



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



In the matter of:)
)
) ISCR Case No. 23-02713
)
)
Applicant for Security Clearance)

Appearances

For Government:
Tara Karoian, Esquire, Department Counsel

For Applicant:

08/18/2025

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On June 27, 2024, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline D. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on August 16, 2024, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on June 30, 2025. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 2,

2025, scheduling the hearing for August 5, 2025. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 3, which were admitted without objection. Applicant testified on his own behalf. The Applicant offered one exhibit, Applicant Exhibit (AppX) A, which was admitted without objection. The record then closed, upon the completion of the hearing. DOHA received the transcript of the hearing (TR) on August 15, 2025.

Findings of Fact

Applicant admitted the allegation in SOR ¶1a, but he vehemently denies the underlying basis for the allegation. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 28-year-old employee of a defense contractor. He has been employed with the defense contractor since March of 2023. Applicant is not married, and has no children. (GX 1 at pages 5, 11 and 23.)

Guideline D, Sexual Behavior

1.a. In September of 2017, Applicant was charged with the sexual assault of an older, female airman. The alleged assault occurred in May of 2016, when he was 19-years-old teenager, and more than a year prior to the female airman's, July 2017, complaint. During the period from May 2016 to July 2017, the two airmen maintained a friendly social and working relationship. Applicant has always maintained his innocence and avers that their sexual intercourse was consensual. The very detailed cross-examination by Department Counsel supports this conclusion. He was told by his military counsel that his chance of being acquitted was 70% versus a 30% chance of being convicted. However, after a four-hour, high-pressured consultation with his military counsel's paralegal, Applicant chose to accept a discharge Under Other Than Honorable Conditions in lieu of trial by court-martial. (TR at page 16 line 5 to page 60 line 9, GX 1 at page 21, and Answer at page 14~17.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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.” 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.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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.

Section 7 of Executive Order 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 D, Sexual Behavior

The security concern relating to the guideline for Sexual Behavior is set out in AG ¶ 12:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

The guideline notes several conditions that could raise security concerns under AG ¶ 13. One is potentially applicable in this case:

(a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted.

In September of 2017, Applicant was charged with a sexual assault that allegedly occurred in May of 2016, more than nine years ago. He chose to accept a less than honorable discharge in lieu of a court-martial. The evidence is sufficient to raise this disqualifying condition.

AG ¶ 14 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

(a) the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature; and

(b) the sexual behavior happened so long ago, 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 judgment.

Both above mitigating conditions apply. I am not convinced that Applicant's one-time, sexual behavior was improper. He has always maintained his innocence. Applicant's detailed testimony on cross-examination supports this conclusion. Furthermore, it occurred when he was a teenager, with an older female, more than nine years ago. Sexual Behavior is found for Applicant.

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 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline D in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is well respected both in his community and in the workplace. (Answer at pages 9~13, and AppX A.) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the sexual behavior security concern.

Formal Findings

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

Paragraph 1, Guideline D: **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.

Richard A. Cefola
Administrative Judge