



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



In the matter of: )  
 )  
 ) ISCR Case No. 16-03183  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

07/26/2018  
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**Decision**  
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LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 9, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct. Applicant responded to the SOR on July 13, 2017, and requested a hearing before an administrative judge. On September 1, 2017, Department Counsel withdrew the allegations in SOR ¶¶ 1.a through 1.c.

The case was assigned to another administrative judge on February 14, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 8, 2018, scheduling the hearing for March 22, 2018. The hearing was continued at Applicant's request to March 23, 2018. The case was reassigned to me on March 22, 2018. The hearing was convened as rescheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted

Applicant's Exhibits (AE) A through O, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 3, 2018.

### **Findings of Fact**

Applicant is a 36-year-old employee of a defense contractor. She has worked for her current employer since June 2014. She seeks to retain a security clearance, which she has held since 2009. She attended college at four different institutions between 2000 and 2012. She accumulated many credit hours, but did not earn her bachelor's degree until 2012. She also has a master's degree, which she earned in 2017. She has never married, and she has no children.<sup>1</sup>

Applicant submitted a job application to a company in 2011. She provided an affirmative response to a question on the application that asked if she had a bachelor's degree or equivalent. She had more than 120 credit hours at the time, but she did not have a bachelor's degree. She stated that she thought that satisfied the "equivalent" part of the test. She did not intend to mislead the company into believing she had a bachelor's degree, but she also submitted a resume that could be interpreted (and apparently was by the employer) as indicating she had a bachelor's degree. She was terminated from employment after orientation.<sup>2</sup>

Applicant worked for a company between 2012 and February 2014. One of the partners in the company was a married reserve military officer. Applicant claims that he raped her at her home in December 2013. She stated that she wanted to make it clear that she did not want a sexual relationship with him, so she texted him the next day to tell him they needed to talk. He called her and said he was coming over to her home. When he arrived, she told him that she did not want a relationship with him. He stated that was fine, but only after one more time. They then had sex, which she felt she was pressured into, but was not rape as it was "consensual because [she] made a conscious decision to do it." He told her during the second incident that he did not love his wife, but he loved a married woman with whom he had been having an affair for 15 years.<sup>3</sup>

Applicant felt like she was being harassed and threatened at work by the partner. She initially downplayed the alleged assault to her employer, but she eventually told the company that she had been raped by the partner. The company instituted an investigation. The company asked Applicant if she had reported the alleged rape to the police. She had not. She testified that she thought the company reported it to the police. She believed that even though nobody at the company told her they reported it to the police and no police officer ever contacted her.<sup>4</sup>

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<sup>1</sup> Tr. at 12-13, 19-20; GE 1-3; AE F, G, O.

<sup>2</sup> Tr. at 20-23, 28-35; Applicant's response to SOR; GE 1, 2; AE F.

<sup>3</sup> Tr. at 35, 68; Applicant's response to SOR; GE 1, 2.

<sup>4</sup> Tr. at 35-43, 71-73; Applicant's response to SOR; GE 1, 2.

Applicant did not believe she was being treated fairly by the company and its human resources (HR) department. She remembered that in December 2013, after the rape, the partner let her use his office. She saw the HR director's name on papers on the partner's desk. When she opened the document, she saw what she thought were the HR director's divorce papers. The papers were actually a marital separation agreement. She surmised that the HR director must be the married woman with whom the partner was having the affair. She thought this information would corroborate her story, and she told HR about the papers in January 2014. In February 2014, she went into the partner's office and made a copy of the marital separation agreement. She sent a message to a different partner stating that she had the papers and wanted to give them to him. He did not respond to the message. She subsequently gave the papers to HR personnel. In February 2014, she was told that if she did not resign that she would be terminated for removing personal information from a partner's office. She tendered her resignation.<sup>5</sup>

Applicant reported the alleged rape to civilian authorities in May 2014. The police report indicated that in July 2014, the detective "explained to [Applicant] that there were not the requisite elements of Rape, according to [state] law, in her account. [He] answered her questions and ensured she had [his] contact number as well as knowledge of Victim Services." She also reported the alleged rape to military authorities. The military apparently did not pursue criminal charges.<sup>6</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) on August 25, 2014. She reported the circumstances surrounding the events that led to her losing her jobs in 2011 and 2014. She noted that the rape "case is still under investigation by the police, the CID, and DSS-IS." She testified that she thought the police were still involved in the case.<sup>7</sup>

Applicant expressed remorse for taking the documents from the partner's office. She realizes that it displayed poor judgment and was not the best way to handle a difficult situation. She also testified that "really, when HR was having a conversation with me about can I bring them things to corroborate what I'm saying, I really thought I was just cooperating with the investigation and trying to get them what they could use to [corroborate her allegations]." She asserts such conduct will never be repeated. She has received counseling to deal with the stress from the alleged assault and other matters.<sup>8</sup>

Applicant actively volunteers in her community. She submitted documents and letters attesting to her excellent job performance. She is praised for her responsibility,

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<sup>5</sup> Tr. at 23-27, 53-60, 63-70, 73-74; Applicant's response to SOR; GE 1, 2, 4.

<sup>6</sup> Tr. at 40, 45-53, 60-63; GE 1, 2; AE L.

<sup>7</sup> Tr. at 60-63; GE 1.

<sup>8</sup> Tr. at 27-29; Applicant's response to SOR; GE 1, 2; AE N.

dependability, honesty, work ethic, compassion, dedication, leadership, discretion, trustworthiness, reliability, intelligence, professionalism, and integrity.<sup>9</sup>

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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 national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant 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.

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<sup>9</sup> AE A, E, K.

Section 7 of EO 10865 provides that adverse 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**

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

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. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(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 individual may not properly safeguard classified or sensitive 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 government protected information; and

(e) personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

SOR ¶ 1.d alleges that Applicant was terminated from her employment “after submitting an application indicating [she was] in possession of a bachelor’s degree when [she] had not graduated.” She admitted that she provided an affirmative response to a question on the application that asked if she had a bachelor’s degree or equivalent. She had more than 120 credit hours at the time, but she did not have a bachelor’s degree. She stated that she thought that satisfied the “equivalent” part of the test. That is not the standard interpretation of the question, but it is accepted as honest. Having considered all the evidence, including Applicant’s testimony and demeanor, I conclude that she did not intentionally provide false information on the job application. AG ¶ 16(a) is not applicable. SOR ¶ 1.d is concluded for Applicant.

Applicant went into a partner’s office and photocopied personal documents of another employee. Her actions led to her resignation in lieu of termination. The conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(d) and 16(e) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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 contributed to 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 expressed remorse for taking the documents from the partner’s office. She realizes that it displayed poor judgment and was not the best way to handle a difficult situation. She asserts such conduct will never be repeated. She has received counseling to deal with the stress from the alleged assault and other matters. The circumstances surrounding her actions were unique and unlikely to recur.

Notwithstanding the above, I find the conduct continues to cast doubt on Applicant’s current reliability, trustworthiness, and good judgment. There are troubling aspects of Applicant’s thought processes. There is some mitigation in this case, but I

continue to have concerns about Applicant's conduct. Additional analysis is included under the whole person.

### **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(d):

(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 Guideline E in my whole-person analysis. I also considered Applicant's favorable character evidence.

Applicant identifies as a rape victim. As such, she deserves to be treated with dignity and respect, and it is hoped that she continues with counseling to get over that trauma. However, I have lingering concerns about her judgment and her overall thought processes. I do not believe she intended to lie to her employer in 2011 that she had a bachelor's degree, but most people would interpret her answer and her resume as indicating she had a bachelor's degree, which clearly the employer did or they would not have terminated her when they discovered she did not. Even more concerning is her 2014 actions. The problem is not only that she went into an employee's office and took and photocopied personal information from another employee, it is also that she thought that was a good idea. She testified that "really, when HR was having a conversation with me about can I bring them things to corroborate what I'm saying, I really thought I was just cooperating with the investigation and trying to get them what they could use to [corroborate her allegations]."

Applicant certainly appears to be the honest person who is portrayed in her character letters. However, I am bound by AG ¶ 2(b), which requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." I simply do not believe Applicant should be trusted with classified information.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the personal conduct 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 E:	Against Applicant
Subparagraphs 1.a-1.c:	Withdrawn
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge