



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



In the matter of:)
)
) ISCR Case No. 19-01241
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

03/23/2023

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E (personal conduct). National security eligibility for access to classified information is denied.

Statement of the Case

On April 17, 2016, Applicant submitted a security clearance application (SCA). On June 29, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline E. 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 July 14, 2022, and she denied all the SOR allegations. (¶¶ 1.a - 1.i.) She requested a hearing before an administrative judge. The case was assigned to me on November 1, 2022. On January 20, 2023, the Defense

Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 23, 2023.

During the hearing, Department Counsel offered Government Exhibit (GE) 1-4, Applicant did not submit any documents, and GE 1-4 were admitted into evidence without objection. I received the hearing transcript (Tr.) on March 2, 2023.

Findings of Fact

Having thoroughly considered the evidence in the record, I make the following findings of fact: Applicant is 54 years old. She earned a bachelor's degree in 2002. Applicant was married in 1992 and divorced in 1994. She remarried in 2010, and she does not have any children. She was formerly employed by a government contractor from December 2009 through September 2014 as a background investigator. When she completed the SCA in April 2016, she was applying for a position as a background investigator with a different government contractor. Her employment was conditional upon the issuance of her DOD security clearance. At the time of the hearing, Applicant was employed as a co-manager for a grocery store chain. (GE 1; Tr. 14, 23-27)

Personal Conduct

In December 2009, Applicant was employed as a background investigator for a government contractor. SOR allegation ¶ 1.a alleges that in August 2014, her employment with the government contractor was suspended following integrity concerns related to her work as a background investigator. The U.S. Office of Personnel Management Integrity Assurance (OPM-IA) initiated a review of her work and determined that there were multiple integrity concerns, including several missed questions during interviews, inaccurate associations, and a failure to cover issues, including foreign contacts and financial accounts. OPM-IA also determined that she falsified six investigative entries. Applicant's employer agreed to rework and revise multiple investigations. Applicant denied that she was suspended from work. She also denied ever falsifying her investigative work or that her employer ever notified her that there were any concerns about the quality of her investigations. (GE 2, 3, and 4; Tr. 14-16, 21-22)

SOR allegation ¶ 1.b alleges that in September 2014, Applicant's employment was terminated by the government contractor following concerns about the quality of her investigation work product, violation of company policy, and her failure to abide by OPM policies and procedures. Applicant claimed that her employer told her over the phone that she was being laid off "due to lack of work and that [the government contractor they were supporting] had lost the government contract." Her employment ended immediately. She claimed that she requested her personnel record from her employer, but they denied her request. (GE 2, 3 and 4; Tr. 14-17)

The Government submitted an OPM Integrity Assurance Proposal dated January 14, 2016. The report stated that after a concern was brought to the attention of the

government contractor, it was determined that Applicant had not conducted records checks for two subjects. The government contractor notified OPM of this finding on August 4, 2014. OPM-IA initiated a five-case sampling of work completed by Applicant. There were 58 sources listed for five cases. Of these sources, it was determined 44 were validated, 12 were undetermined, and two were falsified. There were numerous deficiencies found in her investigative work product. Based on the investigation, Applicant's employment with the government contractor was suspended on August 5, 2014. Following an in-depth investigation of other completed cases, six instances of falsification were discovered, and Applicant was terminated from employment on September 16, 2014. She is ineligible for rehire. (GE 3 and 4)

The Government also submitted a September 2014 letter that was mailed to Applicant by the government contractor. The letter stated:

[Government contractor] has concluded serious failures to abide by [OPM] policies and procedures have been discovered with your conduct. In addition, [government contractor] has serious concerns about the quality of your investigative products. Accordingly, your employment with [government contractor] will be involuntarily terminated for cause effective the date of this communication. (GE 4)

SOR ¶ 1.c alleges Applicant intentionally falsified her April 2016 SCA in response to Section 13A – Employment Activities. She listed her employment dates with her former government contractor employer, and she was required to report if within the last seven years, had she “received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violations of security policy?” She answered “No” to all these questions and deliberately failed to list her August 2014 suspension by her employer for failure to follow policies and procedures. (GE 1)

SOR ¶ 1.d alleges Applicant intentionally falsified her April 2016 SCA in response to Section 13A – Employment Activities. She listed her employment dates with her former government contractor employer, and she was required to report her reason for leaving this employment, to include: “Have you been fired, quit after being told you would be fired, left by mutual agreement following charges or allegations of misconduct, or left by mutual agreement following notice of unsatisfactory performance?” She answered “No” to all of these questions and listed her reason for leaving this employment was due to “contract ended.” She deliberately failed to list that she was terminated by her employer for cause in September 2014. (GE 1)

SOR ¶ 1.e alleges that Applicant intentionally lied to the investigator during her background interviews in May 2018 and August 2018, when she told the investigator that she had been laid off by her former employer in September 2014 for lack of work and due to loss of a government contract. (GE 2)

SOR ¶ 1.f alleges that Applicant falsified her sworn response to interrogatories signed by her in January 2020, in response to Question 3: “At any time, while employed by [government contractor] as a Background Investigator from December 2009 to September 2014, were you counseled or did you receive a written or verbal warning, official reprimand, suspension, discipline, or remedial training for suspected of actual violation of [government contractor] or OPM policy?” She deliberately falsified information by answering this question with a “No” response. (GE 2)

SOR ¶¶ 1.g and 1.i allege that Applicant falsified her sworn response to interrogatories signed by her in January 2020, in response to Question 4: “At any time, while employed by [government contractor] as a Background Investigator from December 2009 to September 2014, were you the subject of an investigation for suspected or actual violation of [government contractor] or OPM policy?”; and Question 8: “...did you violate [government contractor] or OPM policy?”; She deliberately falsified information by answering both questions with a “No” response. (GE 2)

SOR ¶ 1.h alleges Applicant falsified her sworn response to interrogatories signed by her in January 2020, in response to Question 5: “At any time, while employed by [government contractor] as a Background Investigator from December 2009 to September 2014, did you certify or enter data, results of records review or other investigation actions as work performed by you in violation of [government contractor] or OPM policy?” She deliberately falsified information by answering this question with a “No” response. (GE 2)

I questioned the Applicant about a previous job she had with a federal law enforcement agency in 2008. During her 2018 background interview, she denied that she had been fired by this employer. The investigator confronted her with documentation from her former employer that confirmed that she had been terminated in 2008. (GE 2) During the hearing, Applicant testified that she never knew she was terminated by this former employer. She admitted that the agency’s legal counsel and the special agent in charge were present when she was told that she was being let go because she was still in her probationary period, and her unit already had enough employees. She stated, “and that was why I was being **terminated**.” (Emphasis added) (Tr. 18-20)

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 are 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;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official,... in making a recommendation relevant to a national security eligibility determination, and

(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:

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

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

On multiple occasions, Applicant deliberately falsified her 2016 SCA, 2018 background interviews, and her January 2020 response to interrogatories concerning her August 2014 employment suspension and subsequent job termination in September 2014 by a government contractor. The Government provided clear and convincing documents in the record concerning this matter. The above disqualifying conditions apply.

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.

None of the mitigating conditions apply. I did not find Applicant's testimony credible. She continues to lie about the circumstances of the 2014 termination of her employment with a former government contractor, despite the convincing evidence in the record. She did not make prompt, good-faith efforts to correct omissions or falsifications she provided during the course of the security clearance investigation, and she failed to provide any corroborating evidence to support her claims. Her pattern of dishonesty casts doubt on her overall reliability, trustworthiness, and good judgment. Personal conduct security concerns are not mitigated.

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 serious offenses that

