



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



In the matter of:	)	
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Applicant for Security Clearance	)	ISCR Case No. 19-00389

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: Ronald C. Sykstus, Esq.

07/01/2020

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**Decision**  
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LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. In 2012, he resigned from his job as a teacher at a public high school due to an inappropriate relationship with a 17-year-old female student from another school in an adjacent state. He did not make deliberately false or misleading statements about the nature of his relationship with the minor student when he completed a security clearance application in 2017 or during his background investigation in 2018. The questionable judgment he exercised in 2012 is mitigated as minor misconduct and by the passage of time without recurrence. Accordingly, this case is decided for Applicant.

**Statement of the Case**

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, on July 28, 2017. (Exhibit 1) This document is commonly known as a security clearance application. Thereafter, on March 20, 2019, after reviewing the application and the information gathered during a background investigation, the Department of Defense

Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline E for personal conduct.

Applicant answered the SOR on April 11, 2019. He provided a three-page memorandum in which he admitted resigning from his job as a teacher due to the relationship with a minor, but he denied the two falsification allegations.

The case was assigned to another judge on August 1, 2019, and then reassigned to me on August 9, 2019. The hearing took place as scheduled on September 24, 2019. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1 - 4. Applicant offered documentary exhibits, which were admitted as Exhibits A - I. Other than Applicant, no witnesses were called. The hearing transcript (Tr.) was received on October 2, 2019.

### **Findings of Fact**

Applicant is a 31-year-old employee who is seeking access to classified information for the first time. He is employed as an electrical engineer with a federal contractor that does business in the defense industry. (Exhibits A, B, and C) He has never married and has no children.

Applicant was a top student in high school, which he completed in 2006. He then attended a large, public university on scholarship to study electrical engineering. He dropped out after his second year after losing a scholarship due to poor academic performance. He attributed his difficulties to feeling overwhelmed by the large university community and the large classes with hundreds of students. His second attempt to study electrical engineering, albeit at a different university, ended after one semester. In 2009, after due consideration, he enrolled at a smaller state university with the goal of becoming a high school science teacher. He excelled, graduated *cum laude*, and was awarded a Bachelor of Science in Education (Science Education/Physics) in May 2012. (Exhibits E, F, and H)

Applicant began his first job teaching high school in August 2012. He resigned in December 2012 after being informed of allegations that he engaged in an inappropriate relationship with a 17-year-old female student from a different school in an adjacent state. (Exhibits 3 and 4) About six months later in June 2013, in response to an official investigation, he elected to voluntarily surrender his certificate to practice as an educator in the state. (Exhibits 3 and 4) He was prohibited from applying for a new certificate or reinstatement for three years. No criminal charges were brought against Applicant and he was never interviewed by law enforcement.

About 18 months later in August 2014, Applicant returned to his alma mater with a renewed commitment to study electrical engineering. He excelled, graduated *magna cum laude*, and was awarded a Bachelor of Science in Electrical Engineering in May

2017. (Exhibits D, F and G) He began his current job a few months later in July 2017, and he completed a security clearance application the same month. (Exhibit 1)

In response to questions about his employment history, Applicant disclosed his resignation from his job as a high school science teacher in December 2012. He stated that he left the job by mutual agreement following charges or allegations of misconduct. He then provided a lengthy explanation of the circumstances surrounding his resignation:

At the time I was 24 years old, and in late October of 2012 I became involved in a close, non-physical relationship with a girl in another state who was 17. The extent of our relationship was texting, and meeting for lunch occasionally. She knew who I was, she knew my age, and I knew hers. I believed that there was no conflict for my position, since the girl neither lived in the state nor was my student, but the school saw it as a violation of the state ethics policy for teachers. They asked me to leave with pay while they investigated the incident. The investigation into the matter returned only that there was an emotional relationship, nothing more. No charges were brought [against] me, but they did decide that, being an emotional relationship with a minor, it was in violation of state ethics rules for teachers. I was told I could have a public hearing on the issue to determine if I could keep my position, or I could resign from my position. I chose to resign. At the end of the school year, the Board of Education made the decision to relieve me of my [state] teaching license, on the grounds that I violated their ethics policy, and I was prevented from teaching in [the state] for a period of three years. That time is now complete, and I am free to reapply for a teaching position in [the state] if I so choose. (Exhibit 1 at 29)

The incident was reviewed and discussed during Applicant's 2018 background investigation. During an interview, which was summarized in written form, he described the relationship with the minor student as "friendly and not physical." (Exhibit 2 at 5) His overall description of the relationship was consistent with the description in his 2017 security clearance application.

Applicant believes he did not engage in a physical relationship with the minor student because there was no sexual activity between them. He explained that "a physical relationship would involve sex at the very least and probably lots of kissing, a lot of kissing, a lot of touching. And we did none of that, so the relationship, a friendship was largely just texting. We had occasionally - - held hands once at a movie that we went to." (Tr. 34-35) He admits they held hands on occasion and there was a single kiss when they ended the relationship. (Tr. 63-64) He described the kiss as a quick, friendly kiss as opposed to a romantic kiss. (Tr. 36) They had formed an emotional bond and felt close to each other, but there was no sexual activity, and that was the extent of their relationship during October - December 2012.

## Law and Policies

This case is adjudicated under Executive Order (E.O.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.<sup>1</sup> As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>2</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>3</sup> The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.<sup>4</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>5</sup> Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>6</sup>

## Discussion

Under Guideline E, personal conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about a person’s reliability, trustworthiness, and ability to protect classified or sensitive information. The concern is stated fully in AG ¶ 15.

In analyzing the facts of this case, I considered the following disqualifying conditions:

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<sup>1</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>2</sup> 484 U.S. at 531.

<sup>3</sup> 484 U.S. at 531.

<sup>4</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>5</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>6</sup> Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15

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(c) credible information in several adjudicative issue areas that is not sufficient for an adverse determination under any single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgement, 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.

Addressing the two falsification allegations first, the disqualifying conditions at AG ¶ 16(a) and AG ¶ 16(b) do not apply here. I am not persuaded that Applicant made deliberately false, deceptive, or misleading statements in his 2017 security clearance application or during the 2018 background investigation when he described the relationship with the minor student as a non-physical friendship. The extent of the physical contact or touching between Applicant and the minor student was quite limited; namely, the occasional hand-holding and a single kiss goodbye. The primary activities during their relatively brief relationship was talking when meeting for lunch and engaging in electronic or digital communications. In addition, Applicant gave an extensive account of the circumstances surrounding the relationship and the resulting job loss in both his security clearance application and during the background investigation, as noted in the findings of fact. Given all these facts and circumstances, Applicant's description of the relationship with the minor student as a non-physical friendship was not objectively unreasonable. Accordingly, his description of the relationship was not deliberately false, deceptive, or misleading.

Turning next to the underlying misconduct, Applicant certainly exercised questionable judgment when he allowed himself as a 24-year-old first year teacher to have a close, emotional friendship with a 17-year-old minor high school student, regardless that she was a student in another school in an adjacent state. It was a line he should not have crossed. AG ¶ 16(c) applies. Nevertheless, his questionable judgment in 2012 is mitigated as minor misconduct and by the passage of time without recurrence. He is now eligible to reapply for a teaching certificate. Moreover, he used the incident to redirect his life back to electrical engineering, he obtained the required bachelor's degree with high honors, and he is now employed in the field. These matters

are considered as evidence of successful rehabilitation, and Applicant is credited accordingly. Overall, the mitigating condition found at AG ¶ 17(c) applies.

Following *Egan* and the clearly consistent standard, I have no doubts and concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. I conclude that he met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline E:	For Applicant
Subparagraphs 1.a - 1.c:	For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility granted.

Michael H. Leonard  
Administrative Judge