



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-03162  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

04/06/2017

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline K, handling protected information, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 23, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline K, handling protected information, and Guideline E, personal conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on December 7, 2015, and requested a hearing before an administrative judge. The case was assigned to me on January 5, 2017. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 13, 2017. I convened the hearing as scheduled on February 28, 2017. The Government offered exhibits (GE) 1 through 7. Applicant testified and offered Applicant's Exhibits (AE) A through W. All exhibits were admitted into evidence without objection. After the record closed, Applicant forwarded additional correspondence and exhibits that were marked as AE A-1, B-1, and X. There was no objection and the exhibits were admitted.<sup>1</sup> DOHA received the hearing transcript (Tr.) on March 8, 2017.

### **Procedural Matters**

The Government moved to amend SOR ¶ 1.d by deleting the words "which contained classified information." The motion was granted without objection.<sup>2</sup>

### **Findings of Fact**

Applicant denied all of the allegations in SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 59 years old. He earned a bachelor's degree in 1979 and is working towards completing a master's degree. He married in 1987 and has no children. He received a military commission through ROTC in 1979 and served on active duty until 1980, when he transferred to the reserves. At various time, he was recalled to active duty for extended periods and participated in numerous military campaigns. Applicant provided a copy of his certificate of release or discharge from active duty, which reflects his separation date as October 1, 2004, and the character of service as honorable.<sup>3</sup>

In approximately December 2003, an enlisted female soldier alleged Applicant "without consent, brushes her neck, kisses it, and continues to work." She reported the incident. An investigation was conducted in January 2004 and completed in February 2004. Applicant denied the conduct. The Investigating Officer found the soldier's allegations credible and recommended that a General Officer Memorandum of Reprimand (GOMOR) be issued to Applicant. The Report of Investigation was forwarded to the Commanding General. In approximately June 2004, a GOMOR was issued to Applicant for "sexual assault and fraternization."<sup>4</sup> Applicant testified that the

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<sup>1</sup> Hearing Exhibit (HE I) is the Government's discovery letter. HE II-V are email correspondence, which includes the Government's replies regarding the submission of post-hearing exhibits.

<sup>2</sup> Tr. 84-87.

<sup>3</sup> Tr. 29-34; AE J.

<sup>4</sup> Tr. 130-135; AE X is a copy of the Report of Proceedings by Investigating Officer/ Board of Officers. The report provides a narrative of the facts of the incident and a recommendation. The nature of the facts are characterized in the SOR as a sexual assault and fraternization. The report describes the conduct reported by the soldier as "without consent, brushes her neck, kisses it, and continues to work."

Army colonel who was responsible for the investigation “had it out for me,”<sup>5</sup> and he should have recused himself from the investigation. He explained that the colonel did not want him in the theater of operation, did not like him because Applicant was involved in public affairs, and he had a “big camera.” Applicant stated that he was represented by counsel, his supervisor was involved in the investigation, and his supervisor provided a rebuttal.<sup>6</sup>

In November 2004, Applicant was notified a board would be held to determine if he should be involuntarily separated from the Army Reserve. In July 2005, he had a show cause hearing and the board recommended he be discharged from the reserves “under other than honorable conditions.”<sup>7</sup>

In February 2007, Applicant received a letter from the Department of the Army, Review Boards Agency stating: “the Secretary of the Army directed you be informed that your characterization has been changed to UNDER HONORABLE CONDITIONS (GENERAL). New separation orders have been prepared and are enclosed.”<sup>8</sup> The new separation orders state: “Type of Discharge: General.” Applicant was asked at the hearing, “What was your rank?” He responded, “lieutenant colonel.” He was then asked, “Was that the rank they retired you at or is that the rank you retained?” He responded, “That’s the rank I retained, and I’m working now.” He confirmed it was the rank of lieutenant colonel and he will be eligible to receive a pension when he reaches the appropriate age.<sup>9</sup>

In Applicant’s answer to ¶ 2.b of the SOR, he stated, “I was upgraded to an Honorable Discharge in 2007.” This statement is not accurate. Toward the conclusion of Applicant’s hearing he testified that approximately a year ago he received a letter from the Army advising him that his rank was reduced to major. He explained he misinterpreted my previous questions.<sup>10</sup>

SOR ¶ 1.a alleges that in 2006, while employed with Business A, Applicant violated the company’s security rules and regulations by disclosing information regarding the contents of a contract to a potentially competing entity, thereby breaching non-disclosure agreements and provisions of an SF 312 non-disclosure agreement. The Government provided a copy of the Joint Personnel Adjudication System (JPAS) log

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<sup>5</sup> Tr. 37.

<sup>6</sup> Tr. 32-37, 131-135; AE W.

<sup>7</sup> Tr. 32, 141-146.

<sup>8</sup> AE J.

<sup>9</sup> Tr. 34-35, 141-146.

<sup>10</sup> Tr. 135-146. This information will not be considered for disqualifying purposes, but will be considered when analyzing Applicant’s credibility, for mitigation, and in a whole-person analysis.

entry that noted an incident was reported on May 27, 2006, alleging the above conduct was occurring “in the recent past, and is currently, (as of week of 5/22/06).”<sup>11</sup> Applicant disputed the allegation. Applicant testified that the owner of Business A, where Applicant was employed, wanted him to be in charge of a project. Applicant declined and wanted to leave Business A. Applicant testified that the owner told him, “If you don’t do this project, if you don’t do this, we’re going to slap (sic) that you gave out some classified information.”<sup>12</sup> Applicant testified he never disclosed classified information and the allegation was fabricated. He stated that the owner’s motive was that the owner did not want Applicant to work for a competitor. The Government provided no other evidence regarding this allegation. There is insufficient evidence to conclude Applicant violated security rules and procedures as alleged in this allegation.<sup>13</sup> Applicant retained his security clearance at the time.<sup>14</sup> I find for Applicant on SOR ¶ 1.a.

In 2012, Applicant was employed by a government contractor and working in Afghanistan. In July 2012, Applicant received training on operational security. The topics included: a general overview; use of classified information and material; access control into a classified area; mitigating risk when handling classified information; the responsibility for providing training to anyone who is not cleared for classified access, but may likely have inadvertent access to classified information; and the specific requirements for access control to secured facilities and the responsibilities of those who gain access. Applicant acknowledged in writing that he received the appropriate training.<sup>15</sup>

Applicant repeatedly throughout his written documents and his testimony refers to his “big camera.”<sup>16</sup> In Afghanistan, there are restricted areas that are part of the village compound where civilian contractors received room and board. Camera use is specifically prohibited in restricted areas. The program manager working with the command in theater at the time confirmed that there were postings on the village compound prohibiting “the use” of cameras.<sup>17</sup>

In November 2012, the director of security for the village compound, Ms. E, provided a detailed eviction request to the base commander with a summary of incidents committed by Applicant. Ms. E stated that Applicant repeatedly comments that because he is a news correspondent and his job is to videotape and take photos of

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<sup>11</sup> GE 5; Answer to SOR at Tab E.

<sup>12</sup> Tr. 38.

<sup>13</sup> Tr. 37-44; Answer to the SOR at Tab E.

<sup>14</sup> Tr. 44-45.

<sup>15</sup> Tr. 46; GE 4 and 6 at encl. 7; AE M.

<sup>16</sup> Applicant provided a photograph of the camera. It appears to be one that is used for filming for television. AE M.

<sup>17</sup> Tr. 55-57, 70; GE 6 at encl. 4.

residence and property in the village compound. She further stated that Applicant's behavior makes some civilians living there uncomfortable because of the restrictions about cameras due to security and safety reasons. Ms. E stated that in July 2012, she personally asked Applicant to vacate a restricted area where he had a large TV-type camera. Ms. E confronted Applicant, and she stated that he was extremely defensive and aggressive telling her that this is his job. Ms. E notified security personnel because of Applicant's behavior. She indicated that Applicant changed his story several times by explaining he was taking his camera for repairs, he no idea that cameras were not permitted, and then stating that he was not recording. He was instructed to leave the area. He complied. Ms. E observed that Applicant was extremely upset. She noted that the prohibition on the use of cameras is clearly posted, and it is part of the compound's rules and regulations, which are posted on all restricted area doors in English and pictures for visuals.<sup>18</sup>

In March 2013, a government investigator interviewed Applicant. He told the investigator about the July 2012 incident. He explained that he was carrying around a camera because he is employed as a videographer. He was in the village when his camera stopped working. He went to get a screwdriver to fix his camera and while he was walking into the village compound with his camera, Ms. E approached him and said, "Get out of here with that camera, as this is a no filming location." Applicant told Mr. E that he was not filming and the camera was off, and he then entered a building to obtain the screwdriver. Applicant told the investigator that Ms. E was not happy and wanted him removed from the village. Ms. E reported the incident to the military commander, who counseled Applicant and told him not to get into any "problems or concerns" or he would be told to leave. Applicant told the investigator that this incident was a "complete misinterpretation." He explained that because he is from the northeast that sometimes his language is misinterpreted. He acknowledged that she asked him to remove the camera from the premises. The commander informally counseled Applicant about his conduct.<sup>19</sup>

Applicant testified that people in the village compound did not like that he had a "big camera." He admitted that he did have his "big camera" in the village compound, but said it was not located in a restricted area. He stated he was getting his camera repaired, and it did not have a video card in it. He stated that the Intercommunication Technology (IT) people did not want him around because he was involved in high-level work and because of his cameras and photo taking. He stated that the IT people were out to get him and had it out for him because of a perceived racial issue. When Ms. E confronted him, he stated that he showed her that he did not have a video card in the camera. He did not believe his discussion with Ms. E was "heated."<sup>20</sup>

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<sup>18</sup> Tr. 70-73; GE 6 at encls. 4 and 7.

<sup>19</sup> Tr. 47, 51, 58-61; GE 2.

<sup>20</sup> Tr. 47, 51, 58-61, 73; GE 2 and 6 at encl. 7.

Applicant testified that he had an office on the village compound that had multiple cameras in it. He stated it was understood that he needed to move from point A to point B with a camera. He stated not all areas on the village compound prohibit the use of cameras. He had a camera “near” the restricted area when Ms. E confronted him. He tried to explain that he did not have a video card in the camera so he could not record. He had other issues with Ms. E because he had earlier requested a closet from her and it was denied. He testified, “She’s one of the supervisors. And she had an axe to grind with me because of the camera . . . .”<sup>21</sup> There is sufficient evidence to conclude Applicant had his “big camera” in a restricted area, a security rule violation.

Regarding the allegation in SOR ¶ 1.c, two Afghan nationals, Mr. W and Mr. M provided signed sworn statements on August 13, 2012, describing events that occurred on August 11 and 12, 2012. Both letters are substantially the same. They stated that on August 11, 2012, while at the dining facility on the village compound, Applicant approached Mr. W. and started talking about Mr. W’s residence in the United States, his job, and the company where Mr. W works. Civilians of other nationalities were present when Applicant began discussing the information that Mr. W believed was classified. Applicant commented about a poem Mr. W had written and how this particular poem would save lives. Mr. W attempted to change the subject, but Applicant kept insisting he worked for General X and he had a top secret clearance.<sup>22</sup>

The next day, both Mr. W and Mr. M were walking to their sleeping quarters and Applicant was walking towards them. Mr. W stated:

I approached [Applicant] and asked if I could take a minute of his time. [Applicant] appeared to be under the influence of alcohol and replied very rapidly “about what?” I said “sir, if you could please refrain from talking about my work and the company I work for would be highly appreciated and not to approach me again in the future with any matter concerning my job.” [Applicant] said “Hold on! Why do you guys act like you do SECRET squirrel shit, because you are not. Everyone here knows what you do and what [Company L] does! Relax dude, no one cares. I have a SECRET clearance... Ah Top Secret clearance myself.” I replied “good for you sir, but as a friendly reminder, please refrain from putting my business out in the open in front of people none of us know. I will appreciate it very much.” Then [Applicant] started ranting about his position and his job being more important than what I do and further said that “I used to work for a company that was a subcontractor to Company L in Iraq. I know exactly what they do.”<sup>23</sup>

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<sup>21</sup> Tr. 48-51, 56-57, 71-78.

<sup>22</sup> GE 6 at encl. 7.

<sup>23</sup> GE 6 at encl. 7.

Mr. W noted that Applicant was speaking loudly and disregarded his surroundings. He believed Applicant demonstrated poor operational security that could have seriously damaged operations and his personal security.

Applicant denied he disclosed classified information about Mr. W. He testified that he had a nice dinner conversation with Mr. W and Mr. M. Also at the dinner was Ms. S, who was working as a contractor for another company. She provided a statement saying there was “small friendly talk, NONCLASSIFIED” during dinner. She did not elaborate on specifics of what Applicant or Mr. W may have said during the conversation, specifically if Applicant had talked about Mr. W’s work or employer.<sup>24</sup>

Applicant testified that Company L engaged their employees, Mr. W and Mr. M, to lie about him and make false statements. He acknowledged they were at the same dinner table and that they saw each other the following night, but said they only spoke for five seconds and the statements they provided are false. Applicant testified that he does not consume alcohol, which is corroborated.<sup>25</sup> He also stated that he did not have access to classified information. Applicant testified that he believed Company L, for whom Ms. E, Mr. W, and Mr. W worked, saw Applicant as a threat because he has the “big camera” and “ability to do a story about how bad things are.” He believed that because he worked in an area that could expose Company L to wrongdoing, it wanted him out of the country. Applicant indicated that he believed that Company L told these employees to make false statements. Applicant explained that there were others who also wanted him out of the country, such as a person employed by Applicant’s company at the time, whom he believed was in collusion with Company L and was providing Company L sensitive information.<sup>26</sup>

On August 17, 2012, Applicant was formally counseled by the commander on violation of operational security. The formal counseling memorandum for the record that Applicant signed noted that on August 11 and 12, 2012, Applicant compromised the identities of Mr. W and Mr. M and the sensitive nature of their employment by discussing sensitive information in an uncontrolled environment. The commander further counseled him that “discussions inquiring into the nature of personnel duties and responsibilities are to be completely avoided in the [village compound] and other camps unless mission requirements dictate.”<sup>27</sup> Applicant was directed to refrain from “discussing any work related topics which could jeopardize the exposure of a sensitive command and its mission to the campaign.”<sup>28</sup> There is sufficient evidence to conclude Applicant violated security procedures by disclosing sensitive information.

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<sup>24</sup> Tr. 80-84; AE A.

<sup>25</sup> GE 6 at encl. 8.

<sup>26</sup> Tr. 81-84, 124-130; GE 2 at page 3-5.; AE F, G.

<sup>27</sup> GE 6 at encl. 7.

<sup>28</sup> GE 6 at encl. 7.

SOR ¶ 1.d alleges that in November 2012, Applicant violated security rules and procedures when he permitted an Afghan national (Mr. F) unattended access to a terminal that was logged on to a computer system which contained classified information. The IT Advisor of the village compound, Mr. R, reported the incident. He stated in his report that he witnessed a security violation by Applicant in November 2012, in which Applicant allowed Mr. F unattended access to Applicant's unclassified computer system which is co-located in conjunction with Applicant's secret classified computer system. Mr R's report explained that Applicant's workstation is located in an area which affords visibility to other confidential computer systems within the organization. Upon identifying the breach of security, Mr. R immediately informed the security manager of the potential breach of security and regulations regarding local nationals and access to computer systems in a secured area. He further reminded the security manager of a previous conversation with him about Applicant leaving hard drives and other data products unattended at his workstation and the possibility of a potential security violation. These hard drives should be uploaded onto a server provided for storage and be secured at all times. Mr. R stated that he previously engaged Applicant about these issues, and Applicant became visibly irritated and showed a disregard for security protocol. Mr. R sends quarterly security updates to personnel regarding such issues to ensure that the organization does not become complacent regarding computer security.<sup>29</sup>

Applicant addressed this allegation during his March 2013 interview with a government investigator. He told the investigator that there were three computers by a workstation, and he was using one for a project. Mr. R reported Applicant because Mr. R believed that Applicant had Mr. F using a computer with the unclassified system that had access to log onto a classified system. Applicant told the investigator that Mr. R did not like him and assumed that Mr. R was aware of previous accusations that occurred on the village compound, and Mr. R wanted him out. Applicant denied to the investigator that a security violation occurred. He indicated that Mr. F was never on the computer system. Applicant stated he did not have classified information on computer systems that Mr. F could see. Applicant was working on a project, and Mr. F was sitting at Applicant's workstation.<sup>30</sup>

On December 3, 2012, the facility security officer (FSO) for Applicant's employer met with him to discuss the incidents alleged. With regard to the allegation in SOR ¶ 1.d, Applicant told the FSO that Mr. F had authorization to be in the secure area. Mr. F's presence was announced and those present were told that everything needed to be unclassified. Mr. F mentioned to Applicant that he needed to submit his invoice and asked if Applicant had access to G-mail. Applicant indicated that he did and was going to assist Mr. F, but was called away from the area for a moment. Applicant left himself logged in to his unclassified government computer and the G-mail login screen was on the computer. Applicant was still in the work area, but not at his workstation when Mr. R came in and saw Mr. F at Applicant's workstation. Applicant confirmed to his FSO that

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<sup>29</sup> Tr. 47, 84; GE 6 at encl. 7.

<sup>30</sup> GE 2.



the computers in that area had a switch box to switch between unclassified systems and classified systems. Applicant feels that Mr. F saw the G-mail login and sat down to submit his invoice not knowing he could not work on this system. Subsequent to this statement to the FSO, two days later, Applicant advised the FSO by email that Mr. F never actually touched the keys to his computer, but was simply sitting at the Applicant's workstation.<sup>31</sup>

At his hearing, Applicant testified that Mr. F was at Applicant's desk, standing by him in close proximity of other government computers. Applicant stated that Mr. R's allegations, "They were all false allegations. They're all false."<sup>32</sup> He testified that Mr. R made up the allegation. He confirmed he read Mr. R's statement and stated it was a fabrication.<sup>33</sup>

Applicant testified that Mr. F was "at my computer." He specifically stated it was his personal and not a government computer. Applicant confirmed that Mr. F was required to be escorted and attended to while in the secure area. Applicant did not initially escort him into the secure area, but took control over him and someone was required to be with him at all times. Applicant stated that Mr. F was "always around me." Applicant testified that he does not recall leaving Mr. F unattended. He said, "If he wasn't with me, he was within three feet." Applicant was confronted with the contradiction that he told the FSO that he was called away momentarily. He stated he did not recall his prior statement to his FSO, but confirmed that his statement to her was likely more accurate, having occurred shortly after the event. He went on to emphasize that Mr. F was being watched all the time. There is sufficient evidence to conclude Applicant violated security procedures by allowing Mr. F unattended access to a terminal that was logged on to an unclassified computer that could be switched to a classified computer.<sup>34</sup>

SOR ¶ 1.e alleges that around November 2012, while employed by a government contractor and working in Afghanistan, Applicant was reprimanded for a history of leaving hard drives and other media unattended at his workstation. Applicant testified that when he worked in the secured area he had hard drives that he would pass to other people in the area. When he would leave for the day, he would properly secure the hard drives in his possession, but others he gave hard drives to would not secure them properly. He testified he told these people they were to lock them, and they did not. He testified that the hard drives did not contain classified information. Applicant further testified that Mr. R had put out an edict reminding personnel of their responsibility to secure the hard drives. Applicant denied he was counseled, but admitted Mr. R, at one point, engaged Applicant about the hard drives, and Applicant

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<sup>31</sup> GE 6 at encls. 8 and 9.

<sup>32</sup> Tr. 53.

<sup>33</sup> Tr. 90-93.

<sup>34</sup> Tr. 89-97.

told him that he gave the hard drives to personnel who failed to secure them. Applicant stated that he and Mr. R did not like each other. He testified that Mr. R was looking for ways to make Applicant's life miserable. He believed "the IT people were out to get me."<sup>35</sup>

In his December 3, 2012, interview with his FSO, Applicant told her that because of long hours occasionally people would leave external devices on their workstation, but normally the next person through would put the device in a desk drawer.<sup>36</sup> There is sufficient evidence to conclude Mr. R advised Applicant about leaving hard drives unattended and failing to properly store them.

SOR ¶ 1.f alleges that in November 2012, while employed by a government contractor, Applicant was "accused of making improper inquiries into activities of a restricted program." A retired Marine lieutenant colonel and corporate representative provided a statement and opined about Applicant and what he was told by others.<sup>37</sup> Applicant believed that a competing contractor told the corporate representative to make a negative statement against Applicant because the competitor had learned that Applicant had damaging information about it. Applicant testified that there were numerous people in collusion to try and get him removed from Afghanistan.<sup>38</sup> When asked directly why all of these people wanted Applicant removed, he stated, "Because I have the potential, with the big camera then to do a story about [the village compound], and that will make [the village compound] look bad, and then they'll lose business."<sup>39</sup> He further stated, "And I have the ability because I have contacts and resources that I could do a story. I could."<sup>40</sup> The information in the corporate representative's letter may be negative character evidence, but it is insufficient to support this allegation. The corporate representative noted that Applicant sarcastically asked him questions during dinner in front of others about a Navy captain. He did not appreciate Applicant's inquiry, but I am unable to make a determination that this was an improper inquiry into activities of a restricted program. The allegation and evidence are vague. Being accused of doing something improper does not rise to an allegation of actually doing something improper. An accusation is not evidence. There is insufficient evidence to support this allegation. I find in favor of Applicant for this allegation.<sup>41</sup>

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<sup>35</sup> Tr. 47, 88, 97-108.

<sup>36</sup> GE 6 at encl. 8.

<sup>37</sup> GE 6 at encl. 7.

<sup>38</sup> Tr. 65-66; AE A, B.

<sup>39</sup> Tr. 67, 124-130.

<sup>40</sup> Tr. 67-69.

<sup>41</sup> Tr. 63-66, 108-115; GE 6 at encl. 7, Memorandum for the Record dated November 22, 2012.

On November 26, 2012, Applicant received a Memorandum for the Record from the Commander; the subject was “FORMAL COUNSELING ON UNPROFESSIONAL BEHAVIOR AND SUBSEQUENT EVICTION FROM CONTRACTED BILLETING.” The memorandum stated: “Your continued display of unprofessional behavior is a liability to the reputation of the organization. You are hereby released from the contract and directed to coordinate with [your employer] for immediate departure.” Applicant refused to sign the memorandum, but it was witnessed by the Sergeant Major of the command, Applicant’s Program Manager, and the Commander.<sup>42</sup> There is sufficient evidence to conclude that Applicant was evicted from the village compound in Afghanistan due to his security practices.

During Applicant’s March 2013 interview, he stated that the competing contractor, Company L, wanted him off the contract so it would be more competitive and be awarded the government contract. He stated that he always followed security procedures throughout his military and civilian careers.

Applicant provided a voluminous number of documents attesting to his subject-matter expertise in his field, the outstanding quality of his work, his willingness to assist others, along with numerous comments from high-ranking officers and public figures thanking him for his services and expertise. He provided character letters stating he is professional, competent and courteous. He also provided numerous photographs and copies of his work product.<sup>43</sup>

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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, these guidelines are applied 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

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<sup>42</sup> Tr. 115-123; GE 6 at encl. 7. The eviction notice references another incident that allegedly occurred in October 2012. That incident is not alleged in the SOR and is not considered for disqualifying purposes.

<sup>43</sup> AE B, C, D, L, M, O, P, Q, R, S, T, U, V, W; Answer to SOR.

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 not drawn 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 applicant or proven by Department Counsel and has the ultimate burden of persuasion 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 K, Handling Protected Information**

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

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

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

(a) deliberate or negligent disclosure of classified or other protected information to unauthorized persons, including but not limited to personal or business contacts, to the media, or to persons present at seminars, meetings, or conferences;

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

(h) negligence or lax security habits that persist despite counseling by management.

Applicant brought his “big camera” into a restricted area, a security violation (SOR ¶1.b). He spoke about sensitive information with an Afghan national (Mr. W) in an unsecured area where others were present, a violation of security rules and regulations (SOR ¶ 1.c). Applicant left an Afghan national (Mr. F) unattended at Applicant’s computer while it was logged into an unclassified system that was capable of being switched to a classified system, a security violation (SOR ¶ 1.d). Applicant was told by Mr. R about the security concerns of leaving hard drives unattended and his failure to store them properly. Applicant admitted the hard drives were often not stored properly (SOR ¶ 1.e). Applicant was evicted from the village compound in Afghanistan due to his behavior and security practices (SOR ¶ 1.g). I find the above disqualifying conditions apply.

I have considered all of the mitigating conditions under AG ¶ 35, and I have specifically considered the following:

(a) so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual currently reliability, trustworthiness, or good judgment;

(b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities; and

(c) the security violations were due to improper or inadequate training.

Throughout much of Applicant’s hearing, I did not find his testimony credible. Although it has been almost four and half years since the incidents in Afghanistan occurred, I cannot find that they occurred under unusual circumstances or they are unlikely to recur. His conduct cast doubts on his current reliability, trustworthiness, and good judgment. AG ¶ 35(a) does not apply.

Applicant received security training and was counseled about his conduct regarding security-related issues. Shortly after his counselling, he repeated the behavior. He failed to take responsibility for any of his actions. He believes everyone involved in the allegations does not like him, were out to get him, and were conspiring to have him removed because he could expose their complicity in nefarious conduct. There is insufficient evidence to apply AG ¶¶ 35(b) or 35(c).

## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct;

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

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, trustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating the person may not properly safeguard protected information; 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 activities which, if known, may affect the person's personal, professional, or community standing.

The allegations in the SOR were cross-alleged under the personal conduct guideline and are equally a security concern under this guideline. I found in favor of Applicant on SOR ¶¶ 1.a and 1.f, and they are not considered under this guideline. Applicant discussed Mr. W's personal and sensitive information in a public area; his failure to be attentive in securing hard drives even after he had given them to others; bringing a camera into a restricted area; allowing a foreign national unattended access to a unclassified computer that had the ability to switch to a classified computer; and his eventual eviction from the Afghanistan village compound raise personal conduct security concerns. In addition, Applicant was involuntary separated and discharged from the Army Reserve and received a GOMOR for sexual assault and fraternization with a female soldier. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's conduct while in the Army and his subsequent involuntary separation are not minor offenses. I did not find his comments about the characterization of his discharge credible. Some of Applicant's conduct while in Afghanistan rose to the level of violating security rules and regulations as addressed above. This conduct also raises security concerns regarding Applicant's personal conduct. He failed to acknowledge or take responsibility for any of the conduct alleged in the SOR, which causes me to conclude that it is likely to recur and casts doubts on his reliability, trustworthiness and good judgment. I find none of the above mitigating conditions 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines K 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.

Applicant is a 59-year-old extremely talented subject-matter expert in his field. He provided an overwhelming amount of evidence as to the quality of his work, comments from high-level officials regarding their appreciation for his commitment and service in assisting in the success of the mission, and letters attesting to his professional attributes. However, Applicant's success in his career endeavors does not outweigh his conduct. He was discharged from the Army Reserve and initially received an other than honorable discharge that was later upgraded to a general discharge under honorable conditions. He violated security rules and regulations while working in Afghanistan. His testimony was not credible. Applicant failed to meet his burden of persuasion. His conduct raises questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the handling protected information and personal conduct guidelines security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline K:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-2.b:	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 grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge