



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



In the matter of:)
)
-----) ADP Case No. 10-01145
)
Applicant for Public Trust Position)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

April 21, 2011

Decision

HARVEY, Mark, Administrative Judge:

Criminal conduct concerns are mitigated because Applicant’s sexual crime in 1998 was isolated and not recent. Applicant failed to mitigate personal conduct concerns raised by her June 2010 deliberately false statement in which she attempted to minimize her culpability in her sexual activity with a 14-year-old boy in 1998. Her eligibility to occupy a public trust position is denied.

Statement of the Case

On November 12, 2009, Applicant completed a Questionnaires for Investigations Processing (e-QIP) (SF 85P) (Government Exhibit (GE) 1). On October 18, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her (hearing exhibit (HE) 2), pursuant to Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised; Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program*, dated Jan. 1987, as amended (Regulation); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleges trustworthiness concerns under Guidelines J (criminal conduct) and E (personal conduct). (HE 2) The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Regulation that it is clearly consistent with the national interest to grant or continue Applicant's eligibility to occupy a public trust position, which entails access to sensitive information. (HE 2) DOHA recommended referral to an administrative judge to determine whether such access to sensitive information should be granted, continued, denied, or revoked.

On November 8, 2010, Applicant responded to the SOR allegations. (HE 3) On January 31, 2011, Department Counsel indicated she was ready to proceed. On March 3, 2011, I suggested April 4, 2011, as the date of Applicant's hearing. (HE 4) On March 8, 2011, Department Counsel responded by email and indicated that Applicant was available on April 4, 2011, for her hearing. (HE 4) On April 4, 2011, DOHA issued a hearing notice. (HE 1) Applicant's hearing was held as scheduled on April 4, 2011, using video teleconference. (HE 1) Department Counsel offered four exhibits (GE 1-4) (Transcript (Tr.) 17), and Applicant offered three exhibits. (Tr. 18; AE A-C) There were no objections, and I admitted GE 1-3 (Tr. 17), and AE A-C. (Tr. 18-19). Additionally, I admitted the SOR, response to the SOR, hearing notice, emails arranging the hearing date, and the criminal statute Applicant violated. (HE 1-5) On April 12, 2011, I received the transcript.

Findings of Fact¹

Applicant denied each of the SOR allegations; however, she admitted some of the underlying facts relating to each of the SOR allegations. (HE 2) Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 42-year-old support specialist employed by a defense contractor. (Tr. 6, 20; GE 1) She graduated from high school in 1986 and has not attended college. (Tr. 7) She has never been married. (Tr. 21, 73) Her two children are ages 21 and 23. (Tr. 21) She has never held a security clearance. (Tr. 21)

On November 13, 1998, Applicant pleaded "no contest" to corruption of a minor in state court, which is a felony in the fourth degree.² (Tr. 33; GE 3 at 14-15; SOR ¶¶ 1.a and 2.a) The court found her guilty of corruption of a minor after conducting a providence inquiry. (GE 3 at 14-15) The court required her to register as a sex offender for 10 years. (Tr. 34; GE 3 at 16) She is no longer required to register as a sex offender. (Tr. 36; SOR response) Her 1998 arrest and conviction are her only criminal arrest and conviction. (Tr. 73; SOR ¶¶ 1.a and 2.a) The court was required to determine that

¹Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

²The pertinent statute provides, "No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard." (HE 4)

Applicant knew CC, the person who engaged in sexual activity with her, was under the age of 16 or she was reckless in regard to CC's age, when she engaged in sexual activity with him. (Tr. 75-76; HE 4) Applicant was unsure about what happened in court because she was taking medication, and she was ill. (Tr. 77) Her conviction was publicized in the local newspaper. (Tr. 82) She felt remorse and took some responsibility for the offense. (Tr. 86)

Applicant's June 9, 2010 statement to DOHA

On June 9, 2010, Applicant made a written sworn statement to DOHA that CC, the 14-year-old boy, who engaged in sexual activity with her, was drinking a beer at a party, and she assumed he was 19 or 20 years old. (GE 4; SOR ¶ 2.b) They went into a shed, and the doors were open all of the time. (GE 4) CC began to get "grabby" so she pushed him away. (GE 4) He continued to grab her, and she saw him unzip his pants. (GE 4) She did not see him, hear him, or feel him sexually climax. (GE 4) She denied that she saw a condom on his penis; however, she did not disagree with the police statement that he had a condom. (GE 4) She did not know that CC was 14 until the police informed her of his age. (GE 4; SOR ¶ 2.c)

CC's 1998 statement to the police

Around January 1998 in karate class, CC told Applicant that he was in the 8th grade. (Tr. 42; GE 3 at 27, 36-37) On June 30, 1998, he was drinking soda and not beer at the karate-belt promotion party. Applicant drank a mixed drink and half of a beer. (GE 3 at 28, 40-41) Applicant invited CC to go for a walk with her. (GE 3 at 28, 41) They started walking towards the shed, and CC asked, "Where are we going, to the shed?" (GE 3 at 41) She responded, "Yes." (GE 3 at 41) Inside the shed, her shorts were off; her shirt was open; and her breasts were outside of her bra. (GE 3 at 28, 41-42) She gave CC a condom, which he put on his penis. (GE 3 at 28, 42) They engaged in sexual intercourse while standing up. (GE 3 at 28, 41, 43) Afterwards, he removed the condom and threw it into the weeds outside the shed. (GE 3 at 28)

Applicant's statement at her hearing

Applicant said CC lied about his role in their sexual activity because he wanted to please his parents. (Tr. 45-47) He previously had trouble with his parents for having sex with his 17 or 18-year-old girlfriend, and he wanted to shift blame and responsibility to Applicant for their sexual activity. (Tr. 45-47)

Applicant and CC were in the same karate class for a year.³ (Tr. 23, 40; GE 3 at 30, 35) She occasionally talked to CC during karate classes. (Tr. 23) She denied that CC told her in about January 1998 that he was 14 years old or that he was in the 8th

³In June 1998, CC was 14-years-old (date of birth: October 5, 1983), 68 inches tall and weighed 150 pounds. (GE 3 at 30-31, 49) Applicant was 30 years old, was 61 inches tall, and weighed 105 pounds. (GE 3 at 30-31, 49)

grade. (Tr. 41) She denied that she knew how old CC was; however, she assumed he was at least 19 because he was consuming alcohol. (Tr. 24-25; SOR response)

On June 30, 1998, Applicant went to a party after a karate belt-promotion party (Tr. 22). About 15 people, including CC, other children, and mostly adults, attended the party. (Tr. 22) Applicant noticed that CC was drinking beer from a plastic cup. (Tr. 23-24) She denied that she consumed any alcohol at the party. (Tr. 43) CC asked Applicant if she wanted to go for a walk because the rain had stopped. (Tr. 24)

Applicant told the police that before she and CC went on a walk, Applicant mentioned to a friend that she was going on a walk with CC. (Tr. 52) Applicant's friend asked Applicant what she was going to do with CC, and Applicant responded nothing because CC was 15. (Tr. 52; GE 3 at 53) At her hearing, Applicant said that she did not recall the conversation with her friend where she stated CC was 15. (Tr. 52) She insisted that at the time of the sexual incident, she believed CC was 18 or 19. (Tr. 52, 68, 72; SOR response)

While out on their walk, the rain resumed. (Tr. 24) After the walk started, she briefly went to her car to put her shoes in her car.⁴ CC indicated the shed was a place to get out of the rain, and they went into a shed. (Tr. 24, 44)

In the shed, CC started kissing Applicant. (Tr. 24; GE 3 at 53-54) She participated in the kiss. (Tr. 44) CC partially pulled down her shorts. (Tr. 25, 27) When he pulled them down, she pulled them back up. (Tr. 27; GE 3 at 54) She said that she did not recall CC touching her breasts, and she asserted that he only touched her shoulders. (Tr. 53; GE 3 at 54) She said that she did not remember him touching her vagina or rubbing his penis on the outside of her vagina.⁵ (Tr. 27, 55) She denied that she sexually abused CC because "I didn't know it happened. I didn't know he did it. I don't see him [as] a victim." (Tr. 38) She denied that she had sexual contact with CC. (Tr. 39) She denied that she gave CC a condom. (Tr. 45) She denied that she knew CC had a condom on his penis during their sexual activity.⁶ (Tr. 25, 57-58) She said she first learned that CC was wearing a condom when a detective informed her about it. (Tr. 25) She was unaware whether he had ejaculated. (Tr. 57)

Someone called CC's name because his parents were there to pick him up. (Tr. 28) CC and Applicant exited the shed. (Tr. 28) J, an adult who had attended the party, repeatedly called Applicant a bitch outside the shed, and threatened to contact the

⁴The police did not accuse her of getting the condom from her car. (GE. 3 at 57)

⁵Applicant told the police that CC rubbed the outside of her vagina with his penis and that he put his penis into her vagina. (GE 3 at 29) However, it was painful because she had female problems. (GE 3 at 29)

⁶Applicant told the police officer that CC obtained a condom, put it on, attempted to penetrate her vagina, and rubbed his penis on the outside of her vagina. (GE 3 at 55-56) She did not permit more penetration because it was painful to her. (GE 3 at 55) She was unaware that he ejaculated until the police told her. (GE 3 at 56)

police about Applicant's conduct.⁷ (Tr. 29, 49-50) CC's mother confronted Applicant and Applicant denied she said to CC's mother, "I'm thirty, he's fifteen, there ain't no way." Compare Tr. 64-66 with GE3, CC's mother's statement to police at 73. Applicant left the area. (Tr. 29)

The next Monday after the sexual activity, Applicant returned to karate class, and the karate instructor informed her that CC was 15 years old. (Tr. 29) When the police questioned Applicant, the detective asked her if she knew CC's age, and she responded "You said 14, I thought 15." (Tr. 50; GE 3 at 52) The police officer followed up with the question, "Okay, so, but you knew he wasn't eighteen years old?" (GE 3 at 52) She responded, "Yeah." (GE 3 at 52) She insisted that she found out after the sexual activity that CC was 15. (Tr. 51)

In the 1990s, Applicant was prescribed medication to treat her anger, depression, and hyper-sexuality or overactive sexuality. (Tr. 59-61) She began receiving counseling in about 1994. (GE 3 at 59) She was not on any medication when she engaged in sexual activity with CC. (GE 3 at 58) She "had the sex drive of four teenage boys" and she wanted to get it under control. (Tr. 61-62) Her sex drive was derived from anger and a desire for violence because she was sexually abused as a child. (Tr. 59-62) Her only sexual involvement with a minor related to her sexual involvement with CC. (Tr. 74) She ended her counseling and therapy several years ago because her counselor moved and did not recommend that she continue her counseling. (Tr. 78-80)

Character evidence

Applicant provided three character statements. (AE A-C) They lauded her honesty, trustworthiness, caring nature, diligence, kindness, and dependability. (AE A-C)

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, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). The government's authority to restrict access to classified information applies similarly in the protection of sensitive, unclassified information. As Commander in Chief, the President has the authority to control access to information bearing on national security or other sensitive information and to determine whether an individual is sufficiently trustworthy to have access to such information. See *Id.* at 527.

Positions designated as ADP I and ADP II are classified as "sensitive positions." Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3. "The standard that must be met for . . .

⁷Another witness indicated Applicant's blouse only had one or two buttons buttoned when she exited the shed.

assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." Regulation ¶ C6.1.1.1. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable access determination may be made. See Regulation ¶ C8.2.1.

When evaluating an applicant's suitability for a public trust position, an administrative judge must consider the disqualifying and mitigating conditions in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which may disqualify the applicant from being eligible for access to sensitive information. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security and trustworthiness suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance [or access to sensitive information]." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance [or trustworthiness] determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

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 [sensitive] information will be resolved in favor of national security." Section 7 of Executive Order (EO) 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.”

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal factors and conditions, I conclude the relevant trustworthiness concerns are under Guidelines J (criminal conduct) and E (personal conduct).

Criminal conduct

AG ¶ 30 expresses the trustworthiness concern pertaining 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.”

AG ¶ 31 describes six conditions that could raise a trustworthiness concern and may be disqualifying:

- (a) a single serious crime or multiple lesser offenses;
- (b) discharge or dismissal from the Armed Forces under dishonorable conditions;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;
- (d) individual is currently on parole or probation;
- (e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program; and
- (f) conviction in a Federal or State court, including a court-martial of a crime, sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year.

AGs ¶¶ 31(a) and 31(c) apply. On November 13, 1998, Applicant pleaded “no contest” to corruption of a minor, which is a fourth degree felony. The court found her guilty of this offense after conducting a providence inquiry. She is no longer a registered sex offender, and she has completed all probation and community monitoring.

AG ¶ 32 provides four conditions that could potentially mitigate trustworthiness concerns:

- (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.

AG ¶¶ 32(a) and 32(d) fully apply. Applicant's most recent criminal offense occurred on June 30, 1998, almost 13 years ago. She served her probation, paid her fines, received counseling, and did not re-offend. She presented strong evidence of remorse, job training, and solid support from three character witnesses. A sufficient period has elapsed after her most recent offense. She has had time to contemplate her poor judgment and to respond to therapy. She understands her criminal offense had a devastating impact on her lifestyle, family, and career. Her demonstrated intent not to commit future crimes is encompassed in these two mitigating conditions. She accepted some responsibility for her misconduct. Criminal conduct is fully mitigated.

Personal conduct

AG ¶ 15 expresses the trustworthiness and 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 two conditions that could raise a trustworthiness concern in this case:

(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; and

(b) 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(a) and 16(b) apply. On June 9, 2010, Applicant made a deliberately false sworn statement to DOHA that CC was drinking a beer at a party, and she assumed he was 19 or 20 years old, when she actually believed he was 15-years-old. She repeated this false claim about CC's age in her SOR response and at her hearing. CC told her he was in 8th grade in about January 2010. Applicant told a friend that she knew CC was 15 shortly before she went into the shed with him, and she again stated he was 15 shortly after leaving the shed to an adult who confronted her about going into the shed with CC. During her initial interview with the police, she said she knew he was 15 years old. Her claim in her June 9, 2010 statement, in her SOR response, and at her hearing that she believed he was 18 or 19 is not credible.

SOR ¶ 2.c alleges that Applicant's June 9, 2010 statement indicates she denied knowledge of the condom and feeling the sexual contact. Actually, her statement is ambiguous. A reasonable reading of her statement is that she denied seeing the condom and feeling CC ejaculate. Her statements on these two issues are consistent and the allegation in SOR ¶ 2.c is refuted. However, her hearing statement denying that she felt CC's penis touch or rub her vagina and not recalling whether his penis touched or rubbed her vagina, is not credible. I find her statement to the police that she felt his penis rub and partially penetrate her vagina, causing her some pain, to be credible.⁸

AG ¶ 17 provides seven conditions that could mitigate security concerns including:

- (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 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;

⁸Applicant's statement at her hearing about not feeling CC's penis touch or rub her vagina and her statement in her SOR response and at her hearing, claiming to believe CC was 18 or 19 when she engaged in sexual contact with him is not alleged in the SOR. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have considered the non-SOR misconduct for the five above purposes, and not for any other purpose.

(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;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions fully apply to all personal conduct concerns. AG ¶ 17(f) applies to SOR ¶ 2.c for the reasons discussed previously. Her June 9, 2010 statement to DOHA about not seeing CC's condom and not feeling him ejaculate is not contradicted by sufficient evidence to conclude she engaged in an intentional attempt to deceive the Government about these two issues.

Applicant's deliberately false statement to DOHA on June 9, 2010, about her knowledge of CC's age when she engaged in sexual activity with him cannot be mitigated. I conclude that when Applicant made her statement to DOHA about believing CC was 18 or 19, she was making a deliberate and intentional attempt to avoid full responsibility for her offense. Personal conduct concerns raised by her intentionally false statement to DOHA on June 9, 2010 are not mitigated.

Whole-Person Concept

In all adjudications, the protection of our national security is the paramount concern. The adjudicative process is a careful weighing of a number of variables in considering the "whole-person" concept. It recognizes that we should view a person by the totality of his or her acts, omissions, and motivations as well as various other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances and applying sound judgment, mature thinking, and careful analysis. 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant Applicant authority to occupy a public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines 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.

Although the rationale for reinstating Applicant's clearance is insufficient to support access to sensitive information at this time, there are several factors tending to support approval of her access to such information. She is a 42-year-old support specialist employed by a defense contractor. She graduated from high school in 1986, and has not attended college. She has never been married, and her two children are ages 21 and 23. She has never held a security clearance. She has not committed any criminal offenses since June 1998. On November 13, 1998, she pleaded "no contest" to corruption of a minor, which is a felony in the fourth degree. Three character witnesses praised her honesty, trustworthiness, caring nature, diligence, kindness, and dependability. There are no allegations of compromise of sensitive information. She is sufficiently mature to understand and comply with her trustworthiness responsibilities. She does not use illegal drugs. She deserves substantial credit for volunteering to support the Department of Defense and for her service to a Department of Defense contractor. There is every indication that she is loyal to the United States and the Department of Defense.

The whole-person factors against reinstatement of Applicant's access to sensitive information are more substantial at this time. On June 9, 2010, she made a false sworn statement to DOHA that CC was drinking a beer at a party, and she assumed he was 19 or 20 years old, when she actually believed he was 15-years-old. In addition, she repeated her false statement about CC drinking alcohol and believing CC was 18 or 19 years old in her SOR response and at her hearing. She falsely stated that she did not feel CC touch her vagina at her hearing. She was attempting to minimize her culpability by claiming she believed CC was old enough to engage in sexual activity, and the sexual activity was very limited. Her false statements on June 9, 2010, in her SOR response, and at her hearing are not mitigated.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 12968, the Directive, the Regulation, the AGs, and other cited references to the facts and circumstances in the context of the whole person. For the reasons stated, I conclude Applicant has mitigated criminal conduct concerns; however, she has not mitigated personal conduct concerns. She is not eligible for access to occupy a sensitive position.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant or continue Applicant eligibility for a public trust position. Eligibility for access to sensitive information is denied.

Mark Harvey
Administrative Judge