



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



In the matter of:

ISCR Case No. 17-03898

Applicant for Security Clearance

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel

For Applicant: *Pro se*

October 26, 2018

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of the Case**

On October 18, 2016, Applicant submitted a security clearance application (e-QIP). On December 28, 2017, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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); and the adjudicative guidelines (AG) effective January 8, 2017.

Applicant answered the SOR on January 17, 2018 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on August 27, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing that same day, scheduling the hearing for September 7, 2018. The hearing was convened as scheduled. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. Applicant offered three exhibits referred to as Applicant's Exhibits A through C, which were admitted without objection. Applicant called one witness and testified on his own behalf.

The record remained open until close of business on September 21, 2018. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. The record then closed. DOHA received the transcript of the hearing (Tr.) on September 17, 2018.

### **Findings of Fact**

Applicant is 38 years old. He has a Master's degree in Project Management with a concentration in Aerospace. He holds the position of Business Operations Analyst for a defense contractor.

The Government alleged that Applicant is ineligible for a clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that can raise questions about his reliability, trustworthiness and ability to protect classified information.

Applicant served on active duty in the United States Army from 2002 to 2015 when he took a medical retirement due to injuries sustained in Afghanistan. Applicant has been working for his current employer since October 2016.

During his prior employment, while working for an employer located on an Air Force Base, Applicant was accused of being involved in and displaying erratic and irregular behavior, demonstrating unsound judgment, over the course of several months that became alarming to his coworkers and management. An incident report outlining these concerns was documented by the company security department. Applicant was ultimately terminated from his employment, removed from the site, and his CAC card was retained. (Government Exhibits 2 and 4.)

In addition to displaying erratic behavior, Applicant made a series of threatening remarks, namely four separate strange and menacing statements to either his program manager or coworkers that raised serious concerns about his mental stability. Applicant admits to making each of the statements, but contends that he meant them in a far different context than how they were received. Applicant also believes that false claims were made against him for whistleblowing as outlined below. (Applicant's Post-Hearing Exhibit A.)

In March 2016, Applicant reported two employees for timecard fraud. Applicant had noticed for a period of time that these two employees were missing work, not clocking in properly, and they were still taking their regular days off. Applicant reported them to his management. The following day, Applicant noticed that those two employees have been upset with him from that point on. When the matter was investigated, it was determined that the two employees were not keeping their time accurately. Both employees were disciplined, their times and schedules were adjusted, and they were counseled for timecard fraud. (Tr. p. 42.)

Applicant testified that before he reported these two employees for timecard fraud, he worked a flex schedule without problems, and had a friendly and close working relationship with them. After he reported them, his schedule was adjusted, and he was no longer allowed to work flex time. He believes that this was done in retaliation for reporting them for timecard fraud. He also believes that those upset up with him began fabricating a false story about his unverified erratic behavior. (Applicant's Post-Hearing Exhibit A.)

On or about June 9, 2016, Applicant was instructed by his supervisor to come to work on time and leave work on time, in an email. Applicant sent an email back to the Contracting Officers Representative stating that he would "comply and adjust fire." Applicant explained at the hearing that this comment was made in an attempt to convey a willingness to do the right thing and adjust course. (Applicant's Post-Hearing Exhibit A.)

On or about August 16, 2016, Applicant was disciplined by his program manager for attempting to take a flex time schedule. Applicant told his program manager that he believed his flex schedule only became a problem out of retaliation for the whistleblowing he did concerning the timecard fraud. Applicant states that he signed the disciplinary notice only to be compliant. (Government Exhibit 5.)

On or about August 17, 2017, Applicant filed a harassment complaint. The program manager previously related that he had received information from the Applicant that he was seeking legal counsel. During an interview with Human Resources, where Applicant and the program manager were present, Applicant was asked if he had sought legal counsel. Applicant informed Human Resources that he had not yet done so. Applicant then walked out of the office with the program manager and stated to the program manager that, "misquoting me right now is dangerous." The program manager took Applicant's body language and his tone as a threat. (Government Exhibit 2.)

On or about August 18, 2016, Applicant made a statement to his coworker, who states that he observed Applicant behaving erratically at his cubicle, and commented to his coworker that he should, "Prepare to go to war in five minutes." Applicant claims that his exact words were, "prepare for battle, you will see in five minutes... the cleaning lady is here". He also claims that everyone was laughing. (Applicant's Post-Hearing Exhibit A.) This alarmed the coworker enough to report the behavior to the customer. The customer notified the program manager who immediately headed to the Air Force base to terminate the Applicant's employment and escort him from the building. (Government Exhibit 4.)

One witness, the operations manager who hired the Applicant in 2015, testified on Applicant's behalf. He stated that when Applicant worked with him, his performance with the government customer was exemplary. Everyone was happy with him at that time. He personally considers the Applicant to be an exceptional individual. In fact, the witness, has been the individual responsible for helping the Applicant get his new job. (Tr. pp. 77 – 89.)

Letters of recommendation from Applicant's current supervisor, coworkers and Government customers are favorable. They attest to Applicant's strong work ethic, love for his country, professionalism and integrity. Applicant is described as a hard worker, who is reliable and honest. (Applicant's Exhibit C.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2(a) describing 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.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 clearance 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 as to 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 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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 person may not properly safeguard protected information; and

(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:

(2) Any disruptive, violent, or other inappropriate behavior.

Applicant’s statements, when viewed as a whole, were unacceptable, scary and dangerous. His on-going threats clearly demonstrate inappropriate and questionable behavior that cannot be tolerated. The above disqualifying conditions have been established.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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.

It is noted that Applicant was at one time in the military, and his vernacular of concern in this case is inconsistent with everyday civilian language. Despite this excuse, Applicant's misconduct is still unexplainable. Applicant's behavior has created a hostile work environment. Working in the defense industry, as a civilian, while holding a security clearance is a critical mission that requires the highest sensitivity to one's mental stability and sound judgment. In order to properly protect the national interest, the Government must be strict about the rules that govern the defense security program, including what is said by its' employees. In this case, the Applicant made statements and comments that reflect poorly on his mental stability, and in turn effect his ability to properly protect the national secrets. From the evidence presented, the culmination of these statements reflect a warped mind-set and demonstrate a serious lapse in judgment that cannot be taken lightly. Given the inappropriate nature of these statements, not enough time has passed to show that Applicant's misconduct will not be repeated. He has not offered sufficient evidence to mitigate the Personal Conduct concern.

### **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(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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant demonstrated unsound judgment when he made a series of threatening remarks to his coworkers, while holding a security clearance, and while working in the defense industry. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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:	AGAINST APPLICANT
Subparagraph 1.a:	AGAINST Applicant
Subparagraph 1.b:	AGAINST Applicant
Subparagraph 1.c:	AGAINST Applicant
Subparagraph 1.d:	AGAINST Applicant

### **Conclusion**

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

Darlene Lokey Anderson  
Administrative Judge