



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



In the matter of:

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) ISCR Case No. 13-00350  
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Applicant for Security Clearance

**Appearances**

For Government: Alison O'Connell, Esq. Department Counsel  
For Applicant: *Pro se*

10/23/2014

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**Decision**

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CURRY, Marc E., Administrative Judge:

In 2011, a Defense Office of Hearings and Appeals (DOHA) administrative judge denied Applicant's security clearance application in part because of falsifying relevant, material information throughout the security clearance investigative process, from the completion of the security clearance application to the hearing. On re-application, Applicant again testified dishonestly. I conclude that he remains a security risk. Clearance is denied.

**Statement of the Case**

On June 27, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines D, sexual behavior, F, financial considerations, and E, personal conduct. 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 (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on August 27, 2013, denying the allegations and requesting a decision on the written record. Department Counsel was assigned the case on April 14, 2014. On April 24, 2014, she requested that DOHA designate the case for hearing. DOHA designated the case for hearing, as requested, and the case was assigned to me on June 26, 2014.

DOHA issued a notice of hearing on September 22, 2014, scheduling the hearing for October 1, 2014. At the hearing, I took administrative notice of one exhibit marked Hearing Exhibit (HE) I. Also, I received 12 Government Exhibits (GE), marked GE 1 through 12, and 22 Applicant Exhibits (AE) marked AE A through AE V. The transcript was received on October 10, 2014.

### **Amendments of SOR**

Before the hearing, Department Counsel amended the SOR, withdrawing Paragraphs 1 and 2,<sup>1</sup> amending subparagraph 3.a, and supplementing Paragraph 3 with subparagraphs 3.b through 3.e. At the hearing, Applicant answered the amended SOR, denying subparagraph 3.a, admitting subparagraphs 3.b through 3.d, and denying subparagraph 3.e. For ease of reference, I have marked the amended SOR as HE II and the Answer to the amended SOR as HE III.

### **Findings of Fact**

Applicant is a 58-year-old married man with two adult children. He graduated from high school in Afghanistan and immigrated to the United States in 1979, becoming a naturalized U.S. citizen in 1990. (GE 11) From 1980 to 2008, Applicant owned a flooring company and worked as an independent contractor on many U.S. government construction projects. In 2008, he began working for a defense contractor as a linguist. That year, he applied for a security clearance, and was issued an interim security clearance.

Subsequently, Applicant falsified his 2008 security clearance application, his 2009 counterintelligence screening questionnaire, and the interrogatories propounded by DOHA in 2010, regarding the extent of his foreign travel. Furthermore, the ensuing investigation revealed that between 2002 and 2005, Applicant made several trips to Thailand and the Kyrgyz Republic during which he frequented brothels and had sexual relations with prostitutes. Some of these encounters with prostitutes occurred during trips that were not disclosed on his security clearance application.

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<sup>1</sup>Paragraph 1 raised allegations under the Guideline D, sexual behavior guideline, and Paragraph 2 raised allegations under the financial considerations guideline.

This derogatory information prompted DOHA to issue an SOR in November 2010. At the subsequent hearing in May 2011, Applicant admitted to having sex with prostitutes three times while in Thailand. (GE 10 at 45-46) Although he admitted to having sex with an adult woman while in the Kyrgyz Republic, he contends that she was not a prostitute. (GE 11 at 4) Applicant characterized his various omissions during the investigative process as honest mistakes.

The DOHA administrative judge denied Applicant's clearance concluding that Applicant "was not truthful about his failure to disclose the full extent of his travel to foreign countries and about his frequent visits to brothels and sexual relations with prostitutes while abroad." (GE 11 at 8) The Appeal Board affirmed the denial decision, characterizing Applicant's falsifications as "serious, recent, felony-level offenses." (GE 12 at 3)

On reapplication, Applicant admits falsifying the extent of his foreign travel, as alleged in the amended SOR. (HE III at 2) He again denies frequenting brothels and having sexual relations with prostitutes while visiting the Kyrgyz Republic. He characterized the woman with whom he had sex with while in the Kyrgyz Republic as a "working girl" (Tr. 59) as opposed to a prostitute, and denied going to brothels in the Kyrgyz Republic after having admitted this conduct at his earlier hearing. (*Compare* Tr. 60, 76 with GE 10 at 75)

Applicant is well-respected on the job. According to the squadron commander with whom Applicant works, "he has performed outstanding as an advisor on Afghan culture and has been a steady voice of communication between the local people, Afghan National Police, Afghan National Army, and other coalition forces." (AE B) According to the squadron's chaplain, Applicant's "kind and professional manner distinguishes him over the other interpreters." (AE C) A lieutenant commander with whom Applicant works characterizes him as "organized, efficient, [and] extremely competent." (AE F)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

## **Analysis**

### **Guideline E, Personal Conduct**

The security concern under this guideline is as follows:

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.

At the 2011 hearing, Applicant’s dishonest, contradictory, and evasive testimony compelled the judge to deny his security clearance. Although at the 2014 hearing, Applicant admitted to falsifying the extent of his foreign travel, he reiterated his denial of the allegation regarding having sex with prostitutes abroad, and offered similarly outlandish testimony in support of his denial. 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” applies without mitigation.

### **Whole-Person Concept**

Under the whole-person concept, 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.

After being denied a clearance in 2011, Applicant returned to Afghanistan and resumed his translation duties in a position that did not require a security clearance. His performance was exemplary. However, his repeated failure to testify candidly and honestly demonstrates that he still does not, as the administrative judge concluded in the earlier hearing, “understand what is required of him to be eligible for access to classified information.” (HE 11 at 10) Applicant has failed to mitigate the 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 D:	WITHDRAWN
Paragraph 2, Guideline F:	WITHDRAWN
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a-3.e:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY  
Administrative Judge