



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 20-03456 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: Alan Edmunds, Esq., Applicant's Counsel

July 7, 2022

**Decision**

CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On March 16, 2021, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline K. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR soon thereafter, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on July 26, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 19, 2021, scheduling the hearing for September 14, 2021. The hearing was convened as scheduled. The Government offered Exhibits (GX) 1 through 5, which were admitted without objection. Applicant testified on his own behalf. Applicant offered two documents, which I marked Applicant's Exhibits (AppXs) A and B. DOHA received the transcript of the hearing (TR) on September 22, 2021. During the course of the hearing,

the Government asked “for a continuance for the purpose of gathering the additional documents regarding an unalleged 2015 security violation that has just been brought to light.” (TR at page 43 lines 14~16.) On November 15, 2021, the SOR was amended to add allegation i.e. DOHA issued a second notice of hearing on February 24, 2022, scheduling the continued hearing for April 21, 2022. At the continued hearing, the Government offered GX 6, which was admitted into evidence. Applicant again testified, and offered AppXs A-2, B-2 and C~I, I-2 and J. The second transcript (TR-2) was received on May 2, 2022.

### **Findings of Fact**

Applicant admitted to the allegations in SOR ¶¶ 1.a.~1.c. He denied SOR allegations ¶¶ 1.d. and 1.e. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 63-year-old employee of a defense contractor. He has been employed with the defense contractor since 2005. He has held a security clearance since 2005. He is married, and has two adult children. (TR-2 at page 9 line 8 to page 11 line 7.)

#### **Guideline K - Handling Protected Information**

The allegations will be discussed in chronological order:

1.a. Applicant admits that in 2007, about 15 years ago, he made a copy and sent a document that contained secret and/or sensitive information which, prohibits it from being copied and distributed. (TR-2 at page 12 line 3 to page 13 line 20, and GX 5 at page 6.)

1.b. Applicant admits that also in 2007, he emailed a document to a co-worker that contained sensitive information. (TR-2 at page 13 line 21 to page 15 line 6, and GX 5 at page 6.)

1.c. Applicant admits that in September of 2011, about 11 years ago, he failed a weekly audit of his DoD classified computer. (TR-2 at page 15 line 7 to page 16 line 9, and GX 5 at page 6.)

1.e. Applicant denies that in March of 2015, about seven years ago, he sent classified confidential information over an unclassified network. He avers that he sent “raw data” that was unclassified. It was later determined that the data, taken as a whole, was classified. (TR at page 38 line 4 to page 42 line 21, TR-2 at page 23 line 3 to page 27 line 2, and GX 6 at page 4.) Applicant subsequently received hands-on training as a result of this incident. (AppXs A and B at page 1.)

1.d. Applicant denies that in March of 2016, about six years ago, that he sent classified information over an unclassified network. He avers that the data in question was sent to him. (TR at page 22 line 21 to page 37 line 21, TR-2 at page 16 line 10 to

page 23 line 2, and at page 31 line 19 to page 33 line 24.) However, he was found to be culpable, and received subsequent training from his employer. (GXs 3~5, and AppXs A and B at page 2.)

## **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 useful 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 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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, an "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, and has the ultimate burden of persuasion as to obtaining 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 protect or 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 Executive Order 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 K - Handling Protected Information**

The security concern relating to the guideline for Handling Protected Information is set out in AG ¶ 33:

Deliberate or negligent failure to comply with rules and regulations for handling protected information-which includes classified and other sensitive government information, and proprietary information-raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

The guideline notes several conditions that could raise security concerns under AG ¶ 34. Three are potentially applicable in this case:

(a) deliberate or negligent disclosure of protected information to unauthorized persons, including, but not limited to, personal or business contacts, the media, or persons present at seminars, meetings, or conferences;

(g) any failure to comply with rules for the protection of classified or sensitive information; and

(h) negligence or lax security practices that persist despite counseling by management.

Applicant had five incidents that involved the possible compromise of classified or sensitive information.

AG ¶ 35 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 35 including:

(a) so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities.

Applicant's indiscretions regarding the handling of classified or sensitive information occurred over a period of ten years, from 2007 up to and including 2016. However, he has had an unblemished record for the last six years since May of 2016. This is evidenced by the letters of recommendation of two former managers (AppX I), and by his recent performance reviews (AppX D). So much time has passed since his last alleged indiscretion, that I find they are unlikely to recur. Handling Protected Information is found for Applicant.

### **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(d):

- (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 national security eligibility 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline K in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant has a distinguished history of working in the defense industry. He performs well at his job. (AppXs A-2 and B-2.)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Handling Protected Information security concern.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline K:

FOR APPLICANT

Subparagraphs 1.a~1.e:

For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is granted.

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Richard A. Cefola  
Administrative Judge