



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



In the matter of:)
)
) ISCR Case No. 09-07203
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

June 17, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under the criminal conduct, sexual behavior, and personal conduct adjudicative guidelines. His eligibility for a security clearance is denied.

Statement of Case

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on March 6, 2009. On October 18, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline J, Criminal Conduct; Guideline D, Sexual Behavior; and Guideline E, Personal Conduct. DOHA acted 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant received the SOR on October 26, 2010. In an Answer to the SOR which was undated and unsigned, Applicant answered each of the allegations in the SOR and requested that his case be determined on the record in lieu of a hearing. On December 7, 2010, Applicant filed a signed, sworn affidavit which provided additional information and requested that he be granted a security clearance. On March 4, 2011, the Government compiled its File of Relevant Material (FORM). The FORM contained documents identified as Items 1 through 10.¹ By letter dated March 11, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information or objections within 30 days of receipt. Applicant received the FORM on March 18, 2011. His response was due on April 17, 2011. Applicant filed additional information within the required time period. On April 27, 2011, DOHA assigned the case to me for a decision.

Procedural Matters

Pursuant to Additional Procedural Guidance ¶¶ E3.1.2, E3.1.3, E3.1.7, and E3.1.13 of the Directive, Department Counsel moved to amend the SOR issued to Applicant as follows:

1. Delete SOR subparagraph 1.a. and replace with a new subparagraph 1.a. to read as follows:

“a. In about March 2005, while stationed in Korea, you were accused of raping an enlisted member of the United States Army.”

2. Add SOR subparagraph 1.b. to read as follows:

“b. In about April 2005, while stationed in Korea, you knowingly made false statements under oath during the course of an investigation into allegations that you engaged in an inappropriate relationship/fraternization with an enlisted member of the United States Army.”

3. Add SOR subparagraph 1.c. to read as follows:

“c. In about June 2006, you voluntarily resigned your commission as a Chief Warrant Two in the United States Army, and you were administratively separated with a general discharge under honorable conditions in lieu of trial by court-martial.”

Department Counsel submitted that the proposed amendments were supported by evidence included in the FORM. The FORM was sent to Applicant, thereby providing

¹Items 8, 9, and 10 are accepted for administrative notice. Item 8 consists of selected sections of Appendix 2, Uniform Code of Military Justice. Item 9 consists of sections 4-14, 4-15, and 4-16 of Army Regulation 600-20 (Army Command Policy), dated May 13, 2002. Item 10 consists of sections 4-14, 4-15, and 4-16 of Army Regulation 600-20 (Army Command Policy), dated July 15, 1999.

him with notice of the amendments and the supporting evidence. Department Counsel requested that Applicant file any objection to the amendments within 30 days of receiving the FORM. If Applicant did not object to the amendments, he was requested to respond by admitting or denying the allegations in SOR subparagraphs 1.a. through 1.c., as amended, and SOR subparagraphs 2.a and 3.a.

Applicant timely filed a response to the FORM in which he requested a decision without a hearing and answered each paragraph and subparagraph in the amended SOR. I marked Applicant's answer to the amended SOR as Item A and admitted it to the record. Without objection, Department Counsel's motion to amend the SOR as specified above is granted.

Findings of Fact

The amended SOR contains three allegations of disqualifying conduct under AG J, Criminal Conduct (SOR ¶¶ 1.a., 1.b., and 1.c.); one allegation of disqualifying conduct under AG D, Sexual Behavior (SOR ¶ 2.a.); and one allegation of disqualifying conduct under AG E, Personal Conduct. In his Answer to the amended SOR, Applicant admitted all allegations under AG J, AG D, and AG E.² Applicant's admissions are admitted as findings of fact. (FORM; Item 1; Item A.)

Applicant is 32 years old and is employed as a test and evaluation engineer by a government contractor. He has been married and divorced twice. He is currently living in a spouse-like relationship with a woman and is the father of a young child. (Item 4, Exhibit A; Item 5.)

In March 2009, Applicant earned a Bachelor of Arts degree in business administration. He is currently enrolled in a Master of Science in Project Management program. When he completes this program in 2011, he plans to seek a Master in Business Administration degree. (Item 4, Item A; Item 5.)

In March of 1995, Applicant enlisted in a military reserve unit, where he served as an active reservist until January 1997. He was granted access to classified information in 1997. Beginning in January 1997, he served on active duty until March 2001, when he received an honorable discharge at the rank of sergeant. In January 2001, Applicant attended warrant officer candidate school. He was appointed as a warrant officer (WO) 1 and served on active duty in that rank until August 2002, when he was promoted to WO 2. From May 2003 until June 2006, he was deployed overseas as a helicopter pilot. (Item 5; Item 7 at 24-25.)

² In his unsigned and undated answer to the October 18, 2010 SOR, Applicant denied all allegations. (Item 4.)

In 2005, while serving overseas as a warrant officer in the U.S. military, Applicant was accused of raping a junior enlisted member of the U.S. military.³ The rape allegedly took place on the night of March 26, 2005, after Applicant and his accuser met at an off-post bar. Applicant and his accuser were aware of their respective ranks because he had filed training papers in an office where the accuser served as a clerk. Their contacts before the night of March 26, 2005 were in a business setting.⁴ (Item 7 at 96, 114-115.)

The accuser told a friend and fellow service member of the alleged rape on March 27, 2005, but she did not report it to authorities. The friend, however, reported the alleged rape to a sergeant, who notified criminal investigation authorities of the allegation on April 5, 2005. On April 6, 2005, when the accuser was interviewed by a criminal investigator, she confirmed verbally that Applicant had raped her, but she refused to provide a written statement and she declined to cooperate in the investigation. On April 11, 2005, the accuser told a physician at an urgent care facility on the post that she had been raped. The initial criminal investigation of the alleged rape was then terminated because the accuser refused to cooperate and, consequently, there was insufficient evidence to prosecute the case. (Item 7 at 93, 96, 101, 102, 208, 114, 178.)

The command convened an informal investigation focusing on an inappropriate relationship (fraternization) between Applicant and the accuser. The accuser met with an investigator on April 19, 2005 and provided a verbal statement, consistent with her earlier verbal statement, but she was reluctant to provide a written statement. On May 10, 2005, she provided a sworn statement to the investigator. In her sworn statement, the accuser reported that on the night of March 26, 2005, she had gone bar-hopping and drinking with a group of enlisted personnel. During the course of the evening, she became separated from her friends. When curfew approached, she began to walk back to the post gate. She stated that Applicant drove up in his car and offered her a ride back to the gate. She accepted his offer. However, instead of taking her to the gate, Applicant drove the accuser to his apartment, where he raped her on his living room floor. (Item 7 at 101,106, 111.)

In a sworn statement he provided to military investigators on April 19, 2005, Applicant stated that the accuser had never been in his apartment, and he denied having sexual intercourse with her. He further stated that he walked alone back to his apartment after leaving the bar, and his girlfriend came over and spent the night with him. (Item 7 at 108, 136-138.)

³ Applicant's rank was Warrant Officer 2; the accuser's rank was Private First Class. (Item 7 at 92.)

⁴ An enlisted service member who was a former co-worker of Applicant's stated that Applicant spoke of the accuser and young female coworker of the accuser's in a personal way. He reported that in about 2004 Applicant referred to the accuser as "a hottie." Two young female coworkers of the accuser's were also interviewed. They reported that Applicant stared at them for long periods of time, and it made them feel uncomfortable. However, it was their job to assist him when he came to their office. They did not report their uneasiness around Applicant to their chain of command. (Item 7, 140-147.)

On May 6, 2005, Applicant provided a second sworn statement to a military investigator. In this statement, he reported that he, the accuser, and another warrant officer left the bar together and went to the other warrant officer's home, where they spent about two hours conversing with the warrant officer's wife. Then, according to Applicant's statement, he and the accuser left the warrant officer's home, walked to his apartment, and engaged in consensual sexual intercourse. (Item 7 at 104-105.)

The following colloquy occurs in Applicant's sworn statement of May 6, 2005:

Q [Investigator]: "When you made a previous statement denying [the accuser] was in your apartment or that you had sex with her, did you know that statement was not true when you made it?"

A [Applicant]: "Yeah."

(Item 7 at 104.)

In a report dated May 25, 2005, a military officer appointed to conduct the informal investigation into the matter concluded:

I find that based on all the evidence that was presented during the investigation . . . that [Applicant] had an inappropriate relationship with [his accuser] in violation of the Army fraternization [p]olicy. I find that [Applicant] provided a false official statement to me during the investigation. I find that [Applicant] more than likely had sexual intercourse with [the accuser] without her consent.

(Item 7 at 115.)

Additionally, the final supplemental report of the military criminal investigation unit concluded that its subsequent investigation disclosed probable cause to believe Applicant committed the crime of rape when he had sexual intercourse with this accuser without her consent. The investigating officer recommended that charges be preferred against Applicant for the following violations of the Uniform Code of Military Justice (UCMJ)⁵: Article 20, Rape; Article 107, False Official Statement, and Article 134, Fraternization.⁶ Approximately one year later, a pretrial investigation was held, pursuant

⁵ Persons subject to the UCMJ include "[m]embers of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it." See UCMJ § 802, Article 2.

⁶ Article 134 is identified as "General Article" and reads: "Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of a general, special, or

to Article 32, UCMJ.⁷ After a hearing held as a part of the Article 32 pretrial investigation, which included pending court-martial charges of Rape and Forced Sodomy, Applicant requested to resign his commission and accept an administrative separation. He was released from military service with a general discharge under honorable conditions in June 2006. (Item 4, Exhibit A at 3; Item 7 at 90, 93, 115; Item 7 at 4.)

In his answer to the SOR, Applicant denied that a rape ever occurred. In his response to the FORM and the amended SOR, Applicant argued that the crime of rape was never substantiated, and he should not be denied a security clearance on the basis on one isolated incident that occurred six years ago. He claimed that being overseas and away from family and friends created pressures on him that no longer exist. He argued that he had matured, felt remorse for failing to follow orders and regulations proscribing fraternization, and was rehabilitated. He provided in his Answer to the SOR numerous letters attesting to his good character and professional accomplishments. (Item A; Item 4, Exhibit C through Exhibit H.)

Additionally, Applicant argued that while he deliberately lied to the investigator and denied a sexual relationship with his accuser, he later came forward and admitted consensual sexual activity with her. He opined that only three weeks had passed between his false statement to the investigator and his correction of it, suggesting that this conduct demonstrated a “prompt, good-faith” effort to correct the falsification, as required under AG ¶ 17(a). (Item A.)

I take administrative notice of § 4-14(b) of Army Command Policy (AR 600-20), dated 13 May 2002, and § 4-14(b) of Army Command Policy (AR 200-20), dated 15 July 1999, which prohibit relationships between soldiers of different ranks if they:

- (1) Compromise, or appear to compromise, the integrity of supervisory authority or the chain of command.
- (2) Cause actual or perceived impartiality or unfairness.
- (3) Involve, or appear to involve, the improper use of rank or position for personal gain.
- (4) Are, or are perceived to be, exploitative or coercive in nature.
- (5) Create an actual or clearly predictable adverse impact on discipline, authority, morale, or the ability of the command to accomplish its mission.

(Item 9; Item 10.)

summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.” (Item 8.)

⁷ I take administrative notice that Article 32, UCMJ, provides that “[n]o charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.” (Item 8.)

I also take administrative notice of UCMJ § 907, Article 107 (False official statements) and UCMJ § 892, Article 92 (Failure to obey order or regulation). Article 107 reads: “Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.” Article 92 reads: Any person subject to this chapter who - - - (1) violates or fails to obey any lawful general order or regulation; (2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or (3) is derelict in the performance of his duties, shall be punished as a court-martial may direct.” (Item 8.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s suitability for a security clearance, an 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 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, the administrative judge applies these 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, an 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 in seeking to obtain 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 that an 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 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 J, Criminal Conduct

Under the Guideline J, “[c]riminal 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.” AG ¶30.

In March 2005, while serving overseas as a U.S. military officer, Applicant was accused of raping an enlisted member of the U.S. military. Even though the allegation was not litigated, it is sufficient to raise a security concern under AG ¶ 31(c), which reads: “allegation or admission or criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.”

Moreover, Applicant deliberately provided false statements under oath during an investigation of allegations that he had an inappropriate relationship (fraternization) with the enlisted member. Applicant’s deliberate false statements were in violation of UCMJ § 907, Article 107, and punishable by court-martial. He later admitted the inappropriate relationship (fraternization), which is prohibited under UCMJ, Article 134, Article 92, and § 4-14 of Army Command Policy (AR 600-20) 13 May 2002 and 15 July 1999. These offenses raise security concerns under AG ¶ 31(a). AG ¶ 31(a) reads: “a single serious crime or multiple lesser offenses.”

Three criminal conduct mitigating conditions might apply to Applicant's case. If "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," AG ¶ 32(a) might apply. If there was "evidence that the person did not commit the offense," then AG ¶ 32(c) might apply. If "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 involvement," then AG ¶ 32(d) might apply.

Applicant argues that his criminal conduct occurred six years ago under unusual circumstances, is unlikely to recur, and does not cast doubt on his current reliability, trustworthiness, or good judgment. He asserts he feels remorse for failing to follow orders and regulations proscribing fraternization, refers to his criminal conduct as a "single event," and suggests that it would be unreasonable to hold him accountable for these past criminal acts. Moreover, he provides evidence that others who know him and with whom he works consider him to be of good character.

However, the nature of Applicant's criminal conduct is not easily set aside, minimized, or ameliorated. Six years ago, as a military officer, he was accused of raping an enlisted member of the U.S. military. An investigation concluded that there was probable cause to try him at court-martial on the charge. While he denied the rape allegation, he admitted he had disobeyed lawful military orders and regulations regarding fraternization and made deliberate false statements to conceal his failure to follow those lawful orders and regulations. He resigned his commission rather than stand trial by court-martial on the rape and deliberate falsification charges. While he asserts that he is now remorseful and rehabilitated, this conduct raises ongoing concerns about Applicant's judgment, reliability, trustworthiness, and ability or willingness to comply with laws, rules, and regulations. I conclude that while AG ¶ 32(d) applies in part to the facts of Applicant's case, AG ¶¶ 32(a) and 32(c) do not apply. I also conclude SOR ¶ 1.c. for Applicant because it does not, *per se*, allege criminal conduct.

Guideline D, Sexual Behavior

AG ¶ 12 explains why sexual behavior is a security concern:

Sexual behavior that involves a criminal offense indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. . . .

The SOR alleges in ¶ 2.a. that the Guideline J conduct alleged in ¶ 1. also raises security concerns under Guideline D. Specifically, the Guideline D allegations in the SOR raise security concerns under AG ¶¶ 13(a) and 13(d). AG ¶ 13(a) reads: "Sexual

behavior of a criminal nature, whether or not the individual has been prosecuted.” AG ¶ 13(d) reads: “sexual behavior of a public nature and/or that reflects lack of discretion or judgment.”

Appellant, a military officer, was accused of raping an enlisted service member of the U.S. military in March 2005. Although Applicant denied the allegation of rape, the officer who investigated the incident that gave rise to the allegation concluded that Applicant “more than likely had sexual intercourse” with the accuser “without her consent.” Applicant argued that his sexual contact with his accuser was consensual. However, the record establishes that as a military officer he knowingly and willfully violated military policies, regulations, and standards of behavior related to inappropriate behavior and fraternization when he engaged in sexual intercourse with a junior enlisted military member.

AG ¶ 14 lists four possible mitigating conditions that could apply to sexual behavior that raises security concerns. AG ¶ 14(a) reads: “the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature.” AG ¶ 14(b) reads; “the sexual behavior happened so long ago, 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.” Applicant’s disqualifying sexual behavior occurred in March 2005, six years ago, when he was a 27-year-old commissioned officer. The record does not support that Applicant’s disqualifying sexual behavior occurred under unusual circumstances, and it casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 14(a) and 14(b) do not apply in mitigation.

AG ¶ 14(c) reads: “the behavior no longer serves as a basis for coercion, exploitation, or duress.” AG ¶ 14(d) reads: “The sexual behavior is strictly private, consensual, and discreet.” The final supplemental report of the military criminal investigation unit concluded that its subsequent investigation disclosed probable cause to believe Applicant committed the crime of rape when he had sexual intercourse with his accuser without her consent. The investigating officer recommended that charges be preferred against Applicant for the following violations of the UCMJ: Article 20, Rape; Article 107, False Official Statement; and Article 134, Fraternization. Rather than go forward with a court-martial, Applicant voluntarily resigned his warrant and was administratively separated with a general discharge under honorable conditions. Applicant’s sexual behavior violated Army Command Policy proscriptions against fraternization. This behavior as well as the unresolved allegation of rape could serve as a basis for coercion, exploitation, or duress. I conclude that neither AG ¶ 14(c) nor AG ¶ 14(d) applies in mitigation to the facts of Applicant’s case.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

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.

Applicant's personal conduct raises security concerns under AG ¶16(b) and AG ¶ 16(e). AG ¶ 16(b) reads: "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative." AG ¶ 16(e) reads, in pertinent part: "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"

AG ¶¶ 17(a), 17(b) and 17(e) provide conditions that could mitigate security concerns in this case. AG 17(a) reads: "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG ¶ 17(b) reads: "the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized 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 the information, the individual cooperated fully and truthfully." AG ¶ 17(e) reads: "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress."

Applicant deliberately provided false or misleading information concerning relevant facts to an investigator. The record establishes that he failed to make a prompt, good-faith effort to correct the falsification. He was not forthcoming and admitted his falsification only after direct questioning by the investigator. Accordingly, AG ¶ 17(a) does not apply in mitigation to the facts of Applicant's case. Moreover, Applicant failed to provide documentation to establish that either AG ¶ 17(b) or AG ¶ 17(e) is applicable in his case.

Whole-Person Concept

Under the whole-person concept, an 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.

Applicant, a seasoned military service member and a warrant officer, deliberately provided a false statement under oath during an investigation into allegations that he engaged in an inappropriate relationship (fraternization) with an enlisted member of the U.S. military. He argued that he should not be denied a security clearance on the basis on one isolated incident that occurred six years ago. However, these events occurred when he was in a position of responsibility in the military. Applicant's deliberate falsification under oath to a military investigator and his violation of Army command policy prohibiting relationships between soldiers of different ranks were serious matters, and they continue to raise security concerns about his judgment, reliability, and trustworthiness today. I am unable to conclude that he met his burden of persuasion in mitigating the Government's security concerns as enumerated in the amended SOR.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate security concerns under the criminal conduct, sexual behavior, and personal conduct adjudicative guidelines.

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 J: | AGAINST APPLICANT |
| Subparagraphs 1.a. – 1.b.: | Against Applicant |
| Subparagraph 1.c.: | For Applicant |
| Paragraph 2, Guideline D: | AGAINST APPLICANT |
| Subparagraph 2.a.: | Against Applicant |
| Paragraph 3, Guideline E: | AGAINST APPLICANT |
| Subparagraph 3.a.: | Against Applicant |

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 allow Applicant access to classified information. Applicant's request for a security clearance is denied.

Joan Caton Anthony
Administrative Judge