



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



In the matter of: )  
)  
) ISCR Case No. 13-00390  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

11/13/2013

**Decision**

DUFFY, James F., Administrative Judge:

Applicant mitigated the drug involvement and criminal conduct security concerns, but failed to mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 3, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H (drug involvement), J (criminal conduct), and E (personal conduct). DOD acted under Executive Order (EO) 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) effective on September 1, 2006.

On July 30, 2013, Applicant answered the SOR and requested a hearing. The case was assigned to me on September 10, 2013. A subsequent Federal Government shutdown delayed the scheduling of the hearing. The Defense Office of Hearings and

Appeals (DOHA) issued a notice of hearing on October 29, 2013, and the hearing was held as scheduled on November 5, 2013.<sup>1</sup> At the hearing, Department Counsel offered five exhibits (GE 1 through 5) that were admitted into evidence without objection. Applicant testified and offered two exhibits (AE A and B) that were admitted into evidence without objection. The record was held open until November 12, 2013, for Applicant to submit additional information. After the deadline, Applicant submitted AE C through F that were admitted without objection.<sup>2</sup> Applicant later submitted AE G through I. Even though Department Counsel indicated AE G through I were submitted in an untimely manner, they were admitted into evidence.<sup>3</sup> DOHA received the hearing transcript (Tr.) on November 13, 2013.

### **Procedural Rulings**

Applicant affirmatively waived the 15-day notice requirement imposed by ¶ E3.1.8 of the Directive. Department Counsel made a motion to withdraw the allegation in SOR ¶ 3.c. Applicant had no objection to that motion and SOR ¶ 3.c was withdrawn. Department Counsel then made a motion to amend SOR ¶¶ 3.a and 3.b to reflect that the execution date of the Electronic Questionnaire for Investigations Processing (e-QIP) was November 3, 2011, instead of November 8, 2011. Applicant had no objection to those amendments, and the motion to amend those dates was granted.<sup>4</sup>

### **Findings of Facts**

Applicant is a 21-year-old linguist who is seeking to return to a job she had with a defense contractor. She initially began working for that defense contractor in October 2011, but has not worked there recently because her interim security clearance was withdrawn. She was born in Afghanistan and came to the United States when she was 10 years old. She became a U.S. citizen in January 2010. She graduated from high school in 2010 and is currently a full-time college student. She has never been married and has no children. Her e-QIP dated November 3, 2011, is her first request for a security clearance.<sup>5</sup>

Under Guideline H, the SOR alleged that Applicant used marijuana in August 2011 (SOR ¶ 1.a) and in September 2011 (SOR ¶ 1.b). Under Guideline J, it alleged that she was arrested and charged with domestic violence in August 2011 (SOR ¶ 2.a) and in September 2011 (SOR ¶ 2.b), and that she was charged with leaving the scene

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<sup>1</sup> The notice of hearing contained the wrong case number, which led to the wrong case number being placed on the coversheet of the transcript. I have corrected those documents by making handwritten changes.

<sup>2</sup> See Hearing Exhibit (HE) 1.

<sup>3</sup> See HE 2.

<sup>4</sup> Tr. at 14-15, 30, 115-120.

<sup>5</sup> Tr. at 7-9, 30-32, 51-61, 89; GE 1, 4, 5; AE H.

of an accident in August 2011 (SOR ¶ 2.c). Under Guideline E, it alleged that she falsified her responses to questions in an e-QIP by failing to disclose her domestic violence arrests in August and September 2011 (SOR ¶ 3.a) and by failing to disclose her use of marijuana in August and September 2011 (SOR ¶ 3.b).<sup>6</sup>

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b, but indicated her use of marijuana in August 2011 (SOR ¶ 1.a) was not a knowing consumption of that substance. I consider her response to SOR ¶ 1.a to be a denial. She admitted the domestic violence arrests alleged in SOR ¶¶ 2.a and 2.b, but indicated the September 2011 arrest was based on a false allegation against her. She denied the charge of leaving the scene of the accident in SOR ¶ 2.c and the falsification allegations in SOR ¶¶ 3.a and 3.b.<sup>7</sup>

When Applicant she was 16 years old, she began a tumultuous relationship with a boyfriend who was two years older than her. At some point, she lived with him for four or five months. She stated that he abused and harassed her, destroyed her things, and locked her in his house. As discussed in more detail below, a number of the SOR allegations arose from her relationship with him. Their relationship effectively ended when she moved to another state in about December 2011 at age 19. At the time of the hearing, she believed that he went to Europe to evade arrest in the United States.<sup>8</sup>

In March 2011, Applicant had an argument with her mother after Applicant had not returned home for two days. During this incident, Applicant pushed her mother so that she could get away from her and go outside. Her mother called the police. Applicant was arrested for three degree domestic assault and held in police custody for about five hours. She claimed that she pushed her mother due to stress arising from her “psycho” boyfriend and difficulty in finding a job while going to school. Her mother dropped the charge against her, and Applicant was never prosecuted for that offense.<sup>9</sup>

In about August 2011, Applicant obtained a restraining order that prohibited her ex-boyfriend from having contact with her. At that time, she claimed that he took her cell phone and the restraining order from her car. She went to his house to retrieve those items. While at his house, she stated that he and his relatives attacked her and that he kicked the windows in her car, shattering the glass. The police arrived at the scene and arrested her ex-boyfriend. She claimed that her ex-boyfriend’s minor sister submitted a

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<sup>6</sup> SOR.

<sup>7</sup> Applicant’s answer to the SOR. In her response to SOR ¶¶ 3.a and 3.b, Applicant focused on addressing the domestic violence allegations instead of responding to the falsification aspects of the allegations. Of note, her response to SOR ¶ 3.b discussed a domestic violence incident even though the allegation concerned a falsification for failing to disclose drug involvement. Her responses to the falsification allegations appear to indicate that she was confused regarding the nature of those allegations.

<sup>8</sup> Tr. at 66-76, 98-99; Applicant’s answer to the SOR; GE 4.

<sup>9</sup> Tr. at 83-85; Applicant’s answer to the SOR; GE 1, 3, 4, 5.

false report to the police that Applicant hit her during the incident at the house. Applicant denied assaulting her. Following this incident, her ex-boyfriend obtained a restraining order against her.<sup>10</sup>

Later in August 2011, Applicant was visiting a friend's house. Her ex-boyfriend had followed her there. When she was departing, he confronted her about being in the company of other males. An argument ensued. He threw eggs at her car and apparently called the police reporting that Applicant had hit his car and was leaving the scene of the accident. The police arrived at the scene as she was leaving, examined both vehicles, and determined that she did not hit his vehicle. She was never charged with leaving the scene of an accident. The police, however, ran a records check, found that she had an outstanding warrant against her, and arrested her for the assault charge involving the ex-boyfriend's sister and for violating a restraining order. As a result of that arrest, Applicant spent two days in jail. She never appeared in court on those charges and believed they were eventually dismissed.<sup>11</sup>

Applicant submitted an e-QIP on November 3, 2011. In Section 22b of the e-QIP, she was asked if she had been arrested by any law enforcement official in the last seven years. She responded "yes" to that question and disclosed that she was charged with leaving the scene of an accident in September 2011. In response to the "Action Taken" question in that section, she wrote, "Turned out to be a false statement by a person at the scene and the charges were dismissed". She did not disclose her domestic violence arrest in March 2011 or her arrest for assault and for violating a restraining order in August 2011. Additionally, in Section 23a of that e-QIP, Applicant was asked if she had illegally used any controlled substances, including marijuana, in the last seven years. She responded "no" to that question.<sup>12</sup>

On November 16, 2013, an Office of Personnel Management (OPM) investigator interviewed Applicant. During that interview, Applicant discussed her turbulent relationship with her ex-boyfriend. She also disclosed that she was arrested for domestic assault in March 2011 and that she was arrested for assault and for violating a restraining order in August 2011. During the interview, Applicant reportedly stated that she did not disclose that she was arrested in August 2011 because "she did not want to look bad to her potential employer." She thought if she had reported all information, her prospective employer would not have hired her. She also noted that she did not want to jeopardize her employment opportunity. In the interview, she stated that she did not report the domestic assault arrest in March 2011 because the charges were dropped and she never had to go to court for them.<sup>13</sup>

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<sup>10</sup> Tr. at 83-85, 114-115; Applicant's answer to the SOR; GE 4, 5.

<sup>11</sup> Applicant's answer to the SOR; GE 1, 3, 4, 5. In her answer, Applicant indicated that her arrest for allegedly assaulting her ex-boyfriend's sister and the violation of the restraining order occurred after a traffic stop for speeding. In either case, the event that precipitated the police stop resulting in this arrest is not an important factor in the case.

<sup>12</sup> Tr. at 76-90; GE 1.

<sup>13</sup> Tr. at 89-93; GE 4.

In the OPM interview, Applicant also disclosed that she had used marijuana in the past. At the hearing, she stated that she used marijuana on two occasions, once with her ex-boyfriend and another time with him and his friends. She indicated that she may have taken a total of five puffs of marijuana. During the OPM interview, Applicant stated that she did not disclose her marijuana use on her e-QIP because she did not want to give her prospective employer the wrong impression.<sup>14</sup>

Applicant had signed a Prenomination Personal Interview Form for her prospective employer on November 2, 2011. Despite her stated rationale during the OPM interview for not fully disclosing her alleged arrests and drug use on her e-QIP, she had earlier responded “yes” to questions on the prenomination form that asked if she had ever been arrested or convicted of a felony and if she had ever been involved in the illegal use of controlled substances. The form, however, did not ask for details of those events.<sup>15</sup>

On November 17, 2011, Applicant was questioned by a screener during a counterintelligence-focused security interview. During this screening, she disclosed that she had been arrested for domestic violence in August and September 2011 and that she had smoked marijuana. Regarding her prior drug involvement, the screening report indicated, “She stated that approximately three or four months ago she smoked marijuana. She stated that she smoked marijuana again approximately a month later.” The screener assisted Applicant in modifying her e-QIP responses. Specifically, the “no” response to Section 23a (drug activity) was crossed out by hand and the “yes” block was checked and “06/2011 marijuana” was handwritten after that question. Applicant testified that she did not make those handwritten changes, but she initialed and dated those changes. Applicant also initialed other changes to her e-QIP and added another date (11/17/2011) to the Certification block. In addition, she added comments on an SF 86C document dated November 17, 2011, which was attached to her e-QIP.<sup>16</sup>

In her answer to the SOR, Applicant noted that she smoked tobacco using a water pipe, which is called a hookah or shisha. She stated that, in August 2011, a friend mixed marijuana into her tobacco unbeknownst to her and she later smoked it in the hookah. Afterward, her friend informed her that she smoked marijuana. In her answer, she admitted to knowingly using marijuana with friends in September 2011. She claimed this use of marijuana was the result of peer pressure from her friends. She further indicated that she no longer associates with those friends and did not intend to use marijuana in the future.<sup>17</sup>

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<sup>14</sup> Tr. at 93-103; GE 4.

<sup>15</sup> Tr. at 99-101; GE 2.

<sup>16</sup> Tr. at 76-84, 111-114; GE 1, 5.

<sup>17</sup> Applicant’s answer to the SOR.

At the hearing, Applicant confirmed that she consciously decided not to provide information about her prior arrests and drug use on her e-QIP. She indicated that people told her “there are certain things you didn’t need to share” when filling out the e-QIP. She also stated that she was not aware that the Federal Bureau of Investigation could obtain information about her previous arrests.<sup>18</sup>

Applicant worked as a translator with U.S. forces in Afghanistan for about eight months. While there, she was present while U.S. forces engaged in combat actions and suffered casualties. She submitted letters from friends that described her as honest, trustworthy, and loyal.<sup>19</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 that 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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

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<sup>18</sup> Tr. at 85-89.

<sup>19</sup> Tr. at 55-61, 106-110; AE B-F, H, I.

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 about 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline H, Drug Involvement**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

I considered the disqualifying conditions for drug involvement under AG ¶ 25 and determined the following condition is potentially applicable in this case:

(a) any drug abuse.

Applicant used marijuana twice in 2011. I find that AG ¶¶ 25(a) applies.

I considered the mitigating conditions for drug involvement under AG ¶ 26 and the determined the following potentially apply:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant used marijuana in 2011 when she was 19 years old. Her marijuana use arose from peer pressure placed on her by her then-boyfriend. She no longer dates him and has not dated him for about a year and a half. She has moved to another state and no longer associates with drug-using individuals. She does not intend to use illegal drugs in the future. Her marijuana use was infrequent and happened under circumstances unlikely to recur. AG ¶¶ 26(a) and 26(b) apply.

#### **Guideline J, Criminal Conduct**

AG ¶ 30 sets out the security concern relating to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

I considered the disqualifying conditions for criminal conduct under AG ¶ 31 and determined the following may apply:

(a) a single serious crime or multiple lesser offenses; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

In March 2011, Applicant pushed her mother during an argument, was arrested for that conduct, but was never prosecuted for that offense. In August 2011, Applicant was arrested for an alleged assault upon her ex-boyfriend's sister and for violating a restraining order. She was not arrested or charged with leaving the scene of an accident. I find the above disqualifying conditions apply to SOR ¶¶ 2.a and 2.b, but not 2.c. SOR ¶ 2.c has not been established by substantial evidence.

I have considered the mitigating conditions for criminal conduct under AG ¶ 23 and the following potentially apply:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur



and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant admitted pushing her mother. She is remorseful for committing that offense and indicated that it will not happen again. She denied committing the assault upon her ex-boyfriend's sister. She was not prosecuted for any of the alleged offenses. These arrests arose because of her turbulent relationship with her ex-boyfriend. As noted above, that relationship has ended and the stressors arising from the relationship no longer exist. The alleged conduct is relatively minor and unlikely to recur. AG ¶¶ 23(a), 23(b), 23(c), and 23(d) apply.

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

The security concern for personal conduct is set out in AG ¶ 15, 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

In responding to the question in Section 22b on her e-QIP dated November 3, 2011, Applicant did not disclose her arrest for domestic violence in March 2011 or her arrest for assault upon her ex-boyfriend's sister in August 2011.<sup>20</sup> She also did not

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<sup>20</sup> SOR ¶ 3.a alleged that Applicant falsified her e-QIP response to the question in Section 22b by failing to disclose her arrest for domestic violence in August 2011 and September 2011. As noted in the Findings of Fact, the evidence established that Applicant was arrested for domestic violence in March

disclose her prior marijuana use in responding to the question in Section 23a. She has acknowledged she consciously decided not to provide such information because she thought that it would affect her opportunity to obtain employment. She also indicated that a friend advised her that there were things she did not need to share when filling out her e-QIP. I find that Applicant deliberately falsified her e-QIP responses. AG ¶ 16(a) applies.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advise of unauthorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide information, the individual cooperated fully and truthfully;
- (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;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and
- (f) the information was unsubstantiated or from a source of questionable reliability.

Applicant's falsification of her e-QIP is recent. She admitted to falsifying her e-QIP responses in her OPM interview and at the hearing. Such acceptance of responsibility is the first step toward reform and rehabilitation. Nonetheless, insufficient time has expired to conclude that Applicant has reformed herself and will not provide false information in the future. After examining all of the applicable mitigating conditions, I find that none of them fully apply.

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2011 and for assault and violation of a restraining order in August 2011. This variance between the allegation and the evidence is considered minor and does not raise any due process concerns.

## **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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H, J, and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is young. She served with U.S. forces in Afghanistan in dangerous circumstances. She is willing to return and provide such support again. Nonetheless, her e-QIP falsifications are troubling and continue to raise serious concerns about her reliability, trustworthiness, and good judgment.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Applicant has mitigated the drug involvement and criminal conduct security concerns, but failed to mitigate the personal conduct security concerns.

### **Formal Findings**

Formal findings on the SOR allegations, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a – 1.b:	For Applicant

Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a – 2.c:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a – 3.b:	Against Applicant
Subparagraph 3.c:	Withdrawn

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

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James F. Duffy  
Administrative Judge