



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02466

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

08/17/2018

**Decision**

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I find that Applicant mitigated personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 20, 2015, to retain a security clearance required for her duties with a defense contractor. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns for personal conduct (Guideline E) on August 17, 2017. The SOR alleges that Applicant's association with her husband who has an extensive criminal record raises a personal conduct security concern. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective in the DOD on June 8, 2017.

Applicant provided a detailed answer to the SOR on September 11, 2017. She admitted part and denied part of the allegation. Department Counsel was prepared to proceed on December 18, 2017. Another administrative judge was assigned the case on May, 18, 2018, and she sent a Notice of Hearing on June 26, 2018, for a hearing on July 31, 2018. I was assigned the case on June 26, 2018, because of the unavailability of the original judge. I convened the case as scheduled on July 31, 2018. The Government introduced three exhibits I marked and admitted into the record without objection as Government Exhibits (GX) 1, 2, and 3. Applicant and one witness testified. Applicant introduced seven exhibits which I marked and admitted into the record without objection as Applicant Exhibits (AX) A through G. DOHA received the transcript of the hearing on August 8, 2018.

### **Findings of Fact**

After a thorough review of the pleadings, exhibits, and testimony, I make additional findings of fact. Applicant is 47 years old. She has a Master's Degree in Business Administration and a Master's degree in Procurement and Acquisition. She has been an acquisition specialist for various defense contractors since February 2007. She had a period of unemployment from April 2005 until January 2007. Her performance appraisals in her present job are excellent. Her present salary is approximately \$120,000 per year. She also has two part-time employments, as a care giver for a home nursing company, and also as a receptionist at a retirement home. Applicant married in January 1992, and has been married for 26 years. She has one adult daughter who lives with her. Applicant supports her daughter while she is in school. (Tr. 9-11, 29-33; GX 1, e-QIP, dated March 20, 2015; AX B, Resume; AX C, Personal Biography; AX D, Higher Education Awards and Transcripts; AX E, Performance Reviews; AX F, Family Photographs)

The SOR alleges a personal conduct security concern based on Applicant's association with her husband who has a history of criminal activity. The SOR alleges that this association shows that she has questionable judgment creating a security risk. Criminal history records for Applicant's husband shows he has been incarcerated for various lengths of time in at least four state prisons and in federal prisons for felony larceny, theft, breaking and entering, and forgery. (GX 3, Criminal Records)

Applicant acknowledges that her husband has a history of criminal activity. When Applicant married him in January 1992, he already had a criminal record. Applicant did not know about his prior criminal conduct. She knew he was in trouble for something, but she did not know the details. She was 19 years old and her husband was 30 years old at the time, and she was not mature enough to inquiry further into his criminal history. She asked questions about his past but accepted the information he provided her. When her husband was first arrested, she was a high school student and did not know him. She knew him only a few months before they married. She thought the offense he committed before they married was a minor traffic violation. He was incarcerated for a few weeks before they married. She did not inquire about the offense that caused him to be confined. Her husband was convicted of a fraud offense shortly

after they married. She did not inquire about that offense or terminate the marriage. Her husband was also convicted of the offense of breaking and entering about two years after they married. Applicant continued to live with her parents while her husband was incarcerated. Her daughter was born in 1996. Applicant rented an apartment in her own name in 2000. After his release from incarceration, her husband lived with Applicant and their daughter. Applicant was trying to make the marriage work. As of August 14, 2017, for a variety of reasons to include her husband's criminal record, Applicant always used her maiden name and never used her husband's family name. (Tr. 35-48)

Applicant's husband continued to commit offenses and be incarcerated. He spent more time incarcerated during their marriage than out of prison. Most of his crimes were to obtain money to purchase drugs. When out of prison, his occupations are barbering, working construction, or writing books. On her July 16, 2010 e-QIP (GX 2), Applicant reported that from March 2007, she was physically separated for four years from her husband while he was incarcerated in a federal correctional institution (FCI) in Texas. She also noted that she had no contact with him for approximately 18 months before his incarceration. She also reported having little if any contact with her husband's family, maybe three phone calls in four or five years. On her March 20, 2015 e-QIP (GX1), Applicant listed her husband's current address as a state penitentiary. When her husband is released from his present incarceration, Applicant's state has a retainer bond for his continued incarceration in that state. (Tr. 48-49, 57-58)

Applicant does not know how much her employer knows of her husband's criminal past. She believes she let her security officer know about her husband's criminal conduct when she completed the e-QIP and she listed his location as either a FCI or a penitentiary. Applicant and her husband separated over four years ago, and he has been incarcerated for the last three years. She has minimal contact with him. Sometimes she does not hear from him for months. She provides him minimal financial support, maybe \$50 every six months. In at least the last over three years he has been incarcerated, she has not visited him. (Tr. 48-54)

Applicant is a very religious person and does not believe in divorce. She thought her husband's behavior would change and he would become more of a family man. He did change for a short period but he would return to his criminal activities. Applicant talked to her pastor and members of her church and determined that she can divorce her husband within the rules of her church. Applicant initially retained a lawyer to represent her and file a divorce. Her husband would not agree, and made demands that she could not afford. She could not afford to proceed with the divorce until she saved additional funds. She plans to proceed with the divorce as soon as she can.

She earns her own money and pays her bills. Life is more peaceful when her husband is not around so she will not let him back into her life. She plans to divorce him as soon as she saves sufficient funds to pay her attorney and make any payments she is required to make to her husband. She had patience with his criminal conduct believing he would reform, but she has lost patience and does not feel he will reform.

She will not allow him to come back to her house when he is released from any confinement. (Tr. 33-37, 54-60; AX G, e-mail, dated July 3, 2018)

A friend and fellow student with Applicant testified that she served seven years in the U.S. Army as a sergeant (E-5), and has held a high level security clearance for over 20 years. She knows Applicant's security clearance is being challenged because of her husband's criminal conduct. She has known Applicant as a co-worker and fellow student for over nine years. Applicant is a committed, hard-working, helpful person who is striving to get to the next level in her life. Applicant is a religious woman. At Applicant's invitation, the witness attended some of Applicant's group church meetings. She met Applicant's husband and knows that Applicant cannot be manipulated by her husband. Applicant has blossomed and taken charge of her life. She can make the hard decisions pertaining to her relationship with her husband. The witness recommends that Applicant retain her access to classified information. (Tr. 15-26)

Applicant presented six letters of recommendation from fellow workers and friends. Some friends have known Applicant her entire life. Applicant is characterized by them as honest, trustworthy, loyal, supportive, and positive. They note that Applicant completed two master's degrees, raised her daughter as a single mother, and purchased a house. Applicant is a caring and compassionate person who believes in fairness and always strives to do the right thing. She tries to find the positive in people, and encourage them to be better in their lives. (AX A)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Administrative Guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel. . .” The applicant has the burden of persuasion to obtaining 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **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 and sensitive information. Personal conduct is always a security concern because it asks whether the person’s past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. (AG ¶ 15).

Applicant’s association with her husband, who has a lengthy criminal record, raises the following disqualifying conditions under 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 individual may not properly safeguard classified or sensitive information; and
- (g) association with persons involved in criminal activity.

I considered the following Personal Conduct 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 stressor, circumstances, or factors that contributed to untrustworthy, unreliable, or other appropriate 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; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurred under circumstance that do not cast doubt on the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

The mitigating conditions apply. Applicant has been married to her husband, who has a lengthy and ongoing criminal record, for over 26 years. Applicant has an excellent record and reputation for her individual accomplishments; two master's degrees, a good work performance, and a clean record. She married her husband when she was young and she did not know of his criminal past. She has been separated, and is now separated from her husband, for most of their marriage because of his time in prison. She had little if any contact with him for the last four years. Applicant's relationship and limited contacts with her husband, are appropriate under the circumstances, and does not indicate questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules or regulations.

Applicant made a reasonable effort to advise her employer of her husband's criminal conduct. In the 2010 e-QIP, she reported that her husband's present address was a federal correctional institute in Texas. In her 2015 e-QIP, she listed his present address as a state penitentiary. This information puts both the employer and government on notice that her husband has a criminal background. I find that Applicant adequately informed her employer of her husband's criminal conduct.

Applicant is a religious women who does not agree with divorce but believes in trying to make the marriage work in spite of her husband's criminal record. In spite of her religious believes, she obtained counseling from her church and changed her views to permit her to file for divorce. She has taken positive steps by contacting an attorney and attempting to end the marriage. She established that she is unable to meet her husband's financial requests, so she is saving money to permit her to file the divorce papers. She has taken positive steps to eliminate vulnerability, exploitation, or manipulation by not permitting her husband to return to her house after his release from incarceration and being prepared to file for a divorce as soon as she can afford it. Applicant has mitigated the personal conduct security concern.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information must be an overall common-sense 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 considered Applicant's over ten years of working for defense contractors. The evidence shows that Applicant has been faithful to her marriage vows in spite of her husband's criminal record. Applicant established that her association with her husband does not show questionable judgement, untrustworthiness, unreliability, unwillingness to comply with rules and regulations, or other characteristics to indicate that he may not properly safeguard classified or sensitive information. The facts in evidence mitigate any questions and doubts about Applicant's judgment and her suitability for access to classified information. I conclude that Applicant mitigated personal conduct security concerns. Eligibility for access to classified information is granted.

### **Formal Findings**

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

Paragraph 1, Guideline E: FOR APPLICANT

Subparagraph 1.a: For Applicant

## **Conclusion**

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

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THOMAS M. CREAN  
Administrative Judge