



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 16-00783

**Appearances**

For Government: Andre M. Gregorian, Esquire, Department Counsel

For Applicant: *Pro se*

03/23/2018

**Decision**

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

**Statement of the Case**

On September 12, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline K (Handling Protected Information) and Guideline E (Personal Conduct).<sup>1</sup> Applicant responded to the SOR on October 28, 2016. She answered all allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge.

On December 21, 2016, Department Council amended the SOR to add subparagraphs 1.d and 1.e under Guideline K, and to substitute subparagraph 2.b under Guideline E with a revised 2.b allegation. Applicant acknowledged the amendments on January 24, 2017. I was assigned the case on March 7, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 9, 2017, setting the hearing for April 3, 2017. The hearing was convened as scheduled.

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<sup>1</sup> The action was taken under Executive Order 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 or after September 1, 2006. The AG has since been revised for any adjudication on or after June 8, 2017. The revised AG is applied here.

The Government offered three documents, accepted without objection as exhibits (Exs.) 1-3. Applicant offered testimony and four documents, accepted without objection as Exs. A-D. The transcript (Tr.) was received on April 12, 2017, and the record was closed. Based on the exhibits, testimony, and record as a whole, I find Applicant failed to mitigate security concerns under Guideline K and Guideline E.

### **Findings of Fact**

Applicant is a 57-year-old security guard who has worked in the same position since 2008, during which time she also maintained a reserve (on-call) position as a file clerk from 2009 to 2012. She was first granted a security clearance in 2009. Applicant completed her formal education over a decade ago. At present, she is single and has two grown children.

As a security guard, Applicant works in two buildings. She works an eight-hour day on the second shift (3:00 p.m.-11:00 p.m.), patrolling her area every two hours. About 20 such areas have alarms for which Applicant is responsible during her shift. (Tr. 21) She generally shuts down alarms around 3:00 p.m., at the beginning of her shift, as the first shift workers leave. Applicant was cited for failing to set an alarm, which means closing it, for Area I in about September 2014, for Area II in about November 2014, and Area III in about March 2015. (Tr. 22) Applicant is unsure how these cited violations of protocol occurred as she routinely rechecked alarms at the end of her shift.<sup>2</sup>

In January 2016, Applicant was interviewed while seeking renewal of her security clearance. Applicant mentioned she was cited for the September 2014 incident by an individual with whom she has some conflict, later noting: "We don't really get along. It goes way back. It's harassment and all kinds of stuff with [him] . . . He's just a regular security guard." (Tr. 23) During that same interview, Applicant discussed the alleged November 2014 incident, which had been reported by a superior of Applicant's own supervisor. (Tr. 23-24) The alleged violation from March 2015 was discovered by a different individual, an employee from the information technology (IT) department.

Applicant never learned of these alleged failures from those who supposedly found them or reported them. They were not discussed with her until after the third alleged incident, in March 2015. (Tr. 26) Her supervisor, at least twice, told her she needed to check all alarms. She was given a written warning that was placed in her personnel file. Applicant maintained that the first incident was the result of spite, as described, but that the more recent two instances were most likely caused by her failure to get prescription eyeglasses for work. Later, when completing a security clearance application (SCA) in April 2015, Applicant failed to note any, of these incidents in response to Section 13C: Employment Record, which asks, in part, whether, in the preceding seven years, she had received a warning, been officially reprimanded,

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<sup>2</sup> In general, one would learn of a failure to set an alarm in a particular area by whoever would relieve the individual for that night on the following day, consequently, the failure to set an alarm could have occurred during the second or the third shift. (Tr. 22)

suspended, or disciplined for misconduct at work. She answered “no” due to her haste and oversight.<sup>3</sup> (Tr. 74-75)

Applicant knew she had sight problems and lacked prescription eyewear at the time of the incidents. (Tr. 32, 36) Without reliable spectacles with the proper correction, Applicant’s poor eyesight made it difficult for her to maneuver her computer’s mouse properly on her computer, a step essential to setting the alarm.<sup>4</sup> (Tr. 27) In response, Applicant’s supervisor told her to get glasses. (Tr. 28) In blaming her poor eyesight, Applicant is unable to explain how she was able to set the alarms the vast majority of the time. (Tr. 32-34) She maintains that these failures were not her fault, stating “they’re just blaming it on me.” (Tr. 33-34) She cannot explain how the alarms were not set. (Tr. 34) She admitted that she relied on her shift partner to help her set the alarms, but knows that she was responsible for performing her own work. (Tr. 37)

In November 2015, Applicant was counseled and given a warning regarding her need to treat all co-workers with respect and dignity, and advising that profanity should not be directed at another employee. This warning arose from an incident in which Applicant, outside the workplace, had an ugly spat via text with a new employee that she knew through her daughter. (Tr. 62) The texts concerned personal matters. Somehow, a printout of the texting was passed on to her supervisor, leading to a meeting on the issue. Applicant signed the warning letter.

In December 2015, Applicant was given a second warning notice after taking pictures inside her company’s premises, despite being warned, verbally and in writing, that photography was not permitted in the building. That same policy was posted in the building lobby. This warning was received after Applicant took a “selfie” picture of herself in the restroom and posted it on Facebook. Someone, who Applicant claims does not like her, saw the picture and reported it. (Tr. 40) As a result of that and a few other matters, Applicant was put on unpaid leave from work for three or four weeks. (Tr. 41-42) These repercussions made her feel unfairly treated. (Tr. 41) Applicant feels that way because “it happens all the time . . . I’m just singled out.” (Tr. 41)

In December 2016, Applicant received a third warning letter. This time it was for leaving her post unattended for five to nine minutes while on duty.<sup>5</sup> (Tr. 43-45) At the time, she was the sole guard on duty. (Tr. 44) She knew her post had to be continuously manned in order to respond to alarms and receive or make emergency calls. Her act constituted a violation of the National Industrial Security Program Operating Manual (NISPOM) section 5-902. Her violation was reported to the government. Because of the way the matter was handled, so close to her being advised of this process, Applicant

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<sup>3</sup> Applicant concedes the events should have been fresh in her mind, and apologizes for the incorrect answer. (Tr. 76)

<sup>4</sup> Applicant noted that the workstation had a drawer with ready-made eyeglasses one could use, assuming one could find a pair with the proper strength. (Tr. 36-37)

<sup>5</sup> The notice reports that Applicant was gone eight to nine minutes, while she suggests it was about five.

feels she has been singled out for her action. (Tr. 46-47) She claims she was not at her station, but was still in the vicinity of her station.<sup>6</sup> (Tr. 47-48) Applicant reported that this commonly occurred and that she is just being “picked” upon, even though she explained her position to her supervisor. (Tr. 49, 53) She did not raise the issue later with her supervisor’s superior because she feared more trouble. (Tr. 49)

Also in the meeting concerning the December 2016 warning, Applicant was cited for failing to follow company policy by removing material from the company’s facility. The material at issue was some foam that she wanted to give to her granddaughter to use in the pool. (Tr. 54-55) She thought she was free to take what was marked as spare foam without a property pass. Since it was by a big bin on the loading dock, she believed it was trash. (Tr. 55) She believes she was cited with this infraction because she is being singled out. (Tr. 55)

Applicant has never appealed any of the warnings for which she feels she was being singled out or picked on. She signed each warning letter acknowledging the cited security lapse. She always felt she was compelled to sign the warning letters. (See, e.g., Tr. 67) She is somewhat confused about all the facts. (Tr. 69, 71)

## **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. 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 the AG, 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. The AG requires that any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. In addition, an applicant is responsible for

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<sup>6</sup> Elsewhere, Applicant stated, “No, I wasn’t even at work then,” in response to the comment: “[the warning letter] states that the incident of being away from your post happened in August 2016.” She was then directed during the hearing to where she had signed and acknowledged the written warning. (Tr. 47)

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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

## **Analysis**

### **Guideline K – Handling Protected Information**

The concern under this guideline, set forth at AG ¶ 33, is that the deliberate or negligent failure to comply with rules and regulations for handling protected information—which includes classified and other sensitive government information, and proprietary information—raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

Under AG ¶ 34: the conditions that could potentially raise a security concern and may be disqualifying in this matter are:

AG ¶ 34(g): any failure to comply with rules for the protection of classified or sensitive information; and

AG ¶ 34(h): negligence or lax security practices that persist despite counseling by management.

On three occasions, Applicant failed to set an alarm in an assigned area. While she now denies these events, blaming either her poor eyesight or a conspiracy against her, she acknowledged her failures in signing the related warning letters. Thereafter, she failed to appeal these disciplinary measures. It appears that it was only with the third warning, regarding March 2015, that she was finally counseled to resolve the problem and get eyeglasses, which she did. Applicant subsequently violated policy again by photographing herself within the secure complex and by leaving her guard station unattended. These incidents give rise to AG ¶ 34(g) and AG ¶ 34(h).

Under AG ¶ 35, the following mitigating conditions could apply:

AG ¶ 35(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's current reliability, trustworthiness, or good judgment;

AG ¶ 35(b): the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities;

AG ¶ 35(c): the security violations were due to improper or inadequate training or unclear instructions; and

AG ¶ 35(d) the violation was inadvertent, it was promptly reported, there is no evidence of compromise, and it does not suggest a pattern.

Applicant was last given a warning in December 2016, a little more than a year ago. It was the last of multiple warnings within three years. Each incident was the result of simple carelessness, oversight, or negligence, not some complex circumstance that requires deeper investigation. Applicant has not received remedial training, nor has she relented in believing she was being “picked” upon by management, a stance she has never asserted through an appeal. The policies she violated appear to have been rather basic and obvious, with one being clearly posted in the building’s lobby. While each of her lapses may have been inadvertent, there is no documentary evidence indicating she promptly reported her failings. Given her pattern of security and personnel failings, none of the available mitigating conditions apply.

## **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15:

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 or sensitive information.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. Here, Applicant committed the security lapses noted under the preceding section, concedes she engaged in a texting dispute with a co-worker, and has admitted she incorrectly answered “no” on an SCA, in which she was asked whether she had ever been given a warning at her workplace in the preceding seven years. Therefore, the following disqualifying condition applies:

AG ¶ 16(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, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified or sensitive information.

This guideline provides seven potential mitigating conditions under AG ¶ 17. Two are potentially applicable under these facts:

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; and

AG ¶ 17(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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Under these facts, AG ¶ 17(c) does not apply because there is no evidence Applicant preemptively disclosed her violations of policy, abusive texts, or inaccurate SCA answer. It is noted, however, that Applicant appeared genuinely sincere when she attributed her incorrect SCA answer to haste, not intentional falsity.

Between 2014 and 2016, Applicant's policy violations left the facility, owned by a defense contractor, unsecure. Alarms were left unset, the guard station was left unmanned for several minutes, and company property was removed without authorization from a superior. These are serious lapses that should have been easily prevented by the simple exercise of appropriate job-related diligence. Here, however, they occurred through basic thoughtless or careless action. With no showing of additional training or some other effort for her to better understand the policies underlying the need for security guards at Applicant's place of employment, I cannot find either mitigating condition applies.

### **Whole-Person Concept**

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed at AG ¶ 2(a). The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person analysis based on the record. In addition to Applicant's security lapses and mishandling of information, I considered her life, candor at the hearing, and various explanations.

Applicant is a 57-year-old security guard who has worked in the same position since 2008. She was first granted a security clearance in 2009. She is single and has two grown children.

Between 2014 and 2016, Applicant had multiple citations for failing to follow company or government policy in the execution of her position as a security guard. Leaving alarms unset, leaving her station unattended, and photographing the interior of a secure complex, in particular, made her company vulnerable. Her texting to a fellow employee, while outside of work, still demonstrated inappropriate behavior for a company employee in her position.

At times, Applicant denies performing the lapse cited, while at other times she maintains that she is being singled out as part of a conspiracy. There seems to be a reluctance to take responsibility for her action, yet a continued avoidance of appealing the disciplinary measures taken against her. Her inability to consistently deny or admit the allegations waged against her only leads to a state of confusion as to her position. In turn, this raises doubts about her reliability and trustworthiness. Therefore, handling protected information and personal conduct security concerns remain unmitigated.

### **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
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge