



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



In the matter of:)	
)	
-----)	ISCR Case No. 11-00544
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

01/13/2012

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On July 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline E (Personal Conduct). 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 adjudicative guidelines (AG) implemented by the DOD on September 1, 2006..

In his August 8, 2011, response to the SOR, Applicant admitted the two allegations raised under Guideline E and requested a hearing before an administrative judge. The case was assigned to me on September 9, 2011. The parties agreed to an October 5, 2011, hearing date. A notice to that effect was issued by DOHA on September 15, 2011. The hearing took place as scheduled.

Department Counsel submitted four documents which were accepted into the record as exhibits (Exs.) 1-4 without objection. Applicant gave testimony and was given until October 17, 2011, to submit any documents. During the Government's closing, the word "illegal" was struck from the allegations, as noted below. On October 12, 2011, the

transcript (Tr.) of the proceeding was received. On October 18, 2011, Department Counsel forwarded three documents received from Applicant, which were timely submitted. Without objection, they were accepted into the record as Exs. A-C and the record was closed. Based upon a review of the record, security clearance is granted.

Findings of Fact

Applicant is a 42-year-old consultant who has worked for the same defense contractor since May 2010. Applicant earned a master's degree in management and organization with a specialty in human resources, and is currently working toward a second master's degree. He is divorced and has one teenage child.

In June 2005, after he was honorably discharged from the United States Navy with 10 years of active duty service to his credit, Applicant found employment as a human capital analyst. In November 2005, he found another position as a strategic communications planner, which led to an assignment at a U.S. military base in Iraq. He returned to the United States in October 2006, at which point he began working for another defense contractor as an information operations assessment chief. That position also required a period of employment at a base in Iraq. After a successful six-month contract, he returned to the United States and met with his employer's chief executive officer (CEO). Applicant was chosen to take over as program manager on a series of consecutive contracts involving information operations management in support of a base in Iraq. When he asked what the boundaries of his authority were, he was told by the CEO that he "was to assume that [he] was the CEO of [the operation]."¹ Applicant concluded that he thus had the ultimate authority to make on-site decisions for the operation.² In May 2007, he returned to Iraq to assume his role as program manager for the operation, which hired and placed personnel for the U.S. military.

In the ensuing months, the home company began struggling financially. As a result, it was sometimes difficult to meet payroll obligations, including cash payments to local advisors. Applicant discussed the situation with the regional finance manager (RFM). They explored various options for meeting the unit's financial obligations, including the idea of "selling off different company property that we had, to include construction equipment. We had some vehicles that . . . the company owned. We determined to get rid of some of those."³

Applicant also noted that, "we had a store of weapons that we weren't, in my opinion, technically authorized to have based on our contract. But I had gone to the provost marshal (PM), and I had disclosed everything that I had in the weapons locker,

¹ Tr. 21.

² *Id.*

³ *Id.*

and gave them an inventory, presented the contract”⁴ He expressed to the PM that he was concerned that “maybe we weren’t technically authorized to have all these weapons.”⁵ The PM office told him that the possession of the weapons was fine, but told him to keep them under lock and key, noting that nobody presently on the contracts was authorized to carry them.⁶ Applicant explained that the PM office “is basically the sort of camp law. The Sheriff’s office if you will.”⁷ Among other things, the PM conducts inspections of the contractors’ camps at times. Given its authority and responsibilities, Applicant had felt compelled to disclose the information regarding the weapons to the PM.⁸ The inventory he provided the PM included the weapons’ serial numbers. Based on the input received from the PM, he locked the weapons away. Applicant believes he reported the meeting to his home office.⁹ A copy of the inventory was ultimately given to the home office.

Later in the summer of 2007, Applicant considered liquidating more of the company’s property. Since the weapons at issue were not in use or needed, and nobody was authorized to carry them, he decided to sell some of them in order to generate more cash flow.¹⁰ There were no PM-imposed rules restricting or governing the sale of materials.¹¹ He worked with the RFM, who told Applicant that he had found a personnel security detail (PSD) that was interested in their purchase.¹² Although Applicant personally thought PSDs had a “dodgy reputation,” he did not prohibit the RFM from conducting the sale.¹³ He trusted the RFM “[i]mplicitly to do his job. . . .

⁴ Tr. 21-22.

⁵ Tr. 22.

⁶ Tr. 22. This authority was restricted at the time because the carrying of weapons by contractors required approval from the Iraqi Ministry of the Interior and the U.S. Army.

⁷ Tr. 34. In noting a “camp,” Applicant referred to the area of the U.S. Army base in which contractors would “get space from the Government to build our sort of mini-camp.” Tr. 34. Applicant’s group had about 10 trailers on it, where employees worked and lived.

⁸ Tr. 35.

⁹ Tr. 56-57.

¹⁰ Ex. 2 (Interrogatories, interview of Jul. 30, 2010) and Tr, generally.

¹¹ Tr. 58.

¹² Tr. 23, 58-59. Applicant defined a PSD as “an informal term for companies that provide physical security for, in this instance, military members, senior members of Department of State. [W]hen the Department of Defense comes over, he gets a PSD team. . . . There are a number of contract firms . . . that have contracts with the Government to provide services.” Tr. 31.

¹³ Tr. 59. See also Tr. 32.

[W]hen I gave him a task . . . [I] had good faith that he would do it.”¹⁴ The RFM then took the weapons from under lock and key and sold the weapons to a particular team.¹⁵ Applicant did not, and still does not, know the identity of the PSD team involved. The cash proceeds from the sale were noted in the accounting books as “cash received;” the ledgers were sent to the home office indicating proceeds acquired from “sold property.”¹⁶ Applicant is unsure of the exact wording because that task belonged to the RFM, who handled such matters. Applicant did not report the transaction to the PM, but he testified that he updated the inventory and kept it in the safe.¹⁷

By January 2008, Applicant had returned to the United States. A junior analyst from the company who had worked with Applicant in Iraq at one point told him that superiors were talking about the weapon sale. He asked Applicant about it, noting that some weapons were not included in the base inventory. Not being a superior or in his personal chain of command, Applicant only told the man, “[d]on’t worry about it.”¹⁸ Applicant did not feel compelled to disclose more to this individual.

Later, Applicant was asked about the weapons by the CEO and a former field security officer (FSO). He explained the situation as described above. The CEO told him that he did not have the authority to make the decision. Applicant responded, “[b]ut you gave me the authority. You said so when I took over. We’ve liquidated other company property, and there was never a concern with it.”¹⁹ The FSO threatened that there would be a Federal Bureau of Investigations (FBI) inquiry, and that he would face criminal charges because the transaction was illegal.²⁰ However, the FSO provided no basis for either the FBI’s interest in the matter or for the depiction of the sale as illegal. Applicant admitted having made the decision to sell the weapons, but said he did not know to whom the RFM made the sale.²¹ Ultimately, Applicant was terminated from

¹⁴ Tr. 61.

¹⁵ Tr. 56. The RFM apparently knew individuals in the theater who might be interested in various sale items. Tr. 32. The RFM left the assignment around October 2007, and had left the company before Applicant returned to the United States around January 2008. Tr. 33-34.

¹⁶ Tr. 23, 53. Applicant also noted that the transaction “would have gone down as cash received, and then the comments would have been property sales. I can’t honestly say whether we noted it was a weapons sale, or a car sale, or if it was just a transfer of property. Tr. 53. He believes that such sales were usually noted in “general terms.” Tr. 54. However, Applicant did not make such notations; that job belonged to the RFM. Applicant only reviewed the accounting books before they were sent to the home office. *Id.*.

¹⁷ Tr. 55.

¹⁸ Tr. 24, 50, 62-63.

¹⁹ Tr. 25.

²⁰ Tr. 25-26.

²¹ Tr. 28.

employment with the entity in February 2008. On his JPAS incident history, the sale was termed “illegal,” but without citation to any authority as to the basis for that representation.²²

In the early spring of 2008, Applicant discovered that his former employer had noted on his JPAS incident report that his sale of weapons had been illegal. Believing the allegation to be false, he contacted the FBI directly, discussed the issue, and left his contact information. He has never been able to determine how the sale was deemed illegal or why it would be an FBI concern. He has never been charged with anything related to the sale.

After his termination, Applicant found another job in July 2008, and ultimately abandoned his doctoral program in favor of working on another master’s degree.²³ Since that time, he has held positions while retaining a security clearance at other defense contracting companies without incident, including other assignments abroad.²⁴ A program manager for his employer in 2008 noted that Applicant did an outstanding job for her company while staffed in a difficult working environment.²⁵ She also noted that Applicant “demonstrated excellent leadership skills, judgment and the ability to provide the client with the support and counsel they needed. We would not hesitate to hire [him] again in the future.”²⁶ An associate with whom Applicant worked from June 2009 through March 2010 noted that Applicant “ensured successful implementation and conclusion of his project, consistently exhibiting sound judgment and decision-making abilities.”²⁷ There is no evidence of any other questioned or questionable conduct.

Applicant has cooperated with his former company, Office of Personnel Management (OPM) investigators, and DOHA concerning the weapons sale. He has never denied that it was his decision to sell the weapons or that he directed the RFM to execute the sale. There is no evidence or suggestion that he did so for personal profit.²⁸ He continues to deny firsthand knowledge of how the weapons were sold by the RFM or who the ultimate buyer of the weapons was, noting that it was the RFM who “actually

²² Ex. 4 (Report, incident history).

²³ Tr. 66.

²⁴ Tr. 26.

²⁵ Ex. B (Reference, dated Oct. 11, 2011).

²⁶ *Id.*

²⁷ Ex. C (Reference, dated Oct. 13, 2011).

²⁸ Tr. 38-40. Applicant estimates that the sale was worth about \$1,200. He was used to dealing in cash, sometimes up to \$200,000 at a time for payroll. Applicant initiated the receipt system later put in place at the camp for the sake of accountability. Only Applicant and the RFM had access to cash. Tr. 41-43. Applicant has been concerned that the reference to cash implied some suspicion that he had benefitted from the sale.

took care of the hand to hand transaction.”²⁹ He noted that before he went to the assignment, inventories were not maintained. At that time, an incident had occurred in which the U.S. Army had seized weapons possessed by employees without proper authorization. When he arrived, he initiated an examination of the contracts and made inventories, including the one he proffered to the PM while inquiring about the camp’s possession of weapons.³⁰ Actively representing his employer while abroad, he wanted to avoid any situations that might lead to his group being asked to leave the base.³¹

An excerpt from a JPAS incident report regarding a follow-up entry dated January 16, 2008, states:

On January 15, 2008, [Applicant] was interviewed by the above listed security officer, and the [Human Resources Director], along with the [CEO]. Although Applicant initially denied any first hand knowledge of the *disposition* of the weapons, he later recanted and supplied to security officer with a signed statement admitting that [the RFM] sold the missing weapons for cash³² (emphasis added)

Elsewhere, notes from January 31, 2008, state that the “overall supervisor responsible for ensuring that the weapons were accounted for is [Mr. X].”³³ It is further noted that Mr. X had been separated in 2007. The report also states that the company was unable to contact the former RFM. An investigator’s depiction of the restrictions on non-authorized contractors carrying weapons is consistent with those comments made by Applicant.

Applicant’s description of the incidents at issue has been generally consistent throughout. He provided an abbreviated version in completing his May 24, 2010, security clearance application.³⁴ During a July 30, 2010, interview with OPM investigators, Applicant again made generally consistent statements regarding the issues. It was also noted that “the subject feels that [the CEO] felt this was a perfect

²⁹ Tr. 27, 49-51, 58.

³⁰ Tr. 35-36.

³¹ Tr. 37.

³² Ex. 4 (Report, incident history). To state that “[a]lthough Applicant initially denied any first hand knowledge of the *disposition* of the weapons, he later recanted and supplied to security officer with a signed statement admitting that [the RFM] sold the missing weapons. . . .” is misleading. Supplying a signed statement admitting that the RFM sold the weapons does not necessarily constitute a recantation of his initial denial of first hand knowledge of their disposition. Applicant repeatedly denied knowing to whom the weapons were sold.

³³ *Id.*

³⁴ Ex. 1 (Application, dated May 24, 2010) at 49 of 71.

opportunity to let [him] go. The [CEO and others] have [since] left the company” and the company’s name has changed.”³⁵ A June 23, 2011, email sent to Department Counsel from Applicant’s former employer noted that Applicant’s human resources file is thin and stated that the former Human Resources Director had also left the company.³⁶

At the hearing, Applicant conceded that, in hindsight, he made several unspecified errors in his decision-making process with regard to the sale.³⁷ He stated that he has learned from his mistakes. He further showed that he has since successfully maintained unsupervised positions while maintaining a security clearance, and learned how to be more meticulous.³⁸

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required 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 commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” All available, reliable information about the person, past and present, favorable and unfavorable, must be and are considered 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 my decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence submitted.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by

³⁵ Ex. 2 (Interrogatories, Interview of Jul. 30, 2010).

³⁶ Ex. 3 (Cover e-mail, dated Jun. 23, 2011).

³⁷ Tr. 79-80. Applicant also noted, “I don’t think I ever said it was a good idea to [order the sale of the weapons].”

³⁸ Tr. 80, 84.

Department Counsel. . . .³⁹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.⁴⁰

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 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁴¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁴² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁴³ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. Based upon consideration of the evidence, I find Guideline E (Personal Conduct) to be pertinent to the case. Conditions pertaining to that guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are discussed below.

Analysis

Guideline E – Personal Conduct

Security concerns arise from matters of personal conduct because “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability,

³⁹ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴¹ *Id.*

⁴² *Id.*

⁴³ Executive Order 10865 § 7.

trustworthiness, and ability to protect classified information.”⁴⁴ In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.⁴⁵

In February 2008, Applicant was terminated from his employment with a defense contractor. His termination was based on the admitted fact that he was involved in the sale of three weapons to a PSD while deployed in Iraq. It was alleged by the employer that this sale was illegal. Such facts would be sufficient to raise Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16 (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. This includes, but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information; . . . (3) a pattern of dishonesty or rule violations; (4) evidence of significant misuse of Government or other employer’s time or resources.

With a PC DC potentially raised, the burden shifts to Applicant to mitigate the security concerns.

During the Government’s closing, I noted that there was no evidence supporting the SOR description of the weapon sale as “illegal.” Applicant had also expressed concern regarding the application of the term “illegal.” Stating that the use of the term could be a fault attributable to semantics or a poorly worded SOR, the Government urged that it was not concerned with “the legality or illegality” of the sale, but rather with the conduct demonstrated.⁴⁶ Lacking evidence that the transaction at issue was illegal, and noting no objection by the Government, I struck the word “illegal” from the SOR. In so doing, the allegation was substantively amended to conform with the evidence, and Applicant’s on-going concerns regarding both the origin and applicability of that term were addressed. Consequently, I note illegal conduct is not at issue. Moreover, there is no evidence indicating that Applicant intentionally falsified, concealed, or omitted facts

⁴⁴ AG ¶ 15.

⁴⁵ *Id.*

⁴⁶ Tr. 75.

regarding the weapon sale. Indeed, his statements regarding both the incident and all related matters have been generally consistent from the beginning.

Here, the personal conduct at issue pertains to the admitted fact that “Applicant made a determination as a supervisor with this other employee” that led to the sale of weapons on base.⁴⁷ The Government stated that it is not specifically referencing issues related to “who had the gun and handed it to a buyer.”⁴⁸ Rather, it argued that its focus was on “the totality of the conduct” – “the decision making process that led ultimately to the sale of these weapons, and the fact that the Applicant is assuming responsibility for making the decision . . . and for putting that plan into motion.”⁴⁹ In so doing, the Government noted such factors as the venue, the PM’s instruction to keep the weapons under lock and key, and “the fact that [Applicant] decided to send an employee off to sell weapons while in a war zone, but . . . cannot tell us to whom the weapons were sold. . . . This is serious conduct. This conduct was serious enough to get the Applicant terminated from his employer upon their discovery that these weapons were sold.”⁵⁰

I agree that the conduct at issue was serious. However, the evidence shows that Applicant’s former employer terminated him not merely for a sale, but for conducting an *illegal* sale of property. The evidence also suggests that Applicant’s termination may have been precipitated by other motives, given its failure less than diligent documentation of what it alleged was illegal conduct and and in light of facts showing that the business was failing. Without more, I cannot conclude that the conduct, by itself, was truly and solely “serious enough to get the Applicant terminated.” To do so would presuppose that the business properly terminated Applicant due to demonstrated illegal activity.

What remains is the conduct in light of the circumstances. Applicant is a veteran of 10 years of service in the U.S. Navy. He is aware of the procedures and protocols used within the military. Discharged in June 2005, he found a job in November 2005 that took him to the base in Iraq at issue for a period of time. He returned there in October 2006 for six months. In May 2007, he assumed a supervisory position for his company at that base where he was led to believe he had the authority to act as if he were the CEO. There, Applicant diligently studied the company’s contracts and made an inventory of its property. He specifically initiated a discussion about his concerns regarding firearms kept in the company’s operational site with the PM. He was told no current personnel were authorized to carry the weapons noted. Applicant was then advised to keep the firearms under lock and key. Applicant complied with this advice.

⁴⁷ Tr. 75-76.

⁴⁸ Tr. 78.

⁴⁹ *Id.*

⁵⁰ Tr. 69.

Feeling he had the authority of a CEO, Applicant made decisions regarding the liquidation of property. He apparently liquidated such property, including vehicles, with the help of the RFM. There is no evidence suggesting that he lacked the authority to make such transactions on behalf of his employer, nor did his employer cite to any other transactions as having been proscribed or problematic. Only the weapons sale apparently raised concerns with Applicant's employer. Therefore, it would appear that Applicant was given wide latitude in exercising his authority.

For the weapon sale, Applicant authorized his trusted RFM to negotiate and conclude the transaction. In so doing, the otherwise cautious and detail-oriented Applicant delegated the job to an employee. This may be common practice in the private sector. However, this contemplated transaction was to be conducted on a U.S. military camp in Iraq. There, the PM – the camp's "sheriff" – had determined that none of Applicant's employer's on-site personnel were authorized to carry the weapons. Apparently, this included both Applicant and the RFM. Consequently, the PM requested that the weapons be kept under lock and key. If nothing else, a reasonable person should have foreseen logistical issues related to unauthorized personnel conveying secure property on base property in order to conduct a transaction. Under these facts, either Applicant, the RFM, or even the buyer should have first consulted with the PM for guidance as to how the transaction should be conducted. Although the Government stated that it is less concerned with "who had the gun and handed it to a buyer," preliminary consideration of such logistical matters was clearly warranted; indeed, failure to think through how the transaction would be conducted contributed to the facts now at issue. To fail to check with the PM regarding how the transaction should be conducted was to proceed at one's peril.⁵¹

Applicant has been consistent and straightforward from the beginning regarding both his responsibility for the sale and the underlying facts. Personal Conduct Mitigating Condition AG ¶ 17(a) (*the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) does not apply to the extent that no omission, concealment, or falsification is at issue.

Issues regarding whether Applicant's actions were illegal have been removed from consideration for lack of evidence that his conduct was illegal. While the authority of the PM in these matters could have been questioned, it was not. Indeed, it was Applicant who described the PM as the base sheriff and authority. Applicant's primary failure here was his failure to tell the RFM to clear the sale with the PM; it is possible that the RFM sold the weapons to someone otherwise authorized to possess weapons. Furthermore, Applicant openly laments his role in the transaction described. Under these facts, however, I conclude that AG ¶ 17(f) (*the information was unsubstantiated or of questionable reliability*) does not apply.

⁵¹ Theoretically, the weapons could have been transferred to the purchaser without violating the PM's proscriptions. For example, the purchaser could have been authorized by the RFM and PM to take them from the safe for removal.

Under these particular circumstances and facts, and given the location of the activity, Applicant's decision to order the sale of the weapons and his failure to show greater initiative in complying with the spirit of the PM's advisements is serious.⁵² However, although he has maintained an understandable frustration as to how his conduct was illegal – an issue since removed from the SOR – he fully appreciates why these facts raise issues concerning his personal conduct. He admitted the relevant facts and takes full responsibility for his action.

Moreover, the single incident at issue took place in the summer of 2007, four-and-a-half years ago. At the time, he had less than two years of private sector experience in his current field, and less than a year working in a civilian capacity on a base. Since being terminated, Applicant has continued in his present field without incident for three-and-a-half years while maintaining a security clearance. During that time, he has learned on the job and earned the trust of his superiors and peers. Applicant is now more meticulous with regard to the execution of his job. He has been consistent and forthcoming throughout. Given these considerations, I find that AG ¶ 17(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) and AG ¶ 17(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*) apply.

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). Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a highly credible 42-year-old military veteran. He is highly educated with a graduate degree in organization, and a former doctoral candidate now working on a second master's degree. He is well-regarded in his current professional capacities. He is a divorced male helping to raise a teenager.

Before returning to Iraq in a new capacity, Applicant took the initiative to explore the boundaries of his contemplated authority. When told he should act as the local CEO, he acted accordingly. He initiated a reconciliation of the contracts and inventory.

⁵² It is unknown when the PM learned about the transaction. However, there is no evidence the PM reprimanded or otherwise penalized either Applicant, the RFM, their employer, or the buyer over the incident.

He obtained a meeting with the base PM regarding the unit's possession of weapons. He was told that nobody in his employ was authorized to carry the weapons at issue. Rather than confiscate the weapons, the PM directed Applicant to keep them under lock and key. Despite these comments and directions, Applicant ordered an employee to sell the weapons. That transaction took place on base without the prior authorization or approval of the PM. As a result, a questionable weapons sale was concluded, and the weapons were removed from lock and key, and carried for transaction by an unauthorized person.

As previously noted, the personal conduct at issue is serious. However, Applicant, who has been consistent and candid throughout, now understands the Government's concerns. He has repeatedly taken full responsibility for the transaction. He is genuinely contrite over his poor judgment in this singular matter.

Since losing his job in early 2008, Applicant has continued to work for contractors, mostly in unsupervised positions, without incident. Until recently, he maintained a security clearance. Four-and-a-half years have passed since the incident at issue. Applicant has worked without further incident for other employers for three-and-a-half years. During that time, he has gained more managerial and industry experience, and built a solid reputation for excellent work. A veteran of the U.S. military for 10 years before entering the private sector, this singular but serious incident remains an aberration on his overall professional record with regard to personal conduct, reliability, and judgment. He has had nearly five years to learn from his lapse. The facts, as well as Applicant's testimony and demeanor, show that he has.

I have examined the relevant data and Applicant's testimony. Given the isolated nature of the conduct at issue, the passage of time, Applicant's contrition, his genuine appreciation of the severity of his lapse in judgment, his conscious efforts to assure that he is more cautious in subsequent assignments, his intervening professional growth and success, and the absence of any other dubious expressions of judgment, I find that Applicant has met his burden in mitigating the personal conduct security concerns at issue. Clearance is granted.

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 E:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge