



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



In the matter of:)
)
) ISCR Case No. 20-03066
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: Dan Meyer, Esq.

09/12/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On April 28, 2021, the Defense Counterintelligence and Security Agency issued to 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; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on June 4, 2021, and requested a hearing before an administrative judge. The case was assigned to me on June 9, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 17, 2022, scheduling the hearing for July 19, 2022, by Microsoft Teams. The hearing was held as scheduled.

The Government offered exhibits (GE) 1 through 5. Applicant testified and offered Applicant Exhibits (AE) A and B. There were no objections to any exhibits and they were admitted into evidence. The Government's exhibit list and discovery letter were marked as Hearing Exhibits (HE) I and II. Applicant also submitted a brief, a power of attorney, and a copy of the SOR and DOD. Directive that were marked as HE III, IV, and V. DOHA received the hearing transcript on July 28, 2022.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.d with explanations and denied ¶¶ 1.e through 1.i, with explanations. Her admissions are adopted as findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 30 years old. She is not married and has no children. She earned an associate's degree in 2016 and a bachelor's degree in 2018. She has worked for her present employer, a federal contractor, since March 2022. (Tr. 37-39)

Applicant completed her first security clearance application (SCA) in December 2016, when she worked as an intern for the federal government. She believed she was granted an interim security clearance. She completed a second SCA in April 2018 when she was also working as an intern for the federal government. She completed a third SCA in August 2020. In her past, Applicant worked at many part-time and full-time jobs. She worked at some of them while attending school. (GE 2, 3; Tr. 40-49)

The SOR alleges that Applicant was fired from certain jobs, failed to provide the correct dates when she was employed by different employers, failed to disclose she was terminated or fired from certain jobs, and deliberately failed to provide accurate information to the government investigator about the discrepancies in her SCAs until she was confronted with the facts.

In February 2014, Applicant was fired from her employment at CC due to attendance issues and was not eligible for rehire (SOR ¶ 1.d). She worked for CC from February 2012 to February 2014. In her 2016 SCA, she disclosed she was employed by CC from May 2007 to February 2014. She completed a Declaration of Federal Employment form in November 2016. In the declaration she disclosed she had been terminated by CC in February 2014. The 2016 version of the SCA did not ask if she had been terminated or fired. She did not disclose this employment in her 2018 SCA. (GE 2, 3, 4)

During Applicant's January 2, 2019 background interview with a government investigator, she said she was unsure of the dates she worked for CC and forgot to disclose the employment with CC in her 2018 SCA. She was re-interviewed on January 9, 2019, and the investigator confronted her with her termination from CC and the date discrepancy. Applicant told the investigator that she had numerous jobs at the time and did not remember this one. (GE 1, 2, 4, 5; Tr. 89-96, 109-113)

In Applicant's August 2020 SCA, she did not list her employment with CC. In response to Section 13C, which asked about employment history that had not previously been disclosed and if in the last seven years she had been fired from a job, she responded "No" (SOR ¶ 1.e). She testified that she had several managers while at CC and she had health issues which resulted in her attendance issues. She explained she came to work one day and the manager immediately asked her to come to the back office and told her she was terminated due to attendance. Her explanation for failing to disclose the information on her 2020 SCA was that she thought she had disclosed it on her original SCA and it had repopulated when she completed the 2020 SCA. She said it was a mistake for not ensuring the SCA was accurate. (GE 1, 2, 4, 5; Tr. 89-96, 109-113)

In December 2016, Applicant was fired from her employment at AP and was not eligible for rehire (SOR ¶ 1.c). Applicant disclosed in her 2016 SCA that she was hired by AP in October 2016 and worked for them to the present, which was December 1, 2016, the date of the SCA. (Tr. 78-80; GE 3)

Applicant testified that she had been hired at AP and was terminated for failing to show up for her assignment. She stated she did not recall being terminated at that time. She testified that several months later, she reapplied for a job at AP and was told she was not eligible because she had failed to show up previously and had been terminated. She said this is when she learned she had been terminated earlier. (Tr. 80-87)

In her 2018 SCA, she disclosed that she had been hired by AP in October 2016 and left in June 2017. AP provided substitute or temporary workers for different jobs. In her 2018 SCA she stated "I worked [at] different location[s]. Filled teachers absent at different school." (GE 2). She listed the reason for leaving was, "Did not provide enough promising hours." She did not disclose she was fired. (GE 2)

In Applicant's 2020 SCA, she did not disclose her employment with AP. In Section 13C, which asked about employment that had not previously been disclosed, if she had been fired, she responded "No." During the background interview, she told the investigator that she had worked for AP from October 2016 to June 2017, and she left because she was not getting enough hours to work. The investigator confronted her with the dates AP provided regarding her employment, which were from November 29, 2016, to December 5, 2016, and that she had been terminated. She explained to the investigator that she was terminated due to not fulfilling the job duty. She further explained that she did not disclose the termination because she was rehired by AP in error. At her hearing, she testified that she did not recall being terminated until she reapplied for a position with AP three or four months after she first applied. She said she was with AP for a couple of months. This is contrary to their records. She said she provided the dates of employment to the investigator of October 2016 to June 2017, because it probably felt that long, but she did not intend to deceive him. She testified that when she was given an assignment by AP, she did not show up. She testified that maybe she did not take it seriously because she was not employed with AP that long. (GE 1, 5; Tr. 80-88, 99-102)

In April 2016, Applicant was fired from her employment at BB for unfavorable employment or conduct and was not eligible for rehire. In her 2018 SCA, she disclosed that she worked at BB from August 2014 to November 2016. She testified she was unsure of the dates of her employment. She disclosed in the 2018 SCA that her reason for leaving BB was because she accepted a job at another place. The SCA asked for this employment if any of the following had happened in the last seven years: fired, quit after being told you would be fired; left by mutual agreement following charge or allegations of misconduct; or left by mutual agreement following notice of unsatisfactory performance. Applicant responded "No." It also asked for this employment if in the past seven years she had received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy, to which she also answered "No." (GE 2; Tr. 49-50, 59-69)

In Applicant's January 2, 2019 background interview with a government investigator she confirmed she had left employment with BB to accept a new job. She was then confronted with information that she had been terminated by BB. She told the investigator that while at work she had bought a bag of chips and sprayed WD-40 on them. A night auditor took the chips. Applicant asked her supervisor where the chips had gone and told the supervisor she had sprayed WD-40 on the chips. She told the investigator that she was fired by her supervisor citing she was trying to harm her coworker (SOR ¶ 1.g). (GE 5; Tr. 97-99)

Applicant testified that she was fired from BB because it was alleged she tried to harm a fellow employee. She said she was eating a bag of chips that had a variety of types and when she finished the kind of chips in the bag that she liked she saw a can of WD-40. She said she had never smelled WD-40 and was curious what it smelled like and decided to spray it on the remaining chips so she could smell it. She left the bag of chips on a table in the office and left it there overnight. She testified the next day she noticed the bag of chips was missing and inquired where it was to make sure someone had thrown it away. She told whomever was present that she had sprayed it with WD-40, and she was concerned. There was one person who worked the night shift. She was unaware if he ate any of the chips. Her manager said she would check with Employee J, who had worked the night shift. Later that night, Applicant was suspended from her employment because they alleged she was trying to harm an employee. She testified there was no evidence someone had eaten the chips. She said she had absentmindedly forgotten the bag was on the table and did not think about it until she got home that night. She testified that her manager later sat her down and told her she was suspended from work for a week. Then the following week she was terminated. She had worked at BB for about a year and a half and was a full-time employee. (SOR ¶¶ 1.f and 1.g) (GE 2; Tr. 50-57)

Applicant explained she did not recall failing to disclose she had been suspended and fired from BB on her SCA. She said it was an honest mistake, and she should have said yes she had been fired. She said she had rushed through the SCA when she was completing it. She was not familiar with how to complete the SCA. She did not understand the question or the verbiage. I did not find Applicant's testimony credible. I find she deliberately failed to disclose she was suspended and then fired from BB and deliberately

was dishonest when she was interviewed by the government investigator and during her testimony. (Tr. 59-69)

In Applicant's 2018 SCA and 2016 SCA, she disclosed she had been employed by WT from August 2014 to December 2014. The accurate dates of her employment were October 2011 to November 2011. During her January 2019 background interview she told the investigator that she left this employment because she was being sexually harassed. She told the investigator that the incorrect dates she provided were due to "an error." She testified that she was a couple months off in providing the dates on her SCA and she tried to track down the correct dates, but could not get them until after her background investigation. (Tr. 102-104)

In March 2020, Applicant was fired from employment with WN. She had advanced in the company and was a supervisor and had many responsibilities. She failed to follow through on a task that led to her termination. (SOR ¶ 1.a) (GE 1; Tr. 71-78)

Applicant testified that she could not recall how much time she was given to complete her SCA. She worked while attending college and had multiple jobs and at times she had more than one job at the same time. She worked in the retail and hospitality industry and learned new skills. She learned from her past mistakes, such things as following through on assigned tasks and ways to increase productivity. She has been recognized for her positive impact on morale, and because of her performance she was put in for a security clearance. She said she was young and immature and did not know the security clearance regulations, but now she is mature and wiser. She testified her omissions and wrong information on her SCAs were mistakes, and she is not the same person she was when she completed the applications. She testified she did not intentionally provide false statements and wrong dates, or omit information. She had some difficulty tracking down her employment history because she had a lot of jobs. She did not have references, but relied on her memory. She will not repeat her mistakes. (Tr. 28-36)

Applicant provided copies of emails that have positive comments about her work and note that her efforts were appreciated. She also provided character letters that note that she diligently followed the rules especially when she had access to financial or sensitive information. She could solve problems. She is self-assure, confident, professional, punctual, reliable and trustworthy. (AE A, B)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the 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 concerns 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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

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

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(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; 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.

I have considered all of the evidence. There is sufficient evidence to conclude that Applicant was fired by two employers and not eligible for rehire and was fired by another two employers for unfavorable employment or conduct. (SOR ¶¶ 1.a-1.d)

There is insufficient evidence to conclude that Applicant deliberately failed to disclose on her August 2020 SCA her firing from CC (SOR ¶ 1.d) that was alleged in SOR ¶ 1.e. Her explanation for failing to disclose the information on her 2020 SCA was she thought she had disclosed it on her original SCA and that it had repopulated when she completed the 2020 SCA. She did disclose her employment with CC on her 2016 SCA. The 2016 version of the SCA did not ask if she had been terminated or fired. Applicant completed a Declaration of Federal Employment form in November 2016. In the declaration she disclosed she had been terminated by CC in February 2014.

SOR ¶ 1.e also alleged that she deliberately failed to disclose in her August 2020 SCA that she was fired from AP. In December 2016, Applicant was fired from her employment at AP and was not eligible for rehire (SOR ¶ 1.c). Applicant disclosed on her 2016 SCA that she was hired by AP in October 2016 and worked for them to the present, which was December 1, 2016, the date of the SCA. (GE 5)

Applicant testified that she was terminated by AP for failing to show up for her assignment. She testified that several months later she learned she was terminated. In her 2018 SCA, she disclosed that she had been hired by AP in October 2016 and left in June 2017, because the job did not provide enough promising hours. In response to section 13C, which asked if she had been fired from any employment not previously reported, she stated "No." (GE 2) In Applicant's 2020 SCA, she did not disclose her employment with AP. In Section 13C, which asked about employment that had not previously been disclosed, if she had been fired, she responded "No." During the background interview, she told the investigator that she had worked for AP from October 2016 to June 2017, and she left because she was not getting enough hours to work. The investigator confronted her with the dates AP provided regarding her employment, which were from November 29, 2016, to December 5, 2016, and that she had been terminated. I did not find Applicant's testimony credible. I find that she deliberately failed to disclose her termination from AP and the correct period of time she worked there in her 2020 SCA. I further find that she intentionally provided false information to the investigator on why she left that employment. (SOR ¶¶ 1.e, 1.h, 1.i, 1.j)

I also find that Applicant deliberately falsified material facts in her April 2018 SCA by failing to disclose she had been fired by BB due to unfavorable conduct (SOR ¶ 1. f). I find she also deliberately falsified material facts during her January 2, 2019 interview with a government investigator when she told the investigator the reason she left BB employment was because she found a better job, when in fact she had been fired for her conduct by putting WD-40 on chips and potentially harming another employee. She failed to disclose this information to the investigator until she was confronted with it. (SOR ¶ 1.g)

I believe Applicant confused her date of employment with WT, when she provided she worked there from August 2014 to December 2014, when in fact it was October 2011 to November 2011. Because it was for a relatively short period of time and she was not terminated, I find she did not deliberately falsify this information on her 2016 and 2018 SCA. I find for her on SOR ¶ 1.k. However, with regard to her period of employment alleged in SOR ¶ 1.l, I find she deliberately failed to provide the accurate dates. There is a considerable discrepancy between what she disclosed (May 2007 to February 2014) and the period she was actually employed (February 2012 to February 2014), and the fact that she was terminated from employment.

I find none of the disqualifying conditions apply to SOR ¶¶ 1.a, 1.c and 1.d. Applicant was terminated or fired from these jobs due to attendance issues or not completing the job satisfactorily. This is not the type of personal conduct that raises security concerns. I find the above disqualifying conditions apply to the remaining allegations.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

(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; 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.

None of the mitigating conditions apply. I have considered whether Applicant's actions were due to carelessness or were deliberate. I understand the difficulty in providing dates of employment when the person has multiple jobs over an extended period of time. The concern is that Applicant obviously was aware that she was terminated from certain jobs and it is about those jobs that she failed to provide accurate information. Applicant did not make a prompt, good-faith effort to correct the omissions and falsifications before being confronted. She was given an opportunity to do so when she was interviewed by a government investigator, but failed to do so. Failing to be honest on an SCA and when interviewed by a government investigator is not minor. She repeatedly failed to disclose accurate information about derogatory information from her past. I cannot find her actions happened under unique circumstances that are unlikely to recur. Her conduct casts doubt on her reliability, trustworthiness, and good judgment.

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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant's deliberate failure to disclose information in her SCAs and provide truthful responses to a government investigator raises serious concerns. The record evidence leaves me with questions and 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 Guideline E, 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 F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraphs 1.e-1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	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.

Carol G. Ricciardello
Administrative Judge