



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



In the matter of:)
)
) ISCR Case No. 06-26304
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
Pro se

March 31, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 9 August 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E.¹ Applicant answered the SOR 4 September 2007, and requested a hearing. DOHA assigned the case to me 6 December 2007, and I convened a hearing 11 January 2008. DOHA received the transcript (Tr.) 22 January 2008.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant denied the SOR allegations. She is a 34-year-old senior security clearance adjudicator employed by a defense contractor since October 2005. She seeks to retain the security clearance she has held since September 1997.

Applicant first went to work for her current employer in October 2002, when she was employed as a contract adjudicator on-site at a federal government agency. Her employer lost the contract to another company in May 2005, but because the employer did not have a contract on which to employ her, she remained with the new holder of the contract. In so doing, she signed a standard non-disclosure agreement, stating that she would not disclose any information about the company or its employees outside the company without the company's permission. She claims that she signed the document hurriedly to keep her job and never read it. However, she knew from earlier employments that she was prohibited from disclosing information about the company or its employees without permission (Tr. 28).

In September 2005, she was contacted by her old employer with an offer of employment,² which she indicated she would accept. Her old employer also indicated it was looking for other employees, and was willing to consider any of her coworkers who were interested. Applicant passed the information to her coworkers, collected resumes they offered to her, and attempted to transmit them by facsimile to her old employer—using the government agency facsimile machine and agency cover sheet. Unfortunately, she did not transmit the resumes and other supporting documents to her old employer, but to her current one. That company fired her the same day for violating her written non-disclosure agreement (G.E. 3). In October 2005, she resumed employment with her old company.

Applicant's current supervisor considers her an excellent employee, but acknowledges that a non-disclosure agreement such as Applicant signed with her previous employer is fairly standard in the industry, and Applicant's company also uses a similar agreement. He stated that providing employee information, such as resumes, to a third party without authorization is potential grounds for termination.

At hearing, as in her answer to the SOR, Applicant insists that she did nothing wrong. However, she acknowledged that it was not in her then-employer's financial interest for her to transmit her co-workers' resumes to a competitor. Nor was it part of her job description.

²Her original employer had a copy of her resume, and she was considered subject to recall because of the circumstances of her earlier termination.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.³

Analysis

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. She used government resources to attempt to transmit employee information that her current employer considered sensitive or proprietary to a competitor—one who had previously held the same contract.⁴ She

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶16.(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 person may not properly safeguard protected 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 other government protected information;. . . (4) evidence of significant misuse of Government or other

did so the same day that she had been offered, and accepted, re-employment with that competitor. Without doubt, Applicant was within her rights to discuss employment with her old employer, even to provide her resume. She was even within her rights to inform her co-workers that her old employer was hiring. They, in turn, could properly submit their resumes to the company. Where Applicant ran afoul of her fiduciary duty to her employer was undertaking to accept and transmit her co-workers' resumes to the competitor. This is true whether she obtained the resumes directly from her co-workers or from company files. More tellingly, even today she does not really understand why what she did was wrong or why her employer was so upset that it fired her on the spot. Because of this, I conclude that none of the Guideline E mitigating conditions apply. The circumstances of this conduct were not unusual—contractors are replaced by successor contractors who routinely retain some of the employees working for the old company. Further, Applicant's inability to recognize how she breached her fiduciary duty to her employer supports my whole-person assessment that she should not have access to classified information. I resolve Guideline E against Applicant.

Formal Findings

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge

employer's time or resources; (f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment;