



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-08251
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Fahryn Hoffman, Esq., Department Counsel  
For Applicant: *Pro Se*

June 29, 2009

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline K, Handling Protected Information, and Guideline E, Personal Conduct. Applicant's eligibility for a security clearance is granted.

On January 15, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines K and E. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on February 5, 2009, and requested a hearing before an administrative judge. The case was assigned to me on May 15, 2009. DOHA issued a Notice of Hearing on May 19, 2009. I convened the hearing as

scheduled on June 11, 2009. The Government offered Exhibits (GE) 1 through 4. Applicant did not object and they were admitted. Applicant testified and offered Exhibits (AE) A through C, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 18, 2009.

### **Findings of Fact**

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 74 years old. He is a graduate of a service academy and served on active duty for ten years before being honorably discharged. He has held a security clearance for more than fifty years. After leaving the service, he worked for the federal government from 1967 to 1993, when he retired. He did volunteer work for approximately a year before he returned to work part-time as a senior engineer for a federal contractor in 1994, and later that year began working full-time until 2007. He agreed to assume a six-week project that he had a particular expertise in before retiring. He had planned on retiring in January or February 2007, because a year prior his wife had become serious ill and needed care. Applicant and his wife were married in 1967. He had three children from a previous marriage and she had one child from a previous marriage; together they had a son.<sup>1</sup>

In the later part of February 2007, Applicant also had medical problems and needed specialized treatment. The day after his treatment, his wife was hospitalized. Applicant was anxious to finish the project he was working on so he could devote himself to the full-time care of his wife. He described himself as being in "emotional turmoil" from the stressors of his medical problems and his wife's deteriorating condition. She had been experiencing health problems for over twenty years with varying degrees of incapacitation.<sup>2</sup>

Applicant was under pressure to complete the project and was waiting for a particular document he needed. He was never advised that the document, addressed to him, had arrived at his company two weeks earlier. The document was confidential and the internal policy of the company was that it required a classification receipt. This was a more stringent requirement than what the National Industrial Security Program Operating Manual (NISPOM) required. The company that sent the document, Applicant's client, was unaware of Applicant's company's new requirement and did not send it following the more stringent requirement. Delivery of the document to Applicant was delayed while the two companies resolved the issue of the classification receipt. In the meantime, Applicant was frustrated when he learned the document that he

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<sup>1</sup> Tr. 9, 23-26, 50-58.

<sup>2</sup> Tr. 19-22, 58-60.

desperately needed to complete his project was held by his company, and he was not told it had arrived two weeks prior.<sup>3</sup>

On March 12, 2007, when Applicant learned the document was at his company, he requested it so he could complete the project. When Applicant received the document, he took it home so he could complete the project while caring for his wife. He was authorized to work from home, but not to take the document home. He did not request permission from a supervisor to take the document home. He knew the document was confidential and it violated the rules and procedures for handling confidential material. An inventory was completed of Applicant's office safe the next day and it was determined the document was missing. Applicant was contacted and admitted the document was in his possession at home. He secured it in an unauthorized safe at his home. He did not follow proper procedures for carrying and transporting the confidential document.<sup>4</sup>

Applicant admitted he violated company policy and procedure. He admitted he was frustrated and acted inappropriately. When he was contacted at home by the Security Manager, Applicant admitted he had the document. He stated he would return the document, but he needed to care for his wife. Applicant admitted he was displeased with the Security Manager for not originally advising him that the document, he had been anxious waiting for to complete the project, was at their company for two weeks before he was told. He was frustrated that the delay was due to a rule that was not required by the NISPOM. The Security Manager was concerned about the document so she and another person went to his house to retrieve it. He handed the document to her. It was not wrapped properly, but she brought the appropriate material to wrap it.<sup>5</sup>

Applicant does not dispute what he did was wrong. He understands he handled the situation wrong. He stated:

I knew that my action was wrong. I knew, also, that since my wife was incapacitated and never came into my room, where I was working, that no one, other than me, was going to see the document. Although I understand fully that I broke the rules and that I was putting it at risk.<sup>6</sup>

Applicant does not think he is above the rules and regrets his actions. He understands his need to follow the rules, even though he disagrees with the additional policy imposed by his company. He readily admitted he was overwhelmed with the deteriorating situation about his wife and was under a great deal of pressure to complete the project. The delay in receiving the document added to the pressure. He

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<sup>3</sup> Tr. 27, 44-50.

<sup>4</sup> Tr. 36-38, 60-62; GE 4.

<sup>5</sup> Tr. 35-50, 66-76; GE 4.

<sup>6</sup> Tr. 30-31.

sincerely regrets his actions. He credibly testified that he has never done something like this in the past and he will never do something like this again.<sup>7</sup>

Applicant did complete the project. He was given a letter of warning for his actions. There is no evidence that the confidential document was compromised, but it was in his home with his wife. No evidence was presented that there were other classified documents at his residence. He has had no other security related issues since this incident.<sup>8</sup>

Applicant explained he married his wife in 1967 and they had experienced the loss of two adult children. In his answer to the SOR he stated:

I was under extreme and unique pressures when the incident under review occurred. I suspect it is difficult for anyone who has not lost a spouse after a long marriage (exacerbated by the prior death of two of our children) to appreciate the emotional turmoil involved in such a situation.<sup>9</sup>

A senior executive service coworker of Applicant provided a letter stating that he has worked with him since 1983 and stated he “saw no relaxation of good classified document control and handling in a multitude of meetings, conferences and one-on-one situations” He also commented that he has no doubt as to the high character and moral standards of Applicant in both work and social environments and would and has trusted him with keeping our nation’s classified information safe from those not authorized.<sup>10</sup>

A former supervisor for whom Applicant worked for five years and maintained contact with for the past ten years also provided a character letter. He described Applicant as a meticulous, thorough, and dedicated public servant who served honorably and admirably in his specific area of expertise. He believed Applicant’s security violation was completely out of character. He still would trust him even knowing he made a mistake.<sup>11</sup>

Applicant’s son also provided a letter. He described his father as a person who possesses integrity, honor and selflessness. He stated his father sacrificed almost all of his time with his family to devote himself to his country, serving it for 56 years. He was routinely recognized for exceptional and faithful service. He further explained that when his mother fell ill, his father was consumed by concerns for her welfare and her immediate medical care. He also was concerned about completing a project on time. His son noted that it was his father’s dedication to completing an assigned task, while

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<sup>7</sup> Tr. 30-33, 66-70.

<sup>8</sup> Tr. 34-37; GE 4.

<sup>9</sup> Tr. 24, 27-28; Answer to SOR.

<sup>10</sup> AE A.

<sup>11</sup> AE B.

being by his wife's side that resulted in his decision to bring the needed document home. He described his father as tormented by his "single instance of inattentiveness."<sup>12</sup>

## 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, 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense 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. 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, "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 and has the ultimate burden of persuasion as to obtaining a favorable security 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.

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<sup>12</sup> AE C.

Section 7 of Executive Order 10865 provides that 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**

AG ¶ 33 expresses the security concern pertaining to handling protected information:

Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual’s trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

AG ¶ 34 describes conditions that could raise a security concern and may be disqualifying. I have specifically considered the following:

(b) collecting or storing classified or other protected information at home or in any other unauthorized location; and

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

Appellant admitted he took a confidential document home with him because he needed to complete a project. It was not properly stored or wrapped. I find both disqualifying conditions apply.

I have considered all of the mitigating conditions applicable to this guideline under AG ¶ 35. Specifically, I considered the following:

(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 currently 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 admitted that in March 2007 he took a confidential document home with him out of frustration and pressure to complete a project. His actions were influenced by his need to care for his wife due to her deteriorating health. Applicant has had a security clearance for more than fifty years without incident. He is truly remorseful

for his inappropriate conduct. He understands what he did was wrong. There is no evidence that the confidential document was compromised. I find these are unique facts and circumstances and are very unlikely to happen again. Applicant has served his country for more than a half of a century without a blemish. He accepts responsibility for his action. He was counseled and is committed to ensuring that a similar incident does not recur. I find both mitigating conditions apply.

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

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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. I have specifically considered the following:

(c) 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. This includes but is not limited to considerations of: (3) a pattern of dishonesty or rule violations; and

(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.

After careful consideration of all of the evidence, I conclude there is no additional adverse information outside of the evidence presented regarding the security infraction that has been alleged, which requires a separate finding or analysis under the Personal Conduct Guideline. I will consider all of the evidence presented when analyzing the whole person.

### **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 the 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 common sense 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 the facts and circumstances surrounding this case. Applicant served his country as both a military officer and later while working for the Defense Department, and then as a defense contractor. He has served long and honorably. He was going through a very difficult time in his life as his wife's health was deteriorating and she needed full time care. He also had his own medical problems. The pressure of being under a deadline to complete a project and frustration of finding out the document was sitting at his company for two weeks caused him to make a poor decision. He regrets his actions. I have considered his entire background and record. It is undeniable he violated the rules. However, this was a one time aberration in an otherwise stellar career. I find Applicant is not a security risk and that he is unlikely to make the same mistake in the future. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from Handling Protected Information and Personal Conduct.

### **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 K:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant



## **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge