



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 11-02291  
 )  
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Applicant for Security Clearance )

**Appearances**

For Government: Pamela C. Benson, Esquire, Department Counsel  
For Applicant: David Price, Esquire

January 24, 2012

**Decision**

HOWE, Philip S., Administrative Judge:

On June 12, 2010, Applicant submitted his electronic Security Clearance Application (SF 86) (e-QIP). On June 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant 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) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on June 20, 2011. He answered the SOR in writing through counsel on June 28, 2011, and requested a hearing before an administrative judge. DOHA received the request on July 1, 2011. Department Counsel was prepared to proceed on August 19, 2011, and I received the case assignment on August 29, 2011. DOHA issued a Notice of Hearing on October 27, 2011, and I convened the hearing as scheduled on November 15, 2011. The Government offered

Exhibits 1 to 3, which were received without objection. Applicant testified, called one additional witness, and submitted Exhibits A through S, without objection. DOHA received the transcript of the hearing (Tr.) on November 29, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, Applicant denied the factual allegations in ¶¶ 1.a and 1.c of the SOR, with explanations. He admitted the factual allegation in ¶¶ 1.b of the SOR that he was contacted by a federal investigator, but denied he admitted to the investigator that he told a former girlfriend he was a government employee. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 29 years old. He was married in October 2011. His wife testified for him. Applicant went to college from August 2001 to December 2005. Applicant graduated from college with a degree in aeronautics and a pilot's license. Being a pilot is Applicant's career goal. Now he is employed as a pilot for a defense contractor. (Tr. 33, 48, 53, 55, 83; Exhibit 1)

Applicant's wife met him while she was in college in September 2002. They remained in contact from that time until January 2006 when their frequency of contact increased. His wife is a teacher. She regards her husband as a man of integrity and honesty. (Tr. 22-30, 35; Exhibit R)

Applicant had a girlfriend from his senior year in high school until April 2005. There is four years difference in their ages. The relationship started in high school when Applicant was a senior in 2000 to 2001 and the former girlfriend was a freshman. She finished high school while Applicant attended college in another state several hundred miles away. Their romantic relationship ended in April 2005 when he broke up with her. They communicated for the last time on July 14, 2005, concerning the return of personal items they had given each other during their relationship. After the termination of their relationship, the former girlfriend alleged Applicant made telephone calls and sent text messages to her on July 29, 2005, stating he was a Central Intelligence Agency employee and if they did not resume their relationship their lives would be in danger. Applicant's former girlfriend and her parents contacted the state police about the alleged telephone calls. There was also a blocked telephone call to the former girlfriend on July 31, 2005, but the caller was never identified because the Federal Bureau of Investigations (FBI) did not get a subpoena for the telephone company records in 2005. The company would not release any records without a subpoena. (Tr. 61, 62, 82, 98, 99, 100; Exhibits 2, 3, A, B, C, D)

On July 29, 2005, an FBI agent contacted Applicant about the messages. Applicant remembers receiving the telephone call but denies admitting to the FBI agent that he made any such statements in any way to his former girlfriend. The FBI's report

of August 3, 2005, states Applicant admitted he told his former girlfriend he was a CIA agent and that if they were not together someone could get killed or hurt. Applicant, according to the FBI, also acknowledged he realized the seriousness of the situation and he was merely bragging to impress his girlfriend. Applicant received the agent's telephone call while he was on the flight ramp doing a pre-flight check on the airplane he was to use on a flight from one city to another in a single-engine plane. The flight was to depart at 5:14 p.m. and last for two hours. Applicant was busy with that procedure when the FBI agent called. (Tr. 36, 65-80; Exhibits 2, 3)

Applicant denied telephoning and sending text messages to his former girlfriend claiming to be an agent of the Central Intelligence Agency (CIA) and that both their lives could be in danger if she did not resume their relationship. Applicant's telephone records for the dates of July 3, 2005 to August 2, 2005; do not show any telephone call to his former girlfriend. His flight log shows the flight on July 29, 2005, in the evening. Nor does it show a telephone call from the local FBI office. (Tr. 61-107; Exhibits 2, 3, A to D)

Applicant then was contacted on December 15, 2010, by a government investigator as part of the background research for his security clearance. Applicant denied he posed as a CIA agent and denied he admitted to the FBI agent in 2005 that he posed as a CIA agent. Applicant submitted two pages of corrections to the December 15, 2010, background investigation. Applicant conceded he might have told the FBI agent in July 2005 that he knew such a situation would be serious, but does not recall stating he was trying to impress his former girlfriend. Applicant never had any criminal action taken against him for the July 2005 allegations. He was never contacted again about them until the December 15, 2010, interview with the government investigator. (Tr. 61, 62, 65, 74-80, 90-94; Exhibit 3)

Applicant had several background investigations done from August 2001 to the present. His various employers did checks and three states did investigations for concealed weapons permits. No unfavorable information resulted from those reviews. (Tr. 63; Exhibit 3, page 5)

Applicant submitted 10 character letters. His high school mathematics instructor's 2001 letter lists Applicant's academic record and extracurricular activities in high school. A fellow pilot describes Applicant as honest and straight forward, trustworthy and hard working, a person who is very reliable and dependable. A coworker described Applicant as having very good personal interaction skills with customers at an airport where they worked long hours because of staff shortages. This person describes Applicant as being supportive of his former girlfriend when her parents divorced in 2005. Another character reference describes how he and Applicant renovated the writer's rental properties and Applicant manages them competently and without direct oversight. This writer trusts the Applicant totally. A friend of Applicant's of 20-years duration has known him since fifth grade in school. He trusts Applicant totally and considers him very friendly. Applicant's mother wrote a letter on his behalf, describing his personal development since birth. (Exhibits E, G, I, M, N, O, P Q, R, S)

Applicant testified credibly and directly addressed his answers to the specific allegations. His statements showed that at the time he was alleged to have telephoned and sent text messages to his former girlfriend about his being in the CIA he was enrolled in college. Having dated Applicant for four years, his former girlfriend knew he was attending college and could not be employed by the CIA at the same time. Applicant also showed that the FBI telephone call in July 2005 was answered when he was performing a pre-flight check list on an airport ramp, a busy and critical time for any pilot about to fly an airplane.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the 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 useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. (AG ¶ 2 (a)) 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally

permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

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 E, Personal Conduct**

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes seven conditions that could raise a security concern and may be disqualifying. Two conditions might apply:

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is

legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

If Applicant denied to the government investigator in December 2010 that he had admitted to the FBI agent in July 2005 that he posed as a CIA agent in telephone calls to his former girlfriend with whom he broke off their relationship in April 2005, and told her either of them could be hurt if they did not resume the romantic situation they had, then AG ¶ 16 (b) would apply. Also, if the 2005 conduct occurred as alleged, then it would be personal conduct that creates vulnerability in Applicant to exploitation, manipulation, or duress, because he would have impersonated a federal agent. AG ¶ 16 (e) would then apply.

However, Applicant convincingly denies such messages ever occurred or that he admitted they occurred to an FBI agent while Applicant was performing a pre-flight safety check on July 29, 2005. Applicant's character statements and his wife's testimony show a person of character who would not endanger his flight career trying to impress a former girlfriend with such silly statements. Applicant was in college at the time the statements were made. His former girlfriend knew he was in college at the time. Therefore, logically he could not be an employee of the CIA. It is more likely the former girlfriend was using the state police and FBI for her own purposes against Applicant, especially if her parents were in the midst of a divorce at the same time, as one of Applicant's character letters states.

These alleged statements and incidents occurred six years ago. No disciplinary or criminal action was ever taken against Applicant. The passage of so much time, coupled with the lack of any repeated actions of a similar nature, also support the conclusion the allegations are false or exaggerated by a former romantic partner.

AG ¶ 17 provides seven conditions that could mitigate security concerns. While I conclude the incidents did not occur as alleged, if they had, then in the alternative, two mitigating conditions would certainly apply strongly:

(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; and

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

As I stated earlier, the alleged conduct occurred six years ago without any repetition. They were also very unique if they ever occurred. They were also minor because no action was ever taken by anyone against Applicant. After August 1, 2005, nothing more was heard from Applicant's former girlfriend. The allegations were unsubstantiated by any written proof, contradicted strongly by Applicant's phone and

flight records, and the former girlfriend's accusations were of questionable reliability because the relationship she had with Applicant was ended by him and not by mutual agreement or by her.

### **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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant presented himself in a very professional manner. He answered questions directly and honestly about a six-year old incident that was illogical in its elements, at best. Applicant was never bothered about the allegations until he applied for a security clearance. They came from an unreliable source that used state and federal law enforcement agencies for whatever purpose she pursued in 2005 against a former boyfriend. The picture of Applicant presented by his testimony and the statements of his character witnesses is contrary to the allegation of pretending to be a CIA agent while in college in an attempt to get back a girlfriend he removed from his life three months earlier.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his alleged Personal Conduct, if it occurred, which I do not believe. I conclude the "whole-person" concept for Applicant.

## 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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. Eligibility for access to classified information is granted.

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PHILIP S. HOWE  
Administrative Judge