



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 07-16240
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John B. Glendon, Esquire, Department Counsel  
For Applicant: *Pro se*

June 30, 2008

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 24 March 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E.<sup>1</sup> Applicant answered the SOR by undated statement, and requested a hearing. DOHA assigned the case to me 29 April 2008, and I convened a hearing 29 May 2008. DOHA received the transcript (Tr.) 5 June 2008.

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<sup>1</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

## **Findings of Fact**

Applicant admitted the SOR allegations. He is a 42-year-old systems administrator employed by a defense contractor since April 1995. He seeks to retain the security clearance he has held since July 1996.

Between late 2003 and late 2004, Applicant had an extra-marital affair, during which he fathered a child. His paramour bore Applicant a son in January 2005. Only his paramour is aware of the affair and the paternity of her child. Applicant's spouse is not aware of either the affair or the child. Applicant has two other children with his wife, ages 13 and 14.

Applicant's paramour was a woman he met in college in 1983, with whom he then had a brief relationship. They have remained friends over the years, and continue to be friends. The affair began when Applicant and his wife were contemplating divorce. They agreed to remain together "for the sake of their children." Applicant and his paramour agree that the affair was a mistake.

Applicant acknowledges paternity of his paramour's son, and is listed as the father on the child's birth certificate. He sees his son at least monthly. There is no formal court order or written agreement governing current or future child support. However, Applicant pays his paramour \$1,000 per month (cash deposited to her account) to cover child-care expenses. He acknowledges that he could be liable for additional child support in the future, but has not given the issue much thought.

Applicant remains concerned that his wife might learn of the affair, as she would almost certainly divorce him immediately. Indeed, his wife is not aware of his clearance hearing, because he had the case papers mailed to his mother's house to keep his wife from learning about his hearing. He did not present any evidence relating to his job performance.

## **Policies**

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against granting access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>2</sup>

### **Analysis**

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. In most circumstances, Applicant's affair and fathering a child out of wedlock would raise few security concerns. However, his concealment of those facts from his wife, his desire to continue that concealment, and his active steps taken to continue that concealment—through concealing the fact of his clearance hearing—demonstrates his potential vulnerability to exploitation, manipulation, or duress.<sup>3</sup> He has taken no steps to reduce that vulnerability. Further, the record contains no information upon which I could base a whole person analysis in Applicant's favor. I resolve Guideline E against Applicant.

### **Formal Findings**

#### **Paragraph 1. Guideline E: AGAINST APPLICANT**

Subparagraph a: Against Applicant  
Subparagraph b: Against Applicant

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>¶ 16.(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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; (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. . . ; (e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing . . . ;

Subparagraph c: Against Applicant  
Subparagraph d: Against Applicant

**Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

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JOHN GRATTAN METZ, JR  
Administrative Judge