



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



In the matter of: )  
)  
) ISCR Case No. 14-06508  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: *Pro se*

04/25/2016

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 29, 2015, the Department of Defense (DOD) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on June 9, 2015, and elected to have the case decided on the written record in lieu of a hearing. On August 6, 2015, Department Counsel requested a hearing before an administrative judge. At the hearing, Applicant stated that he also wanted a hearing. The case was assigned to another administrative judge on September 15, 2015, and reassigned to me on November 3, 2015. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 12, 2015, scheduling the hearing for December 8, 2015. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A through C, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 30, 2015.

### Findings of Fact

Applicant is a 56-year-old employee of a defense contractor. He has worked for his current employer since 1992. He seeks to retain a security clearance, which he has held for more than three decades. He has a bachelor's degree that was awarded in 1981. He is married with two adult children.<sup>1</sup>

In 2011, Applicant's company offered him a position at a facility that was about 90 miles from where he lived.<sup>2</sup> The company offered a relocation allowance of up to \$50,000, but Applicant was required to move in order to be eligible for the allowance. The relocation plan stated:

- The distance over the shortest, most commonly traveled route from the old home to the new principal work location must be at least 50 miles farther than from the old home to the old principal place of work. . . .
- The employee must complete the relocation within one year following the effective report date.

In addition, under the Plan:

- the employee's new primary residence must shorten the commuting time and distance to the new work location, and
- the employee's primary residence in the new work location must be within a reasonable daily commute to the new work location.<sup>3</sup>

Applicant's mother was ill; his children were in school; his wife was working at their church; and he did not move.<sup>4</sup>

Between May 2011 and May 2013, the company paid Applicant \$43,485 of the relocation allowance. In May 2013, Applicant provided his company with a copy of an April 2013 one-year lease of a home within the geographic area of the new work location. The relocation package was finalized and closed in May 2013.<sup>5</sup>

---

<sup>1</sup> Tr. at 21-22, 33, 56-57; GE 1, 2.

<sup>2</sup> Distance was computed using MapQuest.

<sup>3</sup> AE B.

<sup>4</sup> Tr. at 22, 33, 36-37, 42, 64; Applicant's response to SOR; GE 3, 4; AE A, B.

<sup>5</sup> Tr. at 46; GE 3, 4; AE A, B.

Applicant denied that the one-year lease was a sham that was produced solely to obtain the relocation funds. He stated that the lease was for a room in a house owned by his friend. The lease agreement does not state that it is for a room in a house; it states the lease is for “real property having a street address of [address redacted].” It also stated that the property is a “private single family dwelling.” Applicant admitted that he only made one rent payment of \$500 and his friend did not cash his check. Applicant did not move into the property. He stated that he would periodically stay at the house, but he did not like bothering his friend. He stayed at inexpensive hotels about four times a month.<sup>6</sup>

After the relocation package was finalized and closed in May 2013, Applicant began submitting expense reports that included hotel stays, mileage from his home, and per diem. He received \$7,829. The company’s management at the work location approved the expenses, but Applicant did not disclose to them that he had received a relocation package. The company’s travel policy does not permit reimbursement for overnight stays due to a long commute or working extended hours.<sup>7</sup>

The company initiated an investigation. It reported that Applicant admitted that he had no intention to relocate and he accepted the relocation allowance knowing that he would not relocate. As a result of the investigation, the company issued Applicant a final warning notice. Applicant was not terminated, but his position was downgraded and his salary was reduced about 29%. He filed a grievance with his company. The finding of the grievance action was that management acted appropriately in issuing the final warning notice, but the downgrade was disproportionate. Applicant’s salary reduction was changed to a reduction of about 11%.<sup>8</sup>

Applicant stated that he was never told that the relocation package was contingent upon him relocating, and that he was unaware that he had to move in order to receive the relocation package. He was unable to adequately explain why he submitted a lease if he did not have to actually relocate. He also stated that he was unaware that he was not entitled to mileage, hotel costs, and per diem. He stated that his managers asked him why he was staying at a cheap hotel, and that they could get him per diem so that he could stay at a nicer hotel. He stated that he did not realize at the time that he was doing anything wrong, but that “[l]ooking back, [he] probably should not have taken [the] hotel after the relocation.” He also blamed the company’s managers for offering him the per diem. Applicant’s statements were inconsistent, not credible, and contradicted by his company’s relocation plan.<sup>9</sup>

---

<sup>6</sup> Tr. at 24-29, 46-50, 65-66; AE A.

<sup>7</sup> Tr. at 26-29, 33-34, 44-46, 53; GE 3, 4; AE A.

<sup>8</sup> Tr. at 20, 31, 40-41; Applicant’s response to SOR; GE 2, 3; AE A, B.

<sup>9</sup> Tr. at 21-31, 35-36, 43-46, 51, 56, 61-62, 69; Applicant’s response to SOR; AE A, B.

Applicant submitted documents and letters attesting to his excellent job performance, ethical standards, dependability, dedication, and integrity.<sup>10</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 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 access to classified information will be resolved in favor of national security."

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 security 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 of 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).

---

<sup>10</sup> AE A, C.

## Analysis

### Guideline E, Personal Conduct

The security concern 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:

(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 person may not properly safeguard protected information. This includes but is not limited to consideration of:

(3) a pattern of dishonesty or rule violations;

(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, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant accepted a relocation package from his company that required him to move close to a facility that is about 90 miles from where he lived. He accepted \$43,485 to relocate, but he did not move. He submitted a one-year lease of a home within the geographic area of the new work location, but he did not move into the home. After the relocation package was finalized and closed in May 2013, he collected \$7,829 for hotel stays, mileage from his home, and per diem, for which he was not entitled.

Applicant's conduct showed dishonesty, poor judgment, and an unwillingness to comply with rules and regulations, which raises questions about his ability to protect classified information. It also created a vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(d) and 16(e) are applicable.

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.

I do not accept Applicant's statements that he did not know that he was doing anything wrong. His testimony was inconsistent, not credible, and contradicted by his company's relocation plan. I also cannot accept that a person of Applicant's age, education, experience, and tenure with his company would believe that his company would pay him \$43,485 to move to the location of another facility, and then also pay him mileage, hotel costs, and per diem at the facility's location. Without appropriate acceptance of responsibility, I am unable to determine that similar incidents are unlikely to recur. The conduct continues to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 17(c) and 17(d) are not applicable. AG ¶ 17(e) is partially applicable because his company is aware of his conduct. I find that personal conduct concerns remain despite the presence of some mitigation.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis.

I considered Applicant's long history with his company and his favorable character evidence. However, I have significant concerns about Applicant's honesty and judgment.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the 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
-------------------	-------------------

### **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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Edward W. Loughran  
Administrative Judge