



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-04854

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

December 9, 2010

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Statement of the Case

On December 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing reasons why DOHA could not make the preliminary affirmative determination of Applicant's eligibility for a security clearance, and DOHA 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 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 (AGs) implemented by the Department of Defense on September 1, 2006.

Applicant responded to the SOR on February 8, 2010. The case was assigned to me on June 14, 2010, and was scheduled for hearing on July 21, 2010. A hearing was held on the scheduled date. At the hearing, the Government's case consisted of 20

exhibits (GE). All of the Government's exhibits were admitted. Applicant relied on one witness (himself) and two exhibits (AE). The transcript (Tr.) was received on July 29, 2010.

Summary of Pleadings

Under Guideline E, Applicant allegedly resigned his position as acting fire lieutenant for a city fire department in September 2003, in lieu of involuntary termination for the following conduct: (1) untruthful during an EEO statement; (2) violation of sexual harassment policy; (3) use of position in an inappropriate manner; (4) compromise of a felony investigation; and (5) actions not favorable to the City, Fire Department, and Police Department. In his February 2010 response to the SOR, Applicant admitted each of the allegations. He provided no explanations.

Findings of Fact

Applicant is a 51-year-old mechanical technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in November 1982 and has two children (ages 26 and 23) from his marriage. (GE 1) He and his wife have since divorced. Applicant has a high school diploma and a fire academy certificate from a reputable technical school. Applicant has no military service and has been employed by his current employer since November 2003. (GE 1)

Acting on the recommendations of an old friend, Applicant (in 1981) went to work for a local municipality. (GE 4). He took leave from his job in 1983 to attend college, and resumed his city employment in 1986 with the city's local fire department. (see GEs 2 and 4) He received regular promotions during his first ten years of service with the city's fire department. In 1996, he attended the city's police academy and became a fire inspector. (*compare* GEs 2 and 4; Tr. 82) Although commissioned by the police department, he continued to work for the fire department and was responsible for fire investigations. (GE 2)

In 2001, Applicant began working on a fire investigation case that involved two brothers (A and B). These brothers founded and owned separate businesses that serviced fire extinguishing equipment and fire protection systems. (GE 2) Applicant worked on this case in cooperation with a detective (D) for the local police department. (Tr. 88)

In the process of working his department's case against B, D learned that B's wife (C) was a dispatcher for the central dispatch for the city's police and fire departments. (GE 2) When they initially presented their case to the city's district attorney (DA), the DA told them their case was weak and requested more evidence. (GE 2) The DA also

suggested that Applicant and D back off their investigation of B for the time being. (Tr. 90)

Sometime later (in 2002), C approached Applicant and asked him “what was going on with the case against B.” (GE 2) In this conversation, Applicant provided C details of the investigation against her husband. (GE 2) Applicant advised the DA of his contacts with C and was told that he should not have discussed the case with her. (GE 2) Applicant’s superior also criticized him for discussing the case with C.

Shortly after Applicant was counseled by the DA to avoid conversations with C about the status of the investigation against B, B and C joined Applicant and D in a lawsuit against the city. In their complaint, they accused Applicant and D of “singling them out and harassing them.” (GE 2) After they were investigated by EEO personnel, Applicant and D were cleared by the police department’s internal affairs division of any wrongdoing. (GE 2)

Applicant and D continued to work the case against A and B throughout 2002. As the result of their investigation, A was arrested for fraud. (GE 2) Following his arrest, A was jailed for a week. When he was released pending charges against him, he committed suicide. (GE 2; Tr. 94) Applicant and D were subsequently cleared by their fire and police departments of any wrongdoing in connection with the arrest of A. (GE 8) Applicant and D, in turn, put their investigation of B on hold. (GE 2) C and B thereafter dropped their harassment suit against Applicant and D. (Tr. 95-97)

In a taped January 2003 telephone conversation with C (initiated by Applicant), Applicant asked C on several occasions whether she and her husband were still living together and discussed his own marital status with her. (see GEs 9 and 14). Told by C that she was still married and living with her husband, Applicant responded as follows: “So coming to your house is not an option, I guess, if he’s there.” (GE 2) Before terminating his conversation with C, he inquired if she was still “doing massages at all.” (GE 2) When she responded affirmatively, Applicant suggested that “maybe we’ll talk about that.” (GE 2) C reacted positively to Applicant’s suggestion.

After more fraud complaints were filed against B, Applicant and D activated their investigation of B. In August 2003, C contacted Applicant by telephone and asked to meet him to discuss the case. When Applicant arrived at the meeting site, C entered Applicant’s city vehicle and pressed him for details of his investigation against B. Applicant told C of another complaint against B, and an instituted investigation against B by the local police department. After thanking him for the information, C exited Applicant’s vehicle. (GE 2)

EEO inquiry re: C’s discrimination charges

In response to C’s sexual harassment charges against Applicant and the city, the city’s EEO conducted its own inquiry. The assigned EEO inspector asked Applicant several questions pertaining to C’s harassment complaint, which drew untruthful responses from Applicant. When the inspector asked Applicant whether he ever

socialized with C, Applicant answered “never.” (GEs 8 and 13) Asked whether he had ever had any personal discussions with C over marriage and potential sexual exchanges, he again said “never.” (GEs 8 and 13) He answered no, too, to the inspector’s question of whether he ever received a massage from C, and to the question of whether C had ever been in his city vehicle. (see GE 13) And Applicant answered in the negative to the inspector’s question of whether Applicant ever discussed with C any aspects of the pending investigation of her husband (B)

When later confronted by the police investigator detailed to his department’s own internal investigation of Applicant’s reported actions, Applicant admitted to socializing with C at a birthday party in May 2000 and having coffee with her on other occasions. (see GE 12) After being confronted with C’s reporting of massages to Applicant, Applicant acknowledged he received a massage to his shoulder from C. (GE 12) However, he continued to deny more extended contacts with C, and denied any sexual contact with C whatsoever. (GE 12)

Besides interviewing Applicant, the police investigator assigned to investigate Applicant’s role in the events claimed by C in her complaint, talked to some of C’s coworkers in the fire and police dispatcher’s office. One of C’s coworkers confirmed that Applicant had made many calls to her office inquiring about C’s whereabouts. (GE 12). This investigator also contrasted Applicant’s claims in his taped conversation with C about his involvement in an ongoing investigation of B with his own understanding of the absence of any ongoing investigation of B. (GE 12). Another of Applicant’s coworkers confirmed that she had numerous personal conversations and social exchanges with him following her employment in 1999. (GE 12) She claimed he made advances to her, which she rebuffed. (GE 12). A social friend of C’s confirmed a three-way social exchange between herself, C, and Applicant, in which C’s opening of her massage parlor became a topic of discussion. (GE 12)

After reviewing Applicant’s taped conversation with C, the police investigator found Applicant’s answers to the questions propounded to him to be false and untruthful in many ways when compared to the accounts of C and the other witnesses interviewed. (GE 13) In his own conclusions, he confirmed that Applicant failed to cooperate with an official EEO investigation and was untruthful about an official investigation initiated against B in 2002. (GE 12) He underscored several police department rules and regulations violated by Applicant: failure to maintain proper telephone courtesy with the public; conduct unbecoming a police department employee; failure to abide by internal police department rules of conduct; failure to adhere to the department’s anti-harassment policy; failure to be truthful in a police investigation; and failure to safeguard the confidentiality of police business. (see GEs 12 and 13).

Based on his own internal findings with respect to a prior police investigation in 2002 and the current one involving his communications and relations with C, this police investigator recommended the termination of Applicant’s commission with the police department and the forwarding of any further considered actions of discipline to the city’s fire department. (GE 12) This police investigator repeated his findings concerning Applicant responses to questions from the EEO inspector’s June 2003 interview with

Applicant when he met with the fire marshal (Applicant's supervisor) in August 2003. (see GE13)

City's Personnel and Administrative policies

The city's personnel policies in place throughout the 2002 and 2003 periods of Applicant's employment required employees to avoid any form of unlawful discrimination and be cooperative and truthful at all times with city investigators in administrative investigations. (see GE 14) Rules of conduct governing the city's fire and emergency services personnel required every fire department member to behave in a self-disciplined manner and be responsible to regulate his or her conduct with a positive, productive, and mature attitude.

Rules of conduct required city fire and emergency personnel to: follow all policies, procedures, and written directives of the city; conduct themselves in a manner that will reflect positively on the fire department; and operate safely and use good judgment based on training and directives. (GE 14) Violations of any of the city's personnel and administrative policies was cause for disciplinary action ranging from counseling up to and including dismissal. (GE 14)

The city's personnel policy included a section governing employee ethics. The city's ethics policy barred employees from using their positions for personal gain and unwarranted benefit or treatment. Misuse of an employee's official position was prohibited by the ethics policy. Improper use or disclosure of information gained from a city employee's employment that could result in a benefit to the employee or his family was also prohibited by the city's personnel policy.

Applicant was fully briefed on the city's personnel and administrative policies prior to 2002. Records document that Applicant received a copy of the city's racial and sexual harassment discrimination policy and training on sexual harassment in October 1996. (GE 5). In May 2000, he acknowledged his receipt of the city's revised employee handbook. (GE 6). This revised handbook covered the city's work rules and personnel policies for the city's police and fire departments. (GE 6)

City disciplinary actions taken against Applicant

In August 2003, the city's fire marshal (Applicant's direct supervisor) and investigating officer interviewed Applicant about the result of their internal investigation. (GE 14). In this interview, they challenged Applicant on the answers he provided the EEO officer in his June 2003 interview of Applicant. In this interview, Applicant characterized his answers in his June 2003 interview differently from the way he responded in his June 2003 interview in a number of material respects.

Finding irreconcilable inconsistencies in his statements, his supervisor concluded that Applicant was not completely truthful in all of his responses. (GE 14) The fire marshal also noted material inconsistencies in the accounts Applicant provided police investigators in 2002 and those he furnished in his August 2003 interview. (GE 14)

Based on his review of the evidence compiled in the city's investigation, Applicant's supervisor concluded that Applicant's comments to C in his taped conversation with her in January 2003 were of a sexual nature and were designed to appeal for some type of sexual favor or request. (GE 14) Finding Applicant's telephone conversation with C to have been conducted while he was on official city duty, he determined Applicant's sexual comments to have violated the city's published harassment policy.

Applicant's supervisor also determined that Applicant used his position in an inappropriate manner. (GE 14) Having gained fire and police department information through his official position, he shared this confidential information with C in his capacity as a department inspector and investigator. His supervisor found Applicant's actions to reflect the appearance of preferential treatment and possible coercing of C to participate in activities and/or gain information irrelevant to an investigation. Applicant's supervisor found Applicant's actions as a commissioned law enforcement officer to constitute a use of his position not related to job duties and responsibilities and indicative of poor judgment and an abuse of position and power. In the judgment of Applicant's supervisor, sharing information and using his position for personal gain in this manner violated the city's work rules and ethics policy. (GE 14)

In the judgment of Applicant's supervisor, Applicant's actions also compromised an ongoing investigation of A and B. A and B were considered felony suspects at the time, and Applicant's contacts with B's wife in these circumstances jeopardized the potential outcome of the case in the view of Applicant's supervisor. (GE 14) By sharing investigative information with the wife of a suspect and compromising a felony case, Applicant's supervisor determined Applicant violated the city's personnel and ethics policies. (GE 14).

After a thorough review of all of the evidence compiled by his department in its internal investigation of Applicant's conduct, Applicant's supervisor concluded, too, that Applicant's conduct and behavior created questions regarding the impartiality and objectivity of his performance as a city employee. (GE 14) By engaging in activity that is prejudicial to the best interests of the city and its fire department, Applicant's supervisor determined Applicant violated the city's personnel and ethics policies. (GE 14)

Before deciding on his recommended course of disciplinary action for Applicant, Applicant's supervisor reviewed Applicant's employment history. (GE 14) Applicant's history included a number of prior disciplinary actions taken against him between July 1994 and February 2003.

In recommending termination of Applicant's city employment, Applicant's supervisor prefaced his recommendations with his characterizing of Applicant's conduct. He characterized Applicant's collective actions as contrary to the expectations of his department and city. He stressed Applicant's violations of numerous city policies, and placing the city at an increased risk for liability. Based on his review of the facts provided through the course of the investigation, his supervisor concluded that Applicant committed acts that were: untruthful during an administrative investigation; violated the city's sexual harassment policy; utilized his position in an inappropriate manner;

compromised a felony investigation; and participated in conduct prejudicial to the best interests of the city. (GE 14) His supervisor, in turn recommended involuntary termination from employment with the city's fire department and city.

Applicant acknowledged receipt of his supervisor's findings in September 2003. (GE 14) One week later, Applicant submitted his resignation. His resignation was accepted by the city's fire chief, and ultimately was accepted by the city in lieu of involuntary termination. (see Ges 18 through 20)

Applicant's OPM interviews

In a September 2006 interview with an agent from the Office of Personnel Management (OPM), Applicant reviewed the history of his involvement in the investigation of A and B for the city and his telling C about the investigation of her husband as she sat in his parked city vehicle. (GE 2) He covered C's harassment complaint and his meeting with his supervisor and department investigator in September 2003. (GE 2) However, Applicant denied most of the charges preferred against him by his supervisor that led his supervisor to recommend his involuntary termination. His denials were material and reflect ongoing rejection of his supervisor's core findings about Applicant's untruthfulness during the investigation and the city's claimed personnel and ethics policies. (GE 2)

OPM conducted a follow-up interview with Applicant in June 2008. (GE 4) As a part of this interview, Applicant was asked to give a signed affidavit covering all of the events and circumstances that gave rise to his 2003 resignation in lieu of termination. Applicant provided a fairly detailed summary of most of the events leading up his department's investigation of his actions in his investigation of A and B. His statement covered his investigations of A and B and his acquaintance with C. He acknowledged sharing information with C about the ongoing investigation of her husband (citing the likely guilt of her husband and his sympathy for her), and the ensuing harassment suit she and B filed against D, himself, and the city. (GE 4) Applicant also described his fire department's opened internal investigation as the result of C's initiation of her lawsuit. Applicant also mentioned C and Bs' withdrawal of their lawsuit against the city, and his department's resumption of its internal investigation against B. So, too, he explained C's approaching him once again for information about his department's renewed investigation of her husband. (GE 4) And he acknowledged C's getting into his parked city vehicle to inquire about the city's investigation of B.

But Applicant also omitted important details of his department's internal investigation of his actions and behavior as a fire investigator assigned to the investigation of C's husband, as well as the plausible, credible findings of his supervisor that the latter used to recommend Applicant's employment termination. Besides omitting material details of his taped telephonic exchanges with C and his false denials when questioned by a city EEO investigator, he reiterated his denials of all of C's remaining charges levied against him. He attributed his forced resignation to an absence of backing by his supervisor and fire chief, and not to any wrongdoing on his part. (GE 4) And he assured he tendered his resignation due to some poor choices on his part, and not because he had committed any knowing and willful wrongdoing. (GE 4).

Based on Applicant's own taped statements and the highly plausible and credible inferences that the police investigator and his supervisor drew and used to base their respective termination recommendations, Applicant's limited explanations of the facts and circumstances that led to his own decision to resign and avert involuntary termination cannot be accepted as true and accurate accounts. Applicant's explanations lack completeness and material acknowledgments of the supported findings made by the police investigator and his supervisor, and cited as the basis of their recommended personnel actions against Applicant.

Applicant's hearing accounts

In his hearing testimony, Applicant acknowledged being untruthful in the EEO investigation about his relationship with C. With two exceptions, he accepted the findings of his supervisor's termination memorandum as an accurate portrayal of his actions. (Tr. 117-118) He denied any intentional misrepresentation about C's getting into his city vehicle, and he denied ever receiving a massage from C. (Tr. 109-10)

Before A's suicide in 2002, Applicant and C had been just good friends. (Tr. 92) Their relationship changed, though, following A's death. (Tr. 92-93) By the time Applicant spoke to C in his taped 2003 telephone conversation, his marriage had deteriorated considerably. (Tr. 98) His marriage had been going "downhill for about ten years prior to that" (Tr. 98), and had essentially ended in 2003. He described his relationship with C at that time as "better than friendly" (Tr. 98), and one that included physically affectionate exchanges (e.g., hugging and kissing) without sexual intercourse. (Tr. 98-99) His physically affectionate relationship with C had gone on for some two months before his taped telephone conversation with her in 2003. (Tr. 103-04)

Pressed at hearing to acknowledge he lied about the nature of his relationship with C, Applicant admitted to giving an intentionally false account to the EEO investigator of his relationship with her. (Tr. 108-09) He denied, however, ever receiving a massage from C (Tr. 109-10), taking her for rides in his city vehicle, or intentionally failing to disclose C's getting into his city vehicle. (Tr. 111-16)

Because of the uncertainty he expressed in his EEO interview about C's ever getting into his city vehicle, his claims that he made no false claims about her ever getting into his city vehicle may be accepted. A different inference is warranted, however, in connection with his previous massage denials. In light of his past pattern of denials of any inappropriate social relationships with C, and his limited disclosures of inappropriate behavior in his more recent OPM interviews, his repeated denial of his ever receiving a massage from C is difficult to reconcile with his reported admission of a massage from C in his interview with the city police investigator in 2003. Before he was confronted by the investigator and admitted to the massage, he denied receiving one from C then as well. (see GE 12)

Based on a thorough consideration of the exhibits and testimony covering Applicant's EEO investigation and related resignation, Applicant's assurances lack the probative weight necessary to accept his denials at face value. More probative are the findings of the police investigator who enlisted an admission from him that he received a

message from C and Applicant's supervisor who presented his findings supporting Applicant's recommended termination. After weighing all of the evidence, Applicant's claims to the contrary cannot be accepted.

Endorsements

Applicant is well-regarded by his current supervisor and coworkers. His endorsements confirm numerous credits for his contributions to his team's missions. (see AE A and B) Colleagues who have had considerable experience working with him describe him as very conscientious and trustworthy. They credit him with demonstrated courage, leadership, and outstanding performance in the execution of his assigned responsibilities as a team leader. (see AE E)

Since joining his current employer, Applicant has never been charged or accused of any kind of harassment in the work-place. Nor has he ever been suspended, or reprimanded for any misconduct in the workplace, or subjected to any internal investigations for misconduct in the workplace. (Tr. 188-19)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA 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 "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions 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 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 AG ¶ 2(a) of the revised 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.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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 chances; (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 adjudication policy factors are pertinent herein:

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, 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, ¶ 15.

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 Kungys v. United States*, 485 U.S. 759, 792-800 (1988). 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 burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation of the Government's case. Because Executive Order 10865 requires that all security clearances be clearly consistent with the national interest, "security 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

Applicant is a high performing and well-regarded test engineer of a defense contractor who resigned his city position as a fire inspector in 2003 in lieu of being terminated for multiple actions violating the city's personnel and ethics policies. Claiming he resigned after he failed to receive any backing from his supervisor and the city's fire chief, Applicant consistently denied most of the charges against him and continued to deny two cited instances of inappropriate behavior in his hearing testimony. Considered together, Applicant's actions create sufficient indicia of serious personal conduct questions about his judgment and trustworthiness to raise security concerns under the personal conduct guideline.

Because the judgment and trust lapses associated with the termination actions instituted against him by his city employer in 2003 and ensuing denials in the face of credible evidence supporting the findings of his supervisor involve honesty issues, they pose personal conduct concerns. Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the actions and repeated denials of Applicant that reflect serious abuses of his duties as a law enforcement officer of his city's fire department. Compounding the adverse findings against him as a law enforcement officer are his subsequent denials and omissions of key actions and events when afforded opportunities by OPM to provide complete and accurate accountings of his underlying conduct. So much trust is imposed on persons like Applicant who are cleared to see classified information that discounting actions that reflect serious breaches of trust and candor are gauged very narrowly.

Looking at the developed facts and circumstances in this case, two of the disqualifying conditions under the personal conduct guideline are applicable to Appellant's situation. DC ¶ 16(a), "DC ¶ 16(d)(3), "a pattern of dishonesty or rules violations," and DC ¶ 16(d)(4), "evidence of significant misuse of Government or other employer's time or resources," have application to the facts of Appellant's case.

Holding a security clearance, of course, involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Trust in a person's willingness to follow and comply with rules and guidelines he may not personally favor is required precisely to inspire trust and confidence in the holder of the clearance. Failure of the applicant to adhere to prescribed city personnel and ethical policies and acknowledge inappropriate behavior when asked in official interviews associated with ongoing city investigations raises security-significant concerns about the sufficiency of the applicant's demonstrated trust and judgment necessary to safeguard classified information.

Mitigation is difficult to credit Applicant with, since he has demonstrated a pattern of attesting falsely to allegations made against him by persons associated with investigations involving third parties, as well as those focused on his own actions as a law enforcement officer. When confronted by the investigating police officer of his city employer, he initially denied any socializing with C (including massages administered by C) before relenting and acknowledging the same when advised of documented tapes

and witness accounts. In his taped conversation with C, he mischaracterized his investigatory role in the investigation of B and was too specific in detailing the subject matter of the investigation to C. By knowingly and willfully failing to disclose all of his known exchanges with C when first interviewed by the EEO investigator, and later by the city's internal affairs investigator until confronted with compelling facts to the contrary. Applicant concealed, or attempted to conceal, materially important background information needed to complete the investigations mandated by his city employer. He also compromised the integrity of any actual or potential investigation of B with the details he supplied C in his taped conversation.

Viewing Applicant's conduct in its entirety, his actions not only violated his employer's harassment, personnel, and ethics policies, but they illustrate material breaches of sound judgment and trust imposed on law enforcement officials. Applicant's proven actions also demonstrate Applicant's unwillingness and reluctance to provide full cooperation to both city investigators examining his involvement with C back in 2003, and DoD in its more recent efforts to ascertain Applicant's worthiness to hold a security clearance

Weighing all of the circumstances surrounding his actions while employed as a city fire inspector and ensuing denials in his more recent OPM interviews, even after acknowledging receipt of his supervisor's findings in September 2003, Applicant's actions reflect a material breach of recognized tenets of trust and candor. His failure to provide prompt, good-faith accounts of his actions when afforded multiple opportunities to do so, undercuts his ability to successfully mitigate security concerns.

When addressing past actions that reflect proven dishonest and inappropriate behavior and an applicant's repeated denials of the same, the Appeal Board has construed such denials as self-serving claims, and when considered in light of other instances of trust and judgment lapses, determined them to undermine applicant efforts to demonstrate rehabilitation. See ISCR Case No. 08-03620 at 3-4 (App. Bd May 6, 2000); ISCR Case No. 08-09232 at 3 (App. Bd. Sept. 9, 2010).

Based on a careful review of the administrative record, Applicant may partially rely on two of the mitigating conditions (MC) of the personal conduct guideline. Specifically, MC ¶ 17(c), "the offense if 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, or good judgment," and MC ¶ 17(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," have some applicability to Applicant's situation.

From a whole-person perspective, Applicant's actions and contributions to the defense industry warrant positive assessments. Certainly, during his extended time with his defense employer since he resigned from his city employment in 2003, he displayed responsible conduct and has earned the trust and reliability of his current supervisor and coworkers. At the same time, the investigation records from his former city employer and

