



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



In the matter of:)
)
) ISCR Case No. 20-02555
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

04/04/2022

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline E, personal conduct. Applicant’s eligibility for a security clearance is granted

Statement of the Case

On October 29, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct. DOD CAF acted under Executive Order (EO) 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 adjudicative guidelines effective June 8, 2017 (AG).

On December 30, 2020, Applicant answered the SOR and requested a hearing. The case was assigned me on October 21, 2021. The parties agreed on a hearing date of January 12, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a

notice of hearing on October 29, 2021, and the hearing was convened as scheduled by video teleconference using the Microsoft Teams platform. The Government offered exhibits (GE) 1 through 9. Applicant posed several objections to the documents, all of which were overruled and all were admitted into evidence. Applicant testified, called four witnesses, and offered exhibits (AE) A (A1-A4), B (B1-B60), and C (C1-C22), which were all admitted into the record. DOHA received the hearing transcript (Tr.) on January 24, 2022.

Findings of Fact

Applicant denied the SOR allegation (although her accompanying explanations admitted some aspects). After a thorough and careful review of all the pleadings and evidence, I make the following findings of fact.

Applicant is 63 years old. She is a tenured professor at a state university where she has worked since 1996. She previously held a security clearance since 2009, until it was suspended in 2015, because of the allegation that led to this hearing. Her clearance was initially granted because of her research work in areas that led to university contracts with the DOD. She is married with no children. She holds a Ph.D. (Tr. 7, 36, 120, GE 1)

The SOR alleged: “In response to the cessation of the [DOD agency’s] funding of your [research], [Applicant] threatened to solicit funding from China, Israel and Iran in exchange for the sensitive research.” It is significant to note that the single allegation failed to allege the date, location, or circumstances surrounding the alleged statement. Additionally, no amendment was offered to clarify the allegation. (SOR, December 16, 2020)

As stated above, Applicant held a clearance in 2009 and her university had a contract with a DOD agency to provide research in the area of her expertise. The contract began in September 2009 and ran until December 2014, using a no-cost modification of the contract. In early 2015, Applicant informed the DOD agency of breakthroughs in her research and in early March 2015 her university, on her behalf, requested a no-cost extension to the research contract. On March 31, 2015, Applicant was notified by the DOD agency that her research could no longer be funded and that the agency would not pursue any further contract awards. Applicant was stunned by this decision since she had been working on this project for over 12 years. (Tr. 36, 44, 47, 57; AE A1, AE B19)

On March 24, 2015, Appellant received an email from the DOD agency requesting Applicant “not to make any public distribution” of the research until a classification determination was made. Applicant’s research was already in the public eye since she was interviewed about it by a public television program in 2013 and her work was written about in a renowned newspaper and an alumni magazine in 2011. The Government failed to produce any evidence that the research project Applicant was working on involved classified information. Furthermore, the evidence in the record

supports the contrary, that the project was unclassified. This conclusion is confirmed by a July 2016 letter from a DOD Agency's security officer to Applicant's university's facility security officer (FSO) and in the testimony of Applicant's current assistant FSO, who stated that no research project Applicant worked on, currently or in the past, was of a classified nature. (Tr. 177-178, 180, 182; AE A2-A4, AE B5-7, B15-B18)

After receiving the news that her research work would no longer be funded, Applicant was in a highly emotional state. On April 1, 2015, she called Dr. W, her former program manager at the DOD agency. Applicant asserts that Dr. W talked with her, but also told her he would deny this conversation if asked about it. Applicant wanted to know if there was still any interest in her research work by the DOD. He answered with an emphatic "yes." He also stated that he was not supposed to talk to her but took the call because he believed she was "losing her life's work." Applicant had a very strong emotional reaction to this statement and took the phone away from her ear and began crying. She did not hear what Dr. W said next. At some point her anger boiled up and she stated words to the effect of, "why don't I just send my research to China, Iran, and Israel." She later realized she should not have made that statement, but was overcome by her emotions. She regrets making the statement. She never made any attempt to contact any of those countries. She also telephoned Dr. C about the same time and may have had a similar conversation, but she was so emotional she cannot recall the specifics of the phone call, other than talking about losing her life's work. During her background interview in November 2018 and later in February 2020, with an investigator, she admitted making the statement to Dr. W, concerning her research and foreign countries. There is no evidence indicating the investigator asked her about other similar statements. (Tr. 48-49, 55-58, 116-118, 134; GE 2; AE A1)

In May 2015, Applicant attended a conference hosted by the DOD agency that denied funding on the contract described above. Dr. V, a program manager of the DOD agency, prepared a June 10, 2015 memo for record (MFR), on agency letterhead, without a reference to distribution, describing an interaction she had with Applicant at the conference on May 14, 2015. Dr. V stated that after some discussion about procedures for releasing information to the public, Applicant stated "she didn't necessarily want to do anything to harm the US government." When Dr. V asked for clarification, she claims Applicant stated that the Chinese, Israelis, and Iranians would be interested in funding her research. In her MFR, she stated that Dr. C witnessed this conversation. Dr. V's MFR became the basis for the information contained in GE 5. Dr. V did not testify at Applicant's hearing and was not subject to cross examination. (GE 4-5; AE 1A)

Applicant testified that she first became aware of her alleged May 2015 statement to Dr. V when she was sent the Government's proposed hearing exhibits on May 13, 2021, after the issuance of the SOR. (See HE I) Applicant admitted attending the conference and speaking with Dr. V, but she denied making the statements about harming the U.S. and seeking out foreign investors (China, Iran, Israel) for her research. She believes the MFR inaccurately describes the discussion she had with Dr. V. She also testified that the only time she clearly recalls making a reference to China, Israel,

and Iran about her research was the April 1, 2015 emotional call she made to Dr. W. She believes she could have made a similar statement to Dr. C also in a phone call on April 1, 2015, but she does not clearly remember doing so. Upon learning of the MFR, Applicant contacted Dr. C to learn her recollections of the conversation discussed in the memo. Dr. C provided several responses. In a May 19, 2021 email to Applicant, Dr. C stated: "As for the events of 2015, I honestly just remember there being confusion about funding and release review. I don't remember talking to you and having [Dr. V] walk up; I'm sorry I can't be more helpful." In an October 29, 2021 email Applicant asked if Dr. C recalled if Applicant made any statements of a security concern at the May 2015 conference and Dr. C replied: "I recall you saying, at some point (2015? Don't know) that you had foreign investors interested in your research and that you could look to them to sustain the work if [the DOD agency] ended its funding of the program. That's the only thing I can think of that could be related to your question." In a November 1, 2021 email, Dr. C stated to Applicant: "I'm confident that you have been honest with the DOD; it's clear that integrity (scientific and otherwise) is one of your highest values." (Tr. 59-60, 84, 87, 94-100, 115, 135; GE 4-5; AE A1, AE B22, B45, B47)

Applicant called her therapist to testify, Mr. S. Mr. S is a licensed clinical social worker in private practice as a therapist. He holds a master's degree obtained in 2001. Mr. S has been seeing Applicant since 2016. She sought treatment voluntarily, under no compulsion from anyone or any organization. Initially, for the first few years, he saw Applicant weekly or biweekly. In the last year and a half, he has seen her on a check-in basis. Based upon his education, training, and experience, he diagnosed Applicant as having an adjustment disorder with anxiety. That diagnosis was made in September 2016. Mr. S described his actions to deal with her diagnosis, which included using sensory motor psychotherapy to develop her skills for coping with the triggers for her condition. (Tr. 64-66)

Applicant told Mr. S about the statement she made to Dr. W on April 1, 2015, concerning contacting China, Israel, and Iran about funding her research. Mr. S believes Applicant took the statement about losing her life's work as an existential threat. She was in a highly emotional state at the time and reacted by making an over-the-top statement. She does not have an anti-social personality and regretted making the statement. Mr. S opined, based upon his experience, training, education, and treatment of Applicant, that she would not actually engage in the behavior she talked about with Dr. W on April 1, 2015, i.e., contacting foreign states about her research. He further stated that Applicant sometimes gets emotional in their sessions, but she has never made any threatening statements. Overall, she is emotionally stable, self-aware, and has insight into her condition. She also has developed the skills necessary to avoid triggering highly emotional responses. He believes that Applicant exercises "very good" judgment. (Tr. 67-68, 70-71, 73-76, 79-80)

Applicant's second level supervisor, Dean N, who is the Dean of the college where Applicant teaches, testified. Dean N is also a professor of psychology and neurosciences. She has known Applicant for 12 years, but only in a work capacity. Before 2016, Dean N had to deal with some issues with Applicant involving emotional

outbursts. Since 2016, she has had no issues or complaints about Applicant. Dean N commented that she has noticed changes in Applicant in the form of her being more self-assured and more controlled. She further noted that Applicant has always accepted responsibility for her actions. She stated that Applicant is not impulsive, is trustworthy, exercises good judgment, and is a brilliant scientist. (Tr. 149-153, 156-157)

Applicant presented the testimony of a long-time family friend, Mrs. G. Mrs. G is 92 years old and her testimony was clear and concise. Mrs. G has known Applicant for over 50 years, since Applicant was a little girl living in the same town as Mrs. G. They have stayed in contact through the years and in the past ten years have had weekly contact by texts or emails. Mrs. G described Applicant's character as "impeccable." She considers Applicant as trustworthy as her deceased husband who worked for a government agency for more than 25 years and whose service was honored by being named to the agency's Wall of Fame. She knew Applicant was upset when her research project was not funded. Mrs. G was upset as well because she knew how much time and effort Applicant had devoted to the research. Mrs. G has never held a security clearance. (Tr. 168-170, 172-173)

The current assistant FSO for Applicant's university testified. He has held his position since 2019. He possesses a security clearance. He has known Applicant since 2019. He was not involved with the university before 2019. He reviewed the current research projects at the university and determined that none of Applicant's work involved classified information. He also reviewed her past projects and determined that none of it involved classified information. He and Applicant discussed the events that led to the issuance of the SOR and he noted that Applicant admitted her mistakes and was willing to atone for her actions. Based upon his review of the SOR incident and his dealings with Applicant, he recommends granting her security clearance. (Tr. 177-180, 182, 184)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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(a), the entire process is a careful weighing 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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain 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 about 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 personal conduct security concern:

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 cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is 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 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:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and

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

The sole SOR allegation alleges that after a DOD agency denied funding for her research project, Applicant threatened to contact the countries of China, Israel, and Iran about possible funding for her research project. The allegation lacks specificity in that it does not give a date, location, or indicate whether the statement was made more than once. At the time of the SOR issuance, Applicant had not been provided the June 2016 MFR by Dr. V (GE 4). She also was not asked about her May 14, 2015 statement during her background investigation in February 2020 or November 2018. As such, when she filed her answer to the SOR, it was reasonable for her to conclude that the incident the SOR was describing was her April 1, 2015 telephone conversation. In her answer to the SOR, she admitted the conduct while also explaining her highly emotional state at the time.

It is also important to understand that there was NO evidence presented that any classified information was ever disclosed. Moreover, there was NO evidence presented that any of Applicant's research work was ever classified. In fact, there is evidence to the contrary, that her research WAS NOT classified. So the gravamen of this case is an alleged threat of disclosure, said when in a highly emotional state, that was never carried out, about research that was not classified, and which a DOD agency had decided not to further fund. Regardless, I have concluded that Applicant's statement to Dr. W on April 1, 2015, demonstrated questionable judgment by her that falls under the umbrella of covered conduct described by AG ¶ 16(d).

As far as the evidence concerning the alleged conversation between Applicant and Dr. V at a conference on May 14, 2014, I have considered the factual conflict between Applicant's version of the events and Dr. V's MFR where she describes her version on what happened on May 14, 2015, at the conference. I note that Dr. V claims a third party (Dr. C) witnessed the conversation between Applicant and Dr. V. Applicant was finally made aware of Dr. V's MFR when she received the Government's hearing

exhibits on May 13, 2021. Soon thereafter, she contacted Dr. C about her memory of the conversation. Dr. C did not remember the conversation referred to by Dr. V. She also referred to Applicant as a person of integrity. I note that Dr. V wrote the MFR on agency letterhead approximately one month after the conference. However, the MFR does not indicate any distribution network. Dr. V did not testify and was not subject to cross examination. I also considered Applicant's reputation for truthfulness and honesty as established by her character witnesses. Taking all these factors into consideration, I give the MFR less weight than I do Applicant's testimony, which I found credible and believable, based not only on that evidence but also upon my own observations.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(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; and

(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.

Applicant acknowledged making her statement to Dr. W when she was highly emotional and regrets making it. Moreover, she did not follow through on the threat. The statement occurred in 2015, nearly seven years ago. While the nature of her conduct is not minor, it was an isolated incident. Similar conduct is unlikely to occur and it does not cast doubt on her reliability, trustworthiness, or good judgment. AG ¶ 17(c) applies. Additionally, realizing that she needed to seek professional help concerning controlling her emotional response to situations, Applicant voluntarily started therapy with a qualified licensed clinical social worker in 2016. Her therapist has seen marked progress in Applicant since he started seeing her. He opined that she is emotionally stable, self-aware, and has insight into her condition. She also has developed the skills necessary to avoid triggering highly emotional responses. He also believes that Applicant exercises "very good" judgment. Based upon this evidence, AG ¶ 17(d) applies.

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 considered Applicant's position as a tenured university professor; the testimony of her therapist; the positive character evidence given by her university Dean, her longtime personal friend, Mrs. G, and her assistant FSO. I also considered the time elapsed since the events of 2015 and the lack of evidence of any similar situations. Applicant provided sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the security concern under the Guideline E, personal conduct, was mitigated.

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:	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.

Robert E. Coacher
Administrative Judge