



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



In the matter of:)
)
) ISCR Case No. 18-01579
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

05/17/2019

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the personal conduct security concerns due to intentional falsifications on her security clearance application. National security eligibility for access to classified information is denied.

Statement of the Case

On April 4, 2017, Applicant submitted a security clearance application (SCA). On August 15, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline E (Personal Conduct). The action was taken under Executive Order (EO) 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on October 15, 2018. She provided five documents with her response, and she admitted all of the SOR allegations. Applicant requested a hearing before an administrative judge. On February 28, 2019, the case was assigned

to me. On March 4, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 19, 2019.

During the hearing, Department Counsel offered Government Exhibit (GE) 1-4, which I admitted into evidence without objection. Applicant did not provide additional documentation at the hearing. The five documents attached to her SOR response were marked as Applicant Exhibit (AE) A-E, which I admitted into evidence without objection. Applicant testified and called her father to testify on her behalf. I held the record open until April 19, 2019, in the event either party wanted to submit additional documentation. No additional documents were received. DOHA received the hearing transcript (Tr.) on April 1, 2019, and the record was closed on April 19, 2019.

Findings of Fact

Having thoroughly considered the evidence in the record, I make the following findings of fact: Applicant is 32 years old. She earned some college credits, but did not earn enough for a college degree. She married in 2016, and is the mother of a young daughter born in July 2018. She has been employed by a DOD contractor since February 2017. She does not currently possess a DOD security clearance, but her employer is sponsoring her for a security clearance in order that she may perform specific employment duties. (Tr. 5, 12-14, 36-38; GE 1)

SOR allegation ¶ 1.a alleges that Applicant falsified material facts when she completed her SCA in April 2017. In response to Section 13A – she listed employment with a department store, but she deliberately failed to disclose that she was terminated by her employer for tardiness in about January 2011. Instead, she listed her reason for leaving this employment was because she had to care for her sister. Applicant admitted this allegation in her SOR response. During the hearing, she stated that she was ashamed about being fired from an employer. She did not list accurate information on the SCA purely out of embarrassment. (Tr. 14-17; GE 1, GE 2)

SOR allegation ¶ 1.b alleges that that Applicant falsified material facts when she completed her SCA in April 2017. Specifically, in response to Section 22, she denied that she had “EVER” been charged with an offense involving drugs or alcohol. She admitted this allegation in her response to the SOR, but denied that she intentionally omitted the adverse information from the SCA. Applicant claimed that she knew her driver’s license had been suspended, but she did not recall that she was also charged with open container at the time of her arrest. (GE 1)

The Government records show that in 2010, Applicant was stopped by police for a traffic infraction, when the police officer noticed an open container of alcohol in the car. Applicant admitted the open container of alcohol was hers, but stated she had been drinking it three hours earlier and forgot that she had it in her car. Applicant was arrested and charged with driving while license suspended, and transporting an open container of alcohol. At the hearing, Applicant stated that she had completely forgotten about the open container incident. She only remembered being arrested for driving with

a suspended license. She also denied that the alcohol in the car was hers. When confronted with her admission in the police report, Applicant claimed that she did not recall telling a police officer that the alcohol was hers. It was her contention that the police report was inaccurate. (Tr. 17-21; GE 4)

In March 2018, during Applicant's background interview with an authorized DOD investigator, she was confronted with her 2010 arrest, in part, for open container. Applicant denied all knowledge of this charge, despite the fact that she spent [or "despite spending"] one night in detention. In July 2018, she adopted the report of her background interview as being accurate, after making several changes. She denied any knowledge that she had been charged with an alcohol-related offense. At the hearing, Applicant claimed the alcohol belonged to another passenger in the car. Since she was the driver, she was charged with the open container violation. Applicant stated that she was under stress during the interview because she was pregnant at the time. She claimed that her failure to report this information on her SCA was due to oversight. (Tr. 9-10, 18-22, 34-35; GE 2)

SOR ¶ 1.c alleges Applicant intentionally failed to disclose on her April 2017 SCA, under Section 26, that a 2011 civil judgment had been filed against her. She admitted this hospital bill, which subsequently resulted in a judgment, but her mother later told her the judgment actually belonged to someone else. Applicant provided a document with her SOR response which showed this judgment was dismissed in April 2012. Applicant said it was not her intent to conceal or falsify her SCA regarding the civil judgment. During her March 2018 background interview, Applicant told the investigator that her mother was disputing the hospital bill. She did not mention that the judgment had been dismissed. She told the investigator that she made no attempt to pay the bill and could provide no documentation regarding the judgment. (Tr. 22-27; AE B)

SOR ¶ 1.d alleges Applicant intentionally failed to disclose required information on her April 2017 SCA, under Section 26, which asked if she had ever defaulted on a loan, or if she was currently 120 days or more delinquent on any debts. In her SOR response, she admitted this allegation, but she could not recall why she failed to disclose her four delinquent student loans. Since the birth of her daughter, Applicant claimed to have set up payment arrangements for her student loans. During her March 2018 background interview, Applicant was confronted with her adverse financial information by the investigator. She stated that she did not list her civil judgment and unpaid student loans on the SCA because she was embarrassed. At the hearing, Applicant admitted she had reviewed her credit report at the time she filled out the SCA. She was confused since some credit reports reflected the judgment and delinquent student loans, but she claimed other credit reports did not. Applicant admitted that she did not continue her student loan payments due to other current financial obligations she is trying to resolve. She did remember telling the investigator that she was embarrassed about the judgment and delinquent student loans. (Tr. 28-34; GE 1, GE 2)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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(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. Directive ¶ E3.1.15 an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to 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 EO 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

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for 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 or sensitive information. Of special interest is any failure to provide truthful and candid answers during national security investigative or adjudicative processes. ...

AG ¶ 16 describes conditions that could raise a security concern and be disqualifying. The following is potentially applicable under the established facts in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately falsified her 2017 SCA when she failed to disclose her job termination, her alcohol-related offense, and her adverse financial information. She did not voluntarily provide this information during her background interview until she was confronted with the derogatory information by the investigator. Applicant has provided inconsistent accounts as to why this information was not disclosed. She asserted that she did not remember her arrest included a charge of open container of alcohol when she filled out the security application. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. The following mitigating conditions under AG ¶ 17 are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor or so much time has passed, or the behavior is so infrequent, or 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; and

(d) the individual acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

I have considered all the evidence, including Applicant's testimony. I also considered her motive for falsifying the April 2017 SCA. She had been newly hired by the DOD contractor in February 2017. She was embarrassed by the adverse information she was required to disclose. I considered her claim that she had forgotten the open container incident, despite being arrested and spending a night in jail, and the inherent improbability that she would forget such a significant event. I did not find Applicant's explanations credible. She did not make prompt, good-faith efforts to correct omissions or falsifications during her background interview. Applicant admitted to the investigator the reason she did not list her job termination and adverse credit was due to embarrassment. She demonstrated a pattern of dishonesty, which casts doubt on her reliability, trustworthiness, and overall good judgment. After reviewing her history of deceit, I cannot conclude her dishonest behavior is unlikely to recur. None of the mitigating conditions apply.

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(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. This SOR highlights conduct that provides insight

to a person's character and integrity. Applicant falsified her SCA because she was embarrassed. Intentionally omitting or falsifying relevant information to conceal derogatory information from a security application out of embarrassment, or even fear of maintaining employment, does not mitigate falsification. Applicant failed to mitigate the personal conduct security concerns. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

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

Subparagraphs 1.a-1.d: Against Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge