is there any comment by the OPM investigator that identifies the source(s) for those characterizations or purported activities.

The SOR also alleged that when Applicant completed his e-QIP in March 2016, he deliberately falsified material facts and failed to disclose relevant information pertaining to his employment record. The allegation is without merit. In fact, Applicant clearly indicated in the e-QIP that he had been terminated from the position discussed in SOR ¶ 1.a. for performance reasons and left by mutual agreement following notice of unsatisfactory performance; and that he had been disciplined in the position discussed in SOR ¶ 1.b. for bothering a female co-worker. As for the allegation associated with SOR ¶ 1.c., as noted above, although the SOR alleged that Applicant had been terminated "in about 2013," there is no documentation from the company to support that allegation, and Applicant has been steadfast in claiming that he had already resigned and was not aware that he had supposedly been fired.

The final SOR allegation was that when the OPM investigator interviewed Applicant in December 2016, Applicant lied when he denied that he had been fired from the company associated with SOR ¶ 1.c. There is undisputed evidence that Applicant was fired by the employer because he had failed to timely submit the required security clearance background information, but that same company subsequently rehired him. While the SOR alleged that Applicant had been terminated "in about 2013," there is no documentation from the company to support that allegation, and Applicant has been steadfast in claiming that he had already resigned and was not aware that he had supposedly been fired. In the absence of evidence supporting the allegation and disputing Applicant, there is no evidence that Applicant falsified material facts during that OPM interview. Based on the evidence, AG ¶¶ 16(c) and 16(e)(1) have been established with respect to the 2012 termination for failing to timely submit the required security clearance background documentation, and the 2014 letter of counseling. In the absence of evidence

that Applicant lied or deliberately falsified information when he completed the e-QIP or spoke with the OPM investigator, no other AGs have been established.

The guideline also includes examples of conditions under AG ¶ 17 that could mitigate security concerns arising from personal conduct. They include:

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

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

(f) the information was unsubstantiated or from a source of questionable reliability.

I have concluded that AG ¶¶ 17(c) and 17(f) apply. The February 2012 termination for failing to timely submit the required security clearance background documentation took place over six years ago; and the April 2014 letter of counseling occurred over four years ago. The 2012 incident can be considered "minor" and "unique," and considering the amount of time that has passed without recurrence, it is unlikely to recur. It does not cast doubt on Applicant's reliability, trustworthiness, or good judgment. The 2014 letter of counseling, based on information that is unsubstantiated, and unsupported by documentation, is not proof that the alleged conduct actually occurred, it simply noted that the generic counseling occurred. Applicant has an outstanding reputation for honesty and trustworthiness, and he has steadfastly denied the alleged conduct. Furthermore, there is no evidence to support that the conduct ever occurred. No other AGs apply.

## **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. Moreover, I have evaluated this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>23</sup>

There is some information against mitigating Applicant's conduct. He was terminated for failing to timely submit the required security clearance background documentation when he first took a job with an employer in 2012. He received a letter of counseling in 2014.

The mitigating evidence under the whole-person concept is more substantial. Applicant is a 29-year-old employee of a defense contractor. A 2006 high school graduate, Applicant continued his education and earned some college credits, but no degree. He was granted a secret clearance in 2010. He has served in a number of positions with various employers, and has been assigned to locations in several combat zones including Iraq and Afghanistan, as well as in unspecified positions in the Horn of Africa, in support of special operations forces. Applicant's contributions to the various missions to which he was associated have been documented by those with whom he worked. The combination of Applicant's proven actions, explanations, and beliefs do not cast doubt on Applicant's reliability, trustworthiness, and good judgment. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

## **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:

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<sup>23</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Paragraph 1, Guideline E:

FOR APPLICANT

Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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ROBERT ROBINSON GALES  
Administrative Judge