



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-03840  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

10/23/2018

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

On March 19, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline E. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on April 2, 2018, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on May 9, 2018. A complete copy of the file of relevant

material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 25, 2018. He responded in an undated, one-page note, which was received by the Defense Office of Hearings and Appeals on June 14, 2018. Department Counsel did not object to Applicant's response, and it is admitted into the record. In his response to the FORM, Applicant did not object to the Government's evidence, which was attached to Department Counsel's FORM as Items 1 through 5. This evidence is admitted into the record and is referred to herein using Department Counsel's numbering for each Item. The case was assigned to me on July 26, 2018.

### **Findings of Fact<sup>1</sup>**

In Applicant's response to the SOR, he admitted the allegation under Guideline E set forth in SOR ¶ 1.a, though he asserts that he does not recall the exact wording he used in connection with the threatening online remarks he admitted making in March 2016. His admission included the allegation that his messages led to his debriefing and termination from his employer. Applicant denied in his SOR response the allegations in SOR ¶¶ 1.b and 1.c, and he provided some explanations with his denials. His admissions are incorporated in my findings of fact.

Applicant is a 54-year-old employee of a U.S. Government contractor. He has been married twice, most recently in 1991. He and his current wife have three children. (Item 5 at 8-9.) He was previously married in 1983. (Item 5 at 8.) It appears from the report of his August 4, 2017 background interview that Applicant and his former wife had two children, who are now adults. (Item 5 at 8.) Applicant reported in his background interview that he does not know the addresses of his ex-wife or any of his four sons. (Item 5 at 8.) He appears to be estranged from all five of them.

Applicant served 12-13 years in the Marines as an enlistee and another nine years in the Army National Guard. He received honorable discharges from both services. As a government contractor, he worked for a very brief period in 2013 in a remote site in a war zone. He quit his job and left the country after being accused of insubordination for questioning his supervisor. (Item 5 at 4-5.)

Applicant's security problems arose out of an office relationship with a younger female colleague (the Colleague). Applicant often spent time during the workday with the Colleague at her workstation. This behavior was the subject of critical comments from other personnel. At one point, the government's point of contact with Applicant's employer counseled Applicant to stop spending so much time at the Colleague's workstation. Applicant defiantly refused to change his behavior. Other personnel complained to the facility security officer (FSO) about Applicant's behavior with the Colleague. The FSO was concerned about Applicant's trustworthiness and integrity because she knew from her files that Applicant was married. (Item 4 at 1.)

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<sup>1</sup> Applicant's personal information is extracted from his security clearance application, dated March 8, 2017 (FORM Item 3), unless otherwise indicated by a parenthetical citation to the record.

The Colleague was also friendly with another man, who used to work at the facility (the Former Co-Worker). By March 2016, Applicant and the Former Co-Worker developed a mutual dislike for each other and eventually words were exchanged between the two over social media. On March 7, 2016, the Former Co-Worker called the security officer and reported that Applicant had threatened him in an online message. The security officer reviewed the online communications between the two men. She attached a copy of the communications to a Memorandum for Record she prepared about the incident. (Item 4 at 2-4.)

Applicant's written messages were disturbing to the FSO for two reasons: one, they contained a threat of violence against the Former Co-Worker; and two, they included outright admissions by Applicant that he was unstable and unpredictable. (Item 4 at 1.) Applicant commented in his messages to the Former Co-Worker that he was "10 times stronger" than his rival and that he "can carry a weapon." (Item 4 at 1, 4.) Applicant, in fact, has a license to carry a concealed weapon. (Item 5 at 7.) In a response to a suggestion by the Former Co-Worker that Applicant's threat may become a problem for his security clearance, Applicant wrote: "you should no (sic) better [than] to threaten someone who's not all there . . . I hate life[.]" (Item 4 at 3.) The Co-Worker wrote that Applicant was "insane," and Applicant responded with the comment that "7 years in Iraq and Afghanistan might do it." (Item 4 at 2.)

Based upon her reading of these online messages between the two men and her knowledge of Applicant's interest in the Colleague, the FSO became concerned about a possible escalation if Applicant felt his relationship with the Colleague was endangered. She was also concerned about the elevated access Applicant had to the facility's classified computer systems. She took her concerns to the commanding officer, who decided to suspend Applicant's access to classified information. His employer subsequently terminated him. The Former Co-Worker also sought a protective order against Applicant based upon Applicant's emotional instability and threatening online messages. (Item 4 at 1.)

Applicant's version of the events that led up to his termination is set forth in his responses to the FORM and to the SOR and in the report of his August 2017 background interview, which he adopted in his answers to Department Counsel's interrogatories. He failed to disclose his debriefing or employment termination in his security clearance application (SCA). In his SOR response, Applicant admitted allegation in SOR ¶ 1.a that he was debriefed and terminated from his employment because he made threatening remarks to someone online, but he claimed he did not recall the exact words he used. He provided a lengthy explanation of the interactions he had with the Former Co-Worker and the Colleague in his background interview. Applicant advised the interviewer that he and the Colleague were being stalked by the Former Co-Worker, who was trying to provoke an altercation. He also said that before he wrote the messages, he had consumed alcohol and had taken a sleep aid. He said that the sleep aid impacted his actions. (Item 5 at 3.)

During his background interview, Applicant commented that he was interviewed in June 2017 by an investigator from another government agency (AGA Investigator). He

admitted that he initially misled the AGA Investigator, stating he told the investigator that someone must have hacked his online account and posted the messages. He reported to the background investigator that he ultimately decided to tell the truth and admit he sent the messages. He acknowledged that the AGA Investigator produced copies of the messages. It is unclear from the background investigator's report whether this occurred before Applicant admitted his actions or after. (Item 5 at 7.) In his response to the SOR, Applicant clarified the timing by writing: "When shown [by the AGA investigator] what was said [in the messages], I admitted it looked like something I might say."

Applicant again misled the government in his SCA by not disclosing his March 2016 termination from his employer. The question in Section 13C of the SCA asks for this information and required the disclosure of his termination. In his response to the SOR, Applicant denied that he intended to provide false information. He stated that he was confused how to answer this question because he claims he was not fired. He asserts he was let go because his clearance was suspended and he required the clearance to perform his duties. He also asserts that he was never told why he was "let go." By answering this question in the negative, he claims he believed that he was providing the best answer. (Response to SOR.)

Applicant's excuse for not disclosing in his SCA that he lost his job for security-related reasons evidences that he was deliberately attempting to withhold derogatory information about his termination. This finding is supported by his initial attempt to mislead the AGA investigator in June 2017 claiming his online account was hacked. It is also supported by his false denial in his response to Section 25 of his SCA that he had never had his clearance suspended.

The SOR allegation set forth in ¶ 1.c states that the date of the SCA is September 3, 2015, which is incorrect. That date precedes the dates of Applicant's debriefing and termination, which occurred in March 2016. The correct date of the SCA in the record is March 8, 2017.

## **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense

decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## **Analysis**

### **Guideline E (Personal Conduct)**

The security concern under this guideline 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 disqualifying conditions under this guideline are potentially relevant:

AG ¶ 16(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;

AG ¶ 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 official government representative; and

AG ¶ 16(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; and (3) a pattern of dishonesty or rule violations.

Applicant's admissions and the documentary evidence in the FORM establish AG ¶¶ 16(b) and 16(d) under this guideline with respect to the allegations set forth in SOR ¶¶ 1.a and 1.b. The record satisfies the Government's burden of proving by substantial evidence that Applicant wrote threatening online messages to the Former Co-Worker and was debriefed and terminated. Furthermore, the evidence establishes that Applicant attempted to deceive the AGA Investigator by claiming that his online account was hacked before he was shown the messages and admitted sending them. Sending the messages to the Former Co-Worker was not a one-time mistake, as Applicant argues in his response to the FORM. The record evidence establishes a pattern of dishonest and inappropriate behavior.

The evidence in the FORM however, does not support the allegation, as written, in SOR ¶ 1.c because of the incorrectly alleged date of the SCA. Accordingly, I am constrained to find that the record evidence does not establish SOR allegation ¶ 1.c.

The following mitigating conditions are potentially applicable:

AG ¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(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.

Neither of the above mitigating conditions are established with respect to the disqualifying facts alleged in SOR ¶ 1.a. Applicant's presented no mitigating evidence with respect to his threatening messages, except his excuse that the sleeping aid he claims he took the night of his messaging activities disturbed his judgment. Given the severity of the threats, that excuse cannot be given any significant weight. The incident is not minor, and insufficient time has passed. Applicant's threats, which include a reference to a firearm and his mental instability, cast serious doubts on his judgment and reliability.

AG ¶ 17(a) does not apply to the security concerns raised by the facts alleged in SOR ¶ 1.b. Applicant initially tried to mislead the AGA investigator, and it was only after Applicant was shown the actual messages that he decided to tell the truth. An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the government's industrial security program. ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002).

AG ¶ 17(c) is not established with respect to Applicant's act of deception. These offenses are not minor, infrequent or dated. They cast serious doubts about Applicant's reliability, trustworthiness and judgment.

Applicant's behavior raised in the SOR allegations ¶¶ 1.a and 1.b and established by the record evidence reflect a pattern of dishonesty and inappropriate behavior. Moreover, his threatening messages, combined with the suggestion that he was not stable after his years of military service in war zones, made his threats even more sinister and raised serious questions about Applicant's judgment and reliability.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d).<sup>2</sup>

I have incorporated my comments under Guideline E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Some of the factors in AG ¶ 2(d) were addressed above, but another factor warrants additional comment. Applicant's non-alleged conduct of intentionally failing to disclose his termination in his March 8, 2017 SCA is evidence I can consider in my whole-person analysis. *See, e.g.,* ISCR Case No. 14-01941 at 3 (App. Bd. Mar. 30, 2015) (non-alleged conduct can be considered in performing a whole-person analysis and evaluating mitigation evidence). Applicant's intentional falsification in his SCA addresses the issue of the frequency and recency of Applicant's misconduct and undercuts his limited evidence in mitigation, particularly on the issues of his trustworthiness and reliability. After weighing the disqualifying and mitigating conditions under Guideline E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his past actions.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1. Guideline E:           AGAINST APPLICANT

Subparagraphs 1.a-1.b:   Against Applicant

Subparagraph 1.c:           For Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

John Bayard Glendon  
Administrative Judge

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<sup>2</sup> The factors are: (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.