



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
(Redacted)) ISCR Case No. 20-03521
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

09/21/2021

Decision

MODZELEWSKI, Moira, Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On April 19, 2021, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing a security concern 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 May 6, 2021, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM) on June 16, 2021. Applicant received the FORM on June 29, 2021, and was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation within 30 days of receipt. The Government's evidence is identified as Items 1 through 4. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. Items 1 through 4 are admitted into evidence. The case was assigned to me on September 9, 2021.

Findings of Fact

Applicant admitted to the sole SOR allegation. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 28 years old and earned her bachelor's degree in May 2015. Applicant has been employed by her current sponsor since August 2019. She is single and has no children. (Item 3)

Following graduation in May 2015, Applicant began work as a systems engineer for a federal contractor. In her four interim and annual appraisals for 2017 and 2018, her supervisor repeatedly counseled and cautioned Applicant concerning her failure to maintain a consistent and predictable work schedule. In Applicant's 2018 final appraisal, received and acknowledged by Applicant in February 2019, her supervisor specifically cautioned that Applicant must maintain a work schedule "per (the company's) timekeeping policy," and that a failure to maintain a consistent schedule "could lead to disciplinary action." (Item 4)

In June 2019, Applicant's manager reported to the company's human resources (HR) office that Applicant was not present in their secure work space on numerous days in May and June 2019 and that he suspected she may be mischarging her hours. The HR office, in concert with the company's security office and ethics office, conducted a badge-swipe audit of external doors and internal doors for the period from May 1, 2019, through June 21, 2019. The audit revealed 24 days for which Applicant's timesheet did not align with her badge swipes. On nine days, the badge-swipe audit indicated that Applicant was not in the facility at all, although she had submitted timesheets claiming that she had worked nine-hour days. On another 15 occasions, Applicant recorded hours on her timesheet that exceeded her initial entry into and final exit from the building.

In July 2019, representatives from HR and Ethics met with Applicant to review their concerns. Applicant initially maintained that she worked full 40-hour weeks, but later in the interview acknowledged that she had not worked full 40-hour weeks for several months. When confronted with the audit and asked to explain the days without any badge swipes at all, Applicant initially suggested that she may have "piggy-backed" into the facility (i.e., following another employee who swiped in), but then agreed that the audit should reflect additional badge swipes throughout the day, as she would need to badge in and out of the secure work area. Ultimately, Applicant offered no plausible explanation for the discrepancies between her timesheet and the badge-swipe audit. When asked point-blank whether she had falsified her timesheet, Applicant responded, "I can't think of any reason why I would." (Item 4) The interviewers concluded that Applicant had

mischarged at least 85 hours over the seven-week period and that she was not truthful during her interview. They recommended termination, and Applicant was terminated the following week. (Item 4) The SOR alleges, and Applicant admits, that Applicant mischarged over 100 hours of labor, vice 85. I find the difference not consequential for my analysis or decision.

The allegation is established by Applicant's admissions and the employer's internal investigation. (Items 2 and 4). In Applicant's May 2021 answer to the SOR, she expresses remorse for "serious ethical mistakes." She notes that she was "inexperienced and underchallenged" at her prior employer, but acknowledges that there was no justification for her actions that led to the termination. (Item 2)

Policies

When evaluating an applicant's suitability for national security eligibility, 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 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 states 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 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(3) a pattern of dishonesty or rule violations;

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant was terminated for submitting fraudulent timesheets. Her conduct reflects questionable judgment, untrustworthiness, unreliability, and an unwillingness to comply with rules and regulations. Notably, an audit of only 37 work days revealed nine days in which Applicant claimed to have worked, but did not, and 15 other days in which she "padded" her hours to some extent. This was not a one-time occurrence, or an occasional occurrence, but a clear pattern of fraudulent timesheets and misuse of her employer's resources. Moreover, Applicant had been cautioned in a formal appraisal just three months earlier that continued absences and timekeeping problems could lead to disciplinary action. (Item 4) In the wake of this counseling, her multiple absences in May and June 2019 signal a recklessness that is incompatible with access to classified information. AG ¶¶ 16(d) and 16(e) are applicable to this workplace misconduct.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

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

(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 stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate 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.

During her interview with representatives from HR and the ethics office, Applicant did not take the opportunity to be forthright about the mischarged hours or to accept responsibility. Instead, the team concluded that she was not truthful. The behavior that resulted in her termination is fairly recent, not minor, repeated, and not under any unique circumstances. That conduct continues to cast doubt on her reliability, trustworthiness, good judgment, and willingness to comply with rules and regulations. The above mitigating factors, individually or collectively, are insufficient to dispel the personal conduct security concerns.

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. I have incorporated my comments under Guideline E in my whole-person analysis. I also considered Applicant's expression of remorse in her Answer to the SOR, but it is insufficient to overcome the incidents that led to her termination, which involve questionable judgment and an unwillingness to comply with rules and regulations.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the personal conduct security concern.

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

Conclusion

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

Moira Modzelewski
Administrative Judge