



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



In the matter of: )  
)  
) ISCR Case No. 16-03605  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert Blazewick, Esq., Department Counsel  
For Applicant: Tokay T. Hackett, Esq.

03/22/2018

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 15, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E (personal conduct). The action was taken under Executive Order (Exec. Or.) 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).<sup>1</sup>

Applicant responded to the SOR on April 10, 2017, and requested a hearing. The case was assigned to an administrative judge on October 2, 2017, and reassigned to me on December 4, 2017. The Defense Office of Hearings and Appeals (DOHA) issued

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<sup>1</sup> I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

a notice of hearing on December 7, 2017, scheduling the hearing for December 15, 2017. Applicant waived the 15-day hearing notice requirement.<sup>2</sup>

I appended to the record the Government's exhibit list and discovery letter, and Applicant's exhibit list, as Hearing Exhibits (HE) I, II, and III, respectively. I admitted Government Exhibits (GE) 1 through 6 in evidence without objection. Applicant testified, called four witnesses, and submitted Applicant's Exhibits (AE) A through I, which I admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on December 28, 2017.

### **Findings of Fact**

Applicant admitted in part and denied in part SOR ¶ 1.b and denied SOR ¶ 1.a.<sup>3</sup> He is 37 years old. He was born in the Dominican Republic (DR). He immigrated to the United States in 1994 and became a naturalized U.S. citizen in 1995. He returned to the DR and graduated from high school in 1999. He enlisted and served in the U.S. military from 2003 to 2009 and deployed once. He was honorably discharged due to medical conditions and received a 30% disability rating from the U.S. Department of Veterans Affairs (VA). He started college for his bachelor's degree in 2013 and was two semesters from completion as of the hearing. He married in 2004, and divorced and remarried in 2007. He has one minor child. He has owned his home since 2010.<sup>4</sup>

Applicant has worked as a cybersecurity engineer for a defense contractor since November 2015. He worked for prior defense contractors after his 2009 military discharge. In October 2014, he worked for the federal government until his voluntary resignation in lieu of being fired in September 2015, as further discussed below. He was first granted a security clearance in 2005.<sup>5</sup>

In late November 2014, on his first day in a special access program (SAP) with the federal government, Applicant was issued an SAP security violation. A coworker witnessed him improperly allow an uncleared individual use his login information for a sensitive computer network and leave the uncleared individual unattended in an SAP area in violation of escort protocol. Although he received security training, Applicant was new to SAP rules and regulations. At his lead's direction, he allowed an individual, who was SAP-cleared for only two of three compartments, touch a particular compartment for which he was uncleared. Before doing so, Applicant inquired of his lead whether it was permissible and the lead told him that it was since the system was offline and detached from the network. Applicant denied allowing the individual to use his login credentials. He stated that the individual used the credentials given him by their lead, as Applicant did not yet have full credentials.<sup>6</sup>

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<sup>2</sup> Tr. at 9.

<sup>3</sup> Response to the SOR; Tr. at 11, 105-107.

<sup>4</sup> Tr. at 48-51, 54-55, 75-78, 98-99; GE 1; AE C, D, H, I.

<sup>5</sup> Tr. at 7-8, 77-78, 80-81, 98-99, 103-104; GE 1, 3; AE C.

Applicant denied leaving the uncleared individual unattended in an SAP area. He acknowledged that he stepped away from the individual to grab a document, but stated that the individual was still in his line of sight. Since this incident, he better understands the SAP rules and acknowledged that he should not have stepped away from the individual at all.<sup>7</sup>

When Applicant was initially interviewed by his FSO, he denied that the uncleared individual improperly accessed a classified system at his lead's direction and that he left the uncleared individual unattended in an SAP area. He did not want to blame his lead. He considered him a good man who saw Applicant's potential, helped develop him, and assisted him with becoming a federal government civilian. He also wanted to first give notice to his lead that their FSO interviewed him and was intending on interviewing his lead. He walked out of the initial interview. He subsequently had a discussion with the uncleared individual, who reminded him that they had acted on their lead's direction. He returned to the FSO and disclosed such. Applicant's lead was also given a security violation and removed from the facility for giving the wrong guidance to his employees. This incident was later favorably adjudicated for Applicant, who was permitted to remain in the SAP area. He has not since had any other security infractions or violations.<sup>8</sup>

From 2012 to September 2015, Applicant's wife worked for a defense contractor. In July 2015, she telephoned Applicant from work crying. She told him that a coworker, whom Applicant met one year prior through a mutual friend, was spreading rumors about her. Applicant was upset. He was overtaken by his emotions. He wanted to protect his wife. He three-way called the individual. He and his wife testified that he calmly told the individual not to talk about his wife or he would beat him up. They denied that Applicant referenced a "firearm," "gun," "shotgun," ".45," "bullet," or any other similar language. Applicant did not intend to harm the individual. He did not see or talk to the individual after the call. His wife testified she and the coworker subsequently discussed the call and she reassured him that Applicant was upset because she was, but he was not going to do anything. The coworker indicated that he understood. She and the coworker had subsequent, work-related interactions that were friendly.<sup>9</sup>

Two months later in late September 2015, Applicant's wife gave her employer her two weeks' resignation notice, as she and Applicant planned to relocate their family in October 2015. Her employer accepted her resignation notice and told her that her last day would be the first of October. A few days later, she returned to her employer and asked that her resignation be rescinded because their relocation plans fell through. Applicant's wife testified that her employer initially told her she could keep the job, but when she reported to work the following week they told her that they accepted her

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<sup>6</sup> Tr. at 82-91, 104-109; GE 1, 2, 4, 6.

<sup>7</sup> Tr. at 82-91, 104-109; GE 1, 2, 4, 6; AE G.

<sup>8</sup> Tr. at 82-91, 104-109; GE 1, 2, 6.

<sup>9</sup> Tr. at 48-75, 78-81, 92-98, 101-103, 109-110; GE 1, 4, 6.

resignation due to her subpar work performance and gave her the option to continue to work for the remainder of the week or take paid leave. She elected to go home that day and return later to obtain her things.<sup>10</sup>

Documentation from Applicant's wife's then employer reflect that she was not told that she could keep her job. Rather, her supervisors informed her that they decided to keep her resignation. Upon doing so, she apparently became hysterical and called Applicant. Someone overheard him allegedly ask her the hours her bosses worked so that he could take care of things. Another account indicates that he allegedly telephoned someone and inquired about their hours of operation because he had a .45. Applicant's reported behavior in this instance was not alleged in the SOR.<sup>11</sup>

Simultaneously, Applicant's wife's then employer learned about two prior incidents involving similar verbal threats made by Applicant to their employees. The first of which occurred in January 2015, in which there was a testy exchange between Applicant's wife and two of her coworkers concerning an assignment she was tasked to perform. After the exchange, a third coworker told one of the two coworkers involved in the exchange that she reportedly called Applicant, and he allegedly stated that he was going to handle one of them. Applicant's reported behavior in this instance was also not alleged in the SOR.<sup>12</sup>

The second incident involved the July 2015 incident discussed above. Applicant's wife's then employer learned that the individual involved did not immediately report the incident because he considered it a personal matter, and tasked the individual with writing a detailed account about the incident. In his September 30, 2015 statement, the individual reported that Applicant said, "If you don't stop spreading your poison around the shop I will find you and I will break your legs, I have a 45 and a bullet with your name on it. Do I make myself clear."<sup>13</sup>

The day after Applicant's wife was told that her then employer accepted her resignation notice, a police officer served both her and Applicant with a no-trespass order from her then employer, prohibiting them from entering onto company property. They were surprised by the orders. The police officer informed them that Applicant's wife's coworker reported the July 2015 incident and alleged that Applicant threatened him with a gun or a bullet. This was the first and only time they were served with any such order. They abided by the orders and have not had any contact with the individual from the July 2015 incident. They were never issued a no-peace order, as it was denied by the court. No investigation was conducted and no criminal charges were brought against Applicant or his wife.<sup>14</sup>

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<sup>10</sup> Tr. at 48-75, 78-81, 92-98, 101-103, 109-110; GE 1, 4, 6.

<sup>11</sup> GE 6.

<sup>12</sup> GE 6.

<sup>13</sup> GE 6.

<sup>14</sup> Tr. at 48-75, 78-81, 92-98, 101-103, 109-110; GE 1, 2, 4, 5, 6; AE F.

Applicant was in his one-year probationary period with the federal government when he was served with the no-trespass order. As such, he was given the option to resign in lieu of being fired. He was told that he was being terminated because he had threatened defense contractor employees, which he did not understand. He was not told that he was being terminated because he had threatened anyone with a firearm. He was not interviewed, there was no investigation, and he was not given the option to appeal his termination. An employment record reflects that despite his acceptable performance, Applicant was terminated because of his conduct in which he “made an unacceptable comment to a contractor.” His security clearance expired after he left the federal government.<sup>15</sup>

Applicant understood that he made an unacceptable threat in July 2015. He regretted his actions. Neither he nor his wife considered the implications on their careers or their security clearances. Despite their subsequent reemployment, they have struggled financially after they lost their jobs as a result of this incident. If he were to find himself in a similar situation now, he was adamant that he would avoid it. He testified that this was the only time he threatened to harm someone and he has never threatened anyone with a firearm.<sup>16</sup>

Applicant is loyal to the United States. He has a clean record. He stated that he learned his lesson and he would not do anything in the future to jeopardize his security clearance. His wife honorably served in the U.S. military from 2004 to 2012 and she has held a security clearance for 13 years. She met him during a deployment 12 years ago and they have been married for 10. She described him as loving and patriotic. She described the character of the former coworker involved in the July 2015 incident as questionable.<sup>17</sup>

Applicant’s three witnesses were aware of the SOR allegations. One of them was the assistant vice-president for his current defense contractor. Applicant was assigned as a technical expert to one of his cybersecurity projects in mid-2016. As such, he provided input into Applicant’s performance. He testified that Applicant has not had any performance-related, ethical, or other issues. He described Applicant as trustworthy and stated that he would work with Applicant again.<sup>18</sup>

Another of Applicant’s witnesses was the former vice-president of the cyber sector and Applicant’s former second-line supervisor for his current defense contractor, who has known Applicant since early 2016. He worked for another defense contractor as of the hearing, and served as the subject-matter expert in senior electronic warfare cyber and space. He also previously served in the U.S. military. He also testified that

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<sup>15</sup> Tr. at 78-81, 92-98, 101-103, 109-110; GE 1, 2, 3, 6.

<sup>16</sup> Tr. at 48-75, 95-101, 109-110; GE 6.

<sup>17</sup> Tr. at 48-75, 84; GE 6; AE D, E.

<sup>18</sup> Tr. at 40-48.

Applicant had no performance issues, possessed a strong work ethic, and was trustworthy. He stated that he would also work with Applicant again.<sup>19</sup>

Applicant's final witness was a former coworker from 2011 to 2012 and a friend since that period. He was the security officer for the same contract Applicant previously worked, and so he oversaw the lab that Applicant ran for any security violations. He testified that Applicant ran his lab without issue. He testified that Applicant possessed a great work ethic and was trustworthy. He also stated that he would work with him again.<sup>20</sup>

Applicant's numerous character references, to include a former military supervisor, members with whom he served, his current supervisor, current and former coworkers, and friends, described Applicant as a patriot, a veteran, a family man, a man of solid character, and a loving and caring individual. They attested to his trustworthiness. They stated that he is not a threat to national security.<sup>21</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 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(a), 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.

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<sup>19</sup> Tr. at 29-40.

<sup>20</sup> Tr. at 19-29.

<sup>21</sup> AE A.

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 Exec. Or. 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* Exec. Or. 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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, 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;

(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;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources.

Applicant had one security violation in 2014. In addition, he reportedly made a verbal threat in 2015 to his wife's coworker. He denied ever making a verbal threat in which he referenced any kind of a firearm. Nonetheless, his conduct, in its totality, raises questions about his judgment, trustworthiness, reliability, and willingness to comply with rules and regulations. AG ¶¶ 16(c) and 16(d) apply.

AG ¶ 17 describes the following potentially applicable mitigating conditions:

- (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.

I find that AG ¶ 17(c) applies to Applicant's 2014 security violation. It was his only security violation during the lengthy period in which he held a security clearance. It happened on his first day in an SAP with the federal government. He followed the direction of his lead, who was also issued a security violation, in allowing an uncleared individual use a sensitive computer network. He acknowledged that he should not have left that uncleared individual unattended in an SAP area, in violation of escort protocol.

Concerning the three verbal threats Applicant reportedly made to his wife's then-coworkers in 2015, Applicant denied ever making a threat in which he referenced any kind of a firearm. Documentation from Applicant's wife's then employer reference statements from individuals who reportedly heard Applicant make the third threat in September 2015. Only after this incident did Applicant's wife's then employer learn and obtain statements from the individuals involved in the alleged January 2015 and June 2015 threats. None of these threats were ever investigated or substantiated. Applicant was never criminally charged.

Applicant acknowledged that he verbally threatened his wife's former coworker in June 2015. I considered his demeanor at hearing, and he credibly testified that he was upset and overtaken by his emotions. He understood that his conduct was unacceptable. He regretted his actions. If he were to find himself in a similar situation again, he was adamant that he would avoid it. He learned his lesson and he would not do anything in the future to jeopardize his career or his security clearance.



Applicant's character witnesses and references describe him as a man of solid character. They all attested to his trustworthiness. They stated that he is not a threat to national security. I conclude that AG ¶ 17(c) applies, in that while Applicant's conduct was not minor, it occurred under such unique circumstances that it is unlikely to recur and does not cast doubt on his reliability, trustworthiness, or good judgment.

### **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 considered Applicant's demeanor at hearing. He was candid, credible, sincere, and remorseful.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated 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:	FOR APPLICANT
Subparagraphs 1.a - 1.b:	For Applicant

## **Conclusion**

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

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Candace Le'i Garcia  
Administrative Judge