



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-03216
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: Pro Se

March 26, 2008

**Decision**

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Questionnaire for National Security Positions (SF 86), on August 4, 2006. On August 8, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline E, Personal Conduct for Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On August 30, 2007, Applicant answered the SOR and requested a decision on the administrative record. DOHA received Applicant's answer to the SOR on September 4, 2007. On September 15, 2007, Department Counsel requested a hearing before an Administrative Judge in accordance with ¶ E3.1.7 of the Directive. Department Counsel was prepared to proceed on November 20, 2007. The case was assigned to another administrative judge on November 27, 2007. The case was transferred to me on December 10, 2007. DOHA issued a notice of hearing on January 22, 2008, and I

convened the hearing as scheduled on February 7, 2008. The government offered Exhibits (Gov Ex) 1 through 5, which were admitted without objection. Applicant testified on his own behalf and submitted four documents which were admitted as Applicant Exhibits (AE) A – D without objections. On February 13, 2008, Applicant submitted a 13-page document which is admitted as AE E without objection. DOHA received the transcript of the hearing (Tr) on February 19, 2008. The record closed on March 1, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Procedural Issue**

On January 29, 2008, the Government submitted a Motion for Telephone Testimony. On February 1, 2008, I denied the request. At hearing, the Government withdrew their motion for telephone testimony and requested the record be left open until February 14, 2008, to allow them to submit an incident report. Applicant did not object. The Government had until February 14, 2008 to submit the additional document. (Tr at 8-9.) The Government was required to serve a copy of the document on the Applicant. Applicant had until March 1, 2008, to submit any additional comments or suggestions pertaining to the additional document. On February 14, 2008, the Government submitted a JPAS Incident History, which was admitted as Gov 6. Applicant did not submit a response pertaining to Gov 6.

### **Administrative Notice**

Administrative notice is taken of General Order Number 1 (GO-1), Prohibited Activities for U.S. Department of Defense Personnel Assigned to the Multi-National Corps – Iraq (MNC-I) or present within the MNC-I Area of Responsibility (AOR), from Headquarters Multi-National Corps – Iraq, dated February 12, 2005, a copy of which was admitted as Gov 5.

The following sections are noted, in particular:

**PURPOSE:** To identify conduct that is prejudicial to the maintenance of good order and discipline to all forces assigned to the MNC-I or present within the MNC-I AOR.

**APPLICABILITY:** This General Order is applicable to all United States military personnel, and to civilians serving with, employed by, or accompanying the Armed Forces of the United States, while assigned to the MNC-I or while present in the MNC-I AOR except for personnel expressly excluded under USCENTCOM GO-1A. This General Order also applies to all United States military personnel, and to civilians serving with, employed by, or accompanying the Armed Forces of the United States, while under the operational control of the Commander, MNC-I and present for duty in Kuwait or Iraq. Such duty includes but is not limited to pre-deployment site surveys, leader's recons, and advanced party

deployments. This General Order is not applicable to any personnel assigned to XVIII Airborne Corps (Rear) or personnel located outside the USCENTCOM AOR.

**STATEMENT OF MILITARY PURPOSE AND NECESSITY:** Current operations and deployments place United States Armed Forces into areas where local laws and customs prohibit or restrict certain activities that are generally permissible in western societies. Restrictions upon these activities are essential to fostering US/host nation relations and combined operations of US and friendly forces. In addition, the high operational tempo combined with the hazardous duty faced by MNC-I soldiers and other US forces in the MNC-I AOR makes it necessary to restrict certain activities in order to maintain good order and discipline and ensure optimal readiness.

**2. PROHIBITED ACTIVITIES:** in accordance with and in addition to USCENTCOM GO-1A, the following activities are prohibited:

a. Purchase, possession, use or sale of privately owned firearms, ammunition, explosives, or the introduction of these items into the MNC-I AOR.

c. Introduction, possession, sale, transfer, manufacture or consumption of any alcoholic beverage within the MNC-I AOR. This restriction also prohibits the introduction, possession, sale, transfer, manufacture or consumption of any alcoholic beverage by military personnel or civilians serving with, employed by, or accompanying the Armed Forces of the United States, while assigned to or under the operational control of the Commander, MNC-I and present for duty in Kuwait or Iraq. This prohibition does not apply to personal hygiene items (like mouthwash) commercially available for sale by AAFES in the MNC-I AOR, nor does it apply to the use of alcohol for authorized religious ceremonies.

e. Introduction, possession, transfer, sale, creation or display of any pornographic or sexually explicit photograph, videotapes, movie, drawing, books, magazine, or similar presentations. The prohibitions contained in this subparagraph shall not apply to AFRTS broadcasts and commercial videotapes distributed and/or displayed through AAFES or MWR outlets located within the USCENTCOM AOR. This prohibition shall also not apply within the areas exclusively under the jurisdiction of the United States, such as aboard United States vessels and aircraft.

k. Taking or retaining individual souvenirs or trophies, except as noted below:

(3) No weapon, munitions, or military article of equipment obtained or acquired by any means other than official use may be retained for personal use or shipped out of the AOR for personal retention or control unless authorized by the Commander, MNC-1.

3. PUNITIVE ORDER: Paragraph 2 of this General Order is punitive. Persons subject to the UCMJ may be punished for violations of this General Order. Civilians serving with, employed by, or accompanying the Armed Forces of the United States in the MNC-I AOR may face criminal prosecution or adverse administrative action for violation to this General Order.

4. INDIVIDUAL DUTY: All persons, military and civilian, subject to this General Order are charged with the individual duty to become familiar with and respect the laws, regulations, and customs of their host nation insofar as they do not interfere with the execution of their official duties. Acts of disrespect or violations of host nation laws, regulations, and customs may be punished under applicable criminal statutes and administrative regulations.

6. CONFISCATION OF OFFENDING ARTICLES: Items determined to violate this General Order may be considered contraband and confiscated by command or law enforcement authorities if found under the control of MNC-I soldiers or within the MNC-I AOR. Before destruction of contraband, Commanders or law enforcement personnel will coordinate with their servicing judge advocate.

### **Findings of Fact**

In his Answer to the SOR, dated August 30, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.e and 1.f. He denied the allegations in ¶¶ 1.c, and 1.d. He also commented that the allegation in SOR ¶ 1.f was redundant with SOR ¶ 1.a.

Applicant is a 31-year-old technical writer/technical instructor employed by a Department of Defense contractor seeking to maintain a security clearance. He has worked for his current employer since November 2003. He is a high school graduate with some college. From 1996 to 2002, he served on active duty in the United States Army. He separated at the rank of E-4 with an honorable discharge. He was a Specialist in the satellite communications career field. He has held a security clearance since 1996. He is married and has no children. (Tr at 4-6; Gov 1.)

After he separated from the Army, Applicant accepted a job with his current employer in September 2003. As a contract employer, he was an electronic technician

who worked on the installation and operation and maintenance of satellite terminal and phone centers used by the troops to call home. Most of the phone centers were located at the military exchanges on various US military bases located in Iraq. (AE A; Gov 3.)

Applicant arrived in Iraq in November 2003. When he traveled from base to base, he rode in various military supply convoys. He soon discovered that it was dangerous driving around the country. His employer provided a bright red truck that did not have armor. His job required him to drive around to various US military locations. Baghdad International Airport was his company's unofficial headquarters. (Tr at 30, 35-36.)

In December 2003, Applicant decided that he needed to have a weapon for personal protection due to the increasing insurgent attacks and convoy ambushes. Several contractors were kidnapped and killed. (Tr at 32; Gov 3 at 1.) Around that time, Applicant testified that a convoy commander, an Army Captain, would not allow Applicant to ride in his military convoy unless he had a weapon for self defense. The convoy commander gave him two AK-47 rifles that were seized in a raid earlier that day. (Tr at 40.) Applicant previously had given the convoy commander a bottle of alcohol. (Tr at 40-41.) In a signed, sworn, statement dated April 16, 2005 (Gov 3), Applicant indicated the following:

In DEC03 I decided that I needed a weapon for protection and to be allowed to ride in Army convoys. I had been told by service personnel that I had to have a weapon to ride in the convoys. So I traded alcohol with U.S. Army personnel at War Eagle where I got two AK 47. I do not recall the names of the individuals who I got weapons from.

Applicant kept one rifle and gave the other rifle to a co-worker. He later traded alcohol for a semi-automatic pistol with a soldier from the 82<sup>nd</sup> Airborne (SP). He later traded alcohol for two AK-47 rifles with a US Marine. He gave the rifles to two co-workers. In December 2004, he obtained another 9 mm handgun for another co-worker. (Gov 3.) He received no formal training when he was provided the weapons. (Tr at 75.)

Applicant used alcohol to trade for weapons, ammunition and other needs such as armor for his vehicle. (Gov 4.) He also gave alcohol when he socialized with troops he befriended. (Tr at 47.) He would purchase alcohol at the duty free shop located at the Baghdad International Airport. (Gov 3 at 2.) He never contacted his supervisor or his employer to inquire about purchasing weapons. He did contact them about providing armor for the company vehicle which his employer later provided. (Tr at 76, 97-100.) He had copies of Playboy and Penthouse magazines for his personal use. (Gov 3 at 2.)

Applicant states he never concealed the fact that he had weapons. He kept the 9 mm pistol strapped to his flak vest in plain view. He claims he was never questioned about it. (Tr at 46.) When he purchased alcohol from the duty free shop at Baghdad International Airport, he often saw contractor personnel and military members purchasing alcohol from the shop. He claims there was a widespread culture of drinking by the military. He was not aware that military members were forbidden to drink alcohol.

(Tr at 47; Gov 3 at 2.) No Army Air Force Exchange System (AAFES) facilities located in Iraq sold alcohol. (Tr at 86.)

On April 15, 2005, Applicant was traveling with a night time military convoy to a US airbase located in Iraq. At some point prior to the convoy's arrival, security at the gate was notified by the military that a civilian contractor who stated that he was an employee of Kellogg, Brown, and Root (KBR) was in the convoy and that he was carrying a 9mm automatic pistol. When the convoy approached the security check point, Applicant was asked if he had a weapon. He said, "Yes". He was subsequently searched. A pistol was removed from the holster that was mounted on Applicant's body armor. The security officer asked Applicant if he had contraband, weapons, or sharp items in the vehicle. The incident report states that Applicant repeatedly stated that he did not. A subsequent search of the vehicle revealed that Applicant had four 9 mm magazines loaded with 9 mm ammunition; an AK-47 rifle; two AK-47 30 round magazines loaded with 7.62 x 39 ammunition; a 12 inch knife; a global positioning system; a digital camera; one bottle of whiskey, one bottle of red wine; seven 16 ounce cans of beer; and Penthouse and Hustler magazines (amount unknown). (Gov 4.)

When security personnel asked Applicant why he chose to bring contraband (i.e. pornographic material and alcohol) onto a US military installation. He replied that he trades pornography and alcohol for weapons, ammunition, and other things he needs. He claimed that he got the pornography and alcohol from his coworkers. He was asked why he did not seek out weapons through legal channels such as the explosive ordnance disposal (EOD) teams or area security managers. He said he did not move in those circles. He was asked why he was not following the rules of Combined Joint Task Force Seven (CJTF-7). He claimed that he was never briefed on them and he never knew there were rules in the theater. He claimed that he did not know alcohol was prohibited. At the end of the interrogation, Applicant disclosed the name of his employer. It was discovered that he was not a KBR employee. (Gov 4.) The record is unclear as to whether Applicant actually told the convoy commander that he was a KBR employee or whether it was a miscommunication. Applicant testified that he never said he was a KBR employee. He wears his employee identification at all times. He did not discover that there was an issue regarding his identity until a few days after the incident when he talked to his supervisor. (Tr at 58-59; Answer to SOR.)

After the search, Applicant was allowed to return to his quarters while the investigation was pending. A few days later, he was contacted by a Marine Captain who told him to pick up his items that were not considered contraband. When he picked up the items, he was informed that he could not remain in Iraq as of result of the illegal contraband in his possession. He was told to clear the base and leave the country within 24 hours. Applicant took the first military flight to Kuwait and flew home commercially that same day. After returning to the United States, he was informed by his supervisor that AAFES withdrew their letter of invitation which allowed him to work as a contractor in Iraq. (Gov 2; Answer to SOR.)

Applicant would hand out telephone cards to military personnel, civilians, and contractors out of appreciation for what they did for him. By way of example, he would hand out phone cards after he was allowed to travel with a convoy. He gave phone cards to employees who let him know when convoys were going out and for helping him get on the manifest. He claims he never gave the phone card out as payment for being on a convoy. (Gov 3.) He spent a lot of time arranging to travel with military convoys. (Tr at 78-79.)

Applicant claims that he was never briefed by his employer, the military, or contracted security personnel about the rules pertaining to weapons, alcohol, or pornography in the area of operation, i.e. Iraq. The first time he learned about General Order One was on April 15, 2005, when his vehicle was searched. He claims that he did not use the contraband to buy favors. He did not think that his conduct was illegal. He felt he needed the weapons to protect himself. He was never arrested or charged with any crime while in Iraq and did not receive any disciplinary action from ITT Industries. In April 2005, Applicant resigned from the contract. He never intends to return to Iraq as a contractor due to the dangerous nature of the work. (Gov 2; Answer to SOR.)

Applicant listed his position in Iraq in response to question 22 on his security clearance application, dated August 4, 2006, which asks "Has any of the following happened to you in the last 7 years – Left a job for other reasons under unfavorable circumstances?" (Gov 1.) After learning the rules, he realizes that his conduct was wrong and never intends to engage in such activity again. (Gov 2).

The Integrated Logistics Support Manager where Applicant currently works states Applicant has worked on his team for the past 15 months. He states that there is no task that Applicant has been assigned and completed that has not exceeded his expectations. He interacts with him on a professional and a personal level and would not hesitate to entrust him with the company's most sensitive materials. (AE C.) The Principle Logistics Engineer has worked with Applicant since April 2006 and has dealt with him on a professional and a social level. He has not observed any actions that would lead him to believe that Applicant is a security risk. (AE B.)

The company Facility Security Officer (FSO) states that she has known Applicant for 2 ½ years. She indicates Applicant handles classified information on a daily basis and is diligent about following security procedures. She is aware of the allegations of possessing a handgun and possession of pornographic material. He told her that he received the handgun from a U.S. soldier and purchased the magazine at a local Post Exchange in country. She did not state that she was aware Applicant provided alcohol to military members in exchange for other weapons. She believes these incidents have been blown out of proportion. (AE D.) It is also unclear whether the FSO was aware of the prohibitions outlined in General Order 1 pertaining the contractors possessing weapons in IRAQ, the use of alcohol, or possessing materials that are considered pornographic and/or sexually explicit within Iraq.

During his active duty military service with the United States Army, Applicant deployed to Guatemala, Honduras, and Okinawa. (Tr at 77; AE E at 4-13.) He was awarded a Good Conduct Medal, the Army Commendation Medal, and two Army Achievement Medals while on active duty. (AE E.)

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised 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, 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 access to classified information will be resolved in favor of 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 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 ultimate burden of persuasion as 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.

Section 7 of Executive Order 10865 provides that 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**

### **Personal Conduct**

The security concern relating to the guideline 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 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.

The government did not establish a prima facie case with respect to the allegations in SOR ¶¶ 1.c and 1.d. There is insufficient evidence to support the allegation that Applicant misrepresented himself as a KBR employee when he traveled with a military convoy to a United States military base in Iraq in 2005 as alleged in SOR ¶ 1.c. The incident statement prepared by contracted security personnel indicates they received a message from the military that an inbound convoy contained a civilian contractor who said that he was a KBR employee and was carrying a 9 mm automatic pistol. The incident statement is unsworn, unsigned, and contains hearsay. There is no additional reliable evidence to support the premise that Applicant misrepresented himself as a KBR employee while traveling with the convoy. This information could easily have been a miscommunication from a third party rather than a deliberate false statement made directly by the Applicant.

There is nothing in the incident report that supports the premise that Applicant told the security personnel at the entry control point to the military base that he was a KBR employee. The report states at the end that Applicant stated he was not a KBR employee and provided the name of his employer. The report also indicates that Applicant was not asked why he told the convoy commander that he was a KBR employee. The incident contains no substantial evidence that Applicant misrepresented himself as a KBR employee to the convoy commander or to the security personnel at the gate to the base. Applicant believes there was some sort of misunderstanding. His identity was cleared up when AAFES personnel identified him. I find for Applicant with respect the SOR ¶¶ 1.c and 1.d.

Applicant’s claims of ignorance of the prohibitions listed in General Order Number 1 pertaining to the use of privately owned firearms, alcohol, and possession of pornography/sexually explicit material in the AOR is not credible. With his six years of

active duty service, including several deployments outside the United States, it is reasonable to conclude that he is aware that while in another country certain customs and courtesies must be followed while in that country. He should also be aware that commanders set certain rules for all personnel including military, civilian, and contractors to follow while in the AOR. He claims he was never trained by his company or by the military on these policies. Aside from his own assertions, he provided no corroborating evidence from his company and/or the U.S. military about the lack of training.

While Applicant's concern about needing a weapon for self defense is understandable, trading alcohol for weapons is a rather unorthodox manner of obtaining weapons. Prior to obtaining the weapons, Applicant neither contacted his supervisory chain to inquire about obtaining weapons for he and his co-workers, nor consulted the proper military channels to inquire about obtaining weapons for he and his co-workers. At one point, he contacted his company to request armor for the company vehicles but never submitted a request for weapons. A reasonable person would assume that, as a contractor, the proper way to inquire about and obtain weapons is through their employer.

Of the disqualifying factors under the personal conduct guideline, Personal Conduct Disqualifying Condition (PC DC) ¶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 protected information) applies in Applicant's case. Applicant's claims of ignorance pertaining to General Order 1 lacks credibility. Neither he nor his co-workers were authorized to possess weapons. He was not allowed to purchase and/or transfer alcohol to military personnel stationed in the AOR.

Even if Applicant truly was ignorant about the prohibitions listed in General Order 1, he had a duty as a contractor working with the military to inquire about the customs and courtesies of the foreign country that he was working in and about the rules and standards in the AOR that were set by the Commander. He should have been aware of this based on his prior military experience and deployments. His conduct raises questions about his judgment and willingness to comply with rules and regulations.

The purpose of General Order 1 is to prohibit conduct that is prejudicial to the maintenance of good order and discipline of all forces assigned to MNC-I or present within the MNC-1 AOR. Applicant claims that alcohol was legal in Iraq. There is nothing in the record evidence indicating whether alcohol was legal in Iraq. However, this is irrelevant, because the standards to follow are the ones set by the geographic commander for the AOR.

Joint Publication 4-0, Doctrine of Logistic Support of Joint Operations, Chapter V, paragraph 13.b, dated 6 April 2000, states:

As a general rule, contractor personnel accompanying US forces should not be armed. Regardless of prior military experience or reserve status, contract personnel are not military personnel. Issuing weapons to contractor personnel deployed in an uncertain or hostile environment can cloud their status, leaving them open to being targeted as a combatant. Additionally, unless specifically allowed by host nation law, SOFA provision, or other international agreement, US Forces have no legal basis for issuing arms to contractor personnel. Since contractor personnel are not subject to command authority enforced by an internal system of penal discipline, commanders have no method of guaranteeing armed contractor personnel will act in accordance with the law of war or host nation law.

There are special limited cases where contractors may be issued personal weapons. In those cases, the issuance of such weapons must be authorized under procedures approved by the geographic commander and comply with military regulations regarding firearms training and safe handling. (Joint Publication 4-0, chapter V, paragraph 13.b.) While Applicant more than likely has never reviewed Joint Publication 4-0, the Joint Doctrine stresses the point that contractors are not armed unless under limited circumstances under procedures approved by the geographic commander. It is reasonable to conclude that trading alcohol for weapons is not the procedure established by the geographic commander.

The allegations under Personal Conduct can be mitigated. Personal Conduct Mitigating Condition (PC MC) ¶ 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) is the only mitigating condition that has the potential to apply. I find that it does not. Applicant's actions while deployed as a contractor in Iraq were serious. Once he was finally caught, he was ordered to leave the country and AAFES withdrew their letter of invitation for him to work as a contractor in Iraq which reinforces the notion that his conduct is considered serious. His conduct was disruptive to the maintenance of good order and discipline of forces assigned to the AOR. Considering his past military experience, he should have known that there were proper procedures in place to inquire about obtaining weapons. He should have been aware that trading weapons for alcohol was not the proper procedure for obtaining weapons. He should have been aware that the use of alcohol by the troops was prohibited. His conduct raises questions about his judgment, trustworthiness and reliability. He has not mitigated the concerns raised under personal conduct.

### **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 the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): “(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) 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 the facts and circumstances surrounding this case. I considered Applicant’s favorable military record and the favorable recommendations of his current supervisors and co-workers. In some ways, his favorable military record is a double-edged sword. Given his military experience, Applicant should have known there were orders issued that would apply in the AOR. His claims of ignorance are less than credible. Applicant failed to mitigate the personal conduct concerns. Overall, the record evidence leaves me with doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under personal conduct.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

### **Conclusion**

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

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ERIN C. HOGAN  
Administrative Judge