



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 20-01486 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro Se*

08/29/2023

Decision

PRICE, Eric C., Administrative Judge:

Applicant mitigated personal conduct security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) in September 2019. On January 4, 2020, the Department of Defense (DoD) 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 within the DOD on June 8, 2017.

Applicant answered the SOR on February 9, 2021, and requested a hearing before an administrative judge. (Answer) The case was assigned to me on August 17, 2022. On February 13, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing via video teleconference. I convened the hearing as

scheduled on March 20, 2023. During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 3. Applicant testified and offered Applicant's Exhibits (AE) A through L. The record was held open until April 4, 2023, to permit Applicant to submit additional documents. She timely submitted AE M through P. There were no objections to the proffered exhibits. GE 1 through 3 and AE A through P are admitted in evidence. DOHA received the hearing transcript (Tr.) on March 30, 2023.

Findings of Fact

Applicant is a 56-year-old senior system administrator employed by a defense contractor since February 2019. She has worked in information technology (IT) since 2000. She owned and operated, part-time, a computer consulting and repair business from 2009 through 2017. She has held an interim secret security clearance since about 2019. (GE 1-2; AE F-K; Tr.48-49, 111-113)

Applicant received bachelor's and master's degrees in 1989 and 2011, respectively. She was married from August 1989 to August 1991 and from May 1996 to August 2008, both marriages ended in divorce. She has a son, age 24. (GE 1-2; Tr. 90-91, 105-106)

The SOR alleges that from April 2009 to June 2018, Applicant was fired from five jobs for various reasons. She admitted all SOR allegations with explanation. (Answer) She reported four involuntary terminations in her September 2019 SCA, and voluntarily disclosed and discussed all five firings during interviews with a government investigator in October and November 2019. (GE 1-2)

In April 2009, Applicant was fired from her position as IT manager for a firm following an emotional episode that led to a three-day psychiatric hospitalization. (SOR ¶ 1.e) She admitted that she was terminated after spending three days in the hospital, but denied that she had a mental episode. (Answer at 3-4; GE 1 at 23-24, GE 2 at 3; Tr. 85) She said that she voluntarily admitted herself into the hospital so that her medication could be adjusted. She had been under a doctor's care for anxiety, depression, and stress because of long-standing mental, emotional, and verbal abuse by her former spouse that continued after their August 2008 divorce. During her son's first extended visitation with her ex-husband, who was then living with her mother, she overheard her mother tell her son to say that he didn't "want to talk to [Applicant] again and then hang that phone up." (Answer at 4) In her Answer she explained,

Because of my anxiety and lack of sleep, I stupidly made a comment to a friend of mine that I should kill [my ex-husband] and then myself. I was just blowing off steam to a friend [co-worker], but she took me seriously and contacted my supervisor [he] called me into his office and asked me to let him take me to the hospital [because he] wanted me to see my doctor about adjusting my medication.

Her supervisor was aware of her personal circumstances and was concerned that she was suicidal. (Tr. 27) She was fired several days later. She worked for the firm for almost nine years and had received positive reviews through 2008. She testified consistently with earlier statements and provided detail about her tumultuous family relationships. (Answer; GE 1 at 23-24, GE 2 at 8, 10; Tr. 24-28, 85-88)

In October 2010, Applicant was fired from her position as a computer technician for threatening an employee. (SOR ¶ 1.d) She admitted that she was terminated, but denied that she had threatened anyone. (Answer at 3; GE 1 at 22-23, GE 2 at 7-8; Tr. 31-32, 82-83) She said that three male co-workers, all about 20 years younger than her, did not like her, belittled her education, and generally harassed her. She reported their harassment to their mutual supervisor, but no action was taken. She said that a co-worker then falsely reported that she had refused to give him a file that he needed. She told her co-worker that if he did not leave her alone she was going to file harassment charges against him and her other two co-workers. A week later, she was terminated for threatening an employee. (Answer; GE 1-2; Tr. 28-32, 82-85)

In February 2015, she was fired from her position as an IT specialist and project manager for insubordination. (SOR ¶ 1.c) She admitted that she was terminated, but denied that she had been insubordinate. (Answer at 2; GE 1 at 19-20, GE 2 at 6-7; Tr. 35-36, 79-80) She supported widely dispersed offices and directly reported to two supervisors, the general manager at her site and a company executive in another country. A company executive at a third site was displeased because Applicant had not personally set up their new computers and had not agreed to personally provide on-site support. She said that her supervisor had directed her to contract for local computer support for that site because it would be more cost-effective. A recruiter and former general manager noted that her unclear supervisory chain caused problems because she often received conflicting directives from different managers. He also said that the real reason she was fired was because of a downturn in business. He said that Applicant was professional, efficient, knowledgeable, and that his interactions with her were always positive. (Answer at 2; GE 1 at 19-20, GE 2 at 6-7; AE A; Tr. 32-36, 79-82)

In June 2015, Applicant was fired from her position as change manager for falsifying her resume. (SOR ¶ 1.b) She admitted that she was fired after working for the company for less than a month because she had embellished her resume by adding the key words "change management" to her two previous job experiences. She said that she had done so at the request of a recruiter for the position. She admitted that it was wrong to do so, and said that she has not, and would not do it again. (Answer at 2; GE 2 at 6; Tr. 36-37, 72-75, 119-120) She did not list this employment in her September 2019 SCA. In October 2019, she voluntarily disclosed details of this position, including her termination to a government investigator, and said that she had not reported the job in her SCA because she thought the period of employment was too short. (GE 1, GE 2 at 6; Tr. 75-79, 110-111)

In June 2018, Applicant was fired from her position as an IT support technician for lack of improvement after being placed on a Performance Improvement Plan (PIP), and

for improperly emailing a software license key and not informing her supervisor of a possible software activation issue. (SOR ¶ 1.a) She admitted that she was placed on a PIP and later terminated, but denied that she emailed a software license key, stating that she had provided an activation key to a company executive while he was being assisted by another computer technician. (Answer at 1-2; GE 1 at 16-17, GE 2 at 5; Tr. 37-41, 67-72, 106-108)

Applicant worked for the company from January 2017 to June 2018 and said that before being placed on a PIP she had received favorable feedback and had applied for a promotion. (GE 1-3; Tr. 37-38, 88-89) On February 5, 2023, she applied for the IT Director position and said that she believed that the PIP was issued because of that application. (AE B-C; Tr. 39, 42) On February 23, 2018, she received a disciplinary notice citing deficiencies in her performance as IT Operations Manager over the preceding 18 months and received a written PIP. (GE 3; AE D; Tr. 39-41) Applicant said that after issuing the PIP, the “Acting Director of IT constantly f[ound] fault in everything that [she] did”, that she “went to work every day on pins and needles just waiting to see what they were going to say I did wrong”, and that she was constantly belittled. (GE 1 at 17; Tr. 38, 70) She was so affected by that treatment that she took two weeks of leave on the advice of her counselor. (Tr. 39-40) On March 7, 2018, she received another disciplinary notice that described performance issues including inappropriate comments regarding the PIP, poor judgment, lack of improvement in her performance, and informed her that she was being demoted to IT technical support technician. (GE 3 at 4; AE D) Her response noted concerns about communications and training and said that she felt as if she was working in a hostile environment after her supervisor told her that she “was poison.” (GE 3 at 5) She received a third disciplinary notice dated June 11, 2018, terminating her employment for the reasons alleged in the SOR. (GE 1-3; AE B-D; Tr. 37-42, 59-72, 88-89)

After being fired in June 2018, Applicant drank alcohol occasionally to deal with her termination and anger issues. She said that she was not an alcoholic but used alcohol to cope with stressors in her life including anger towards her mother and ex-husband for abuse that continued until his death in 2015. In September 2018, she entered a faith-based alcohol and drug recovery program and completed the residential program in November 2018. She received extensive counseling, therapy, and mentoring. She also completed courses in anger management, parenting and coping skills. She started her current job while residing in a graduate dormitory, where she lived until May 2019. She said that she did not consume alcoholic beverages from July 2018 to September 2022, and has occasionally consumed 1-2 beers at social events since. She occasionally takes medication for anxiety and depression in accordance with a prescription. (GE 1 at 48-49, GE 2 at 11; AE M-P; Tr. 43-59, 89, 92-103)

Program counselors wrote very positive letters noting that Applicant was an “excellent client, sincere about the program, and her recovery,” “determined to heal, overcome, and learn from her emotional scars,” “excelled as a graduate, “continued to attend all her classes and meetings,” “worked diligently with her counselor on understanding the underlying root causes of her struggles,” “focused on learning how to set boundaries,” “eager to learn and gain understanding”, that she remains in contact with

program staff, and that they are “extremely impressed by all that she has accomplished” and “will be an asset wherever she goes.” (AE M, O)

Applicant said that she no longer has the same stressors in her life and that since starting her current job in February 2019, she has focused on her work, established an excellent reputation and sound record of performance. (Tr. 45-51, 120; AE E-L) She is recognized for her willingness and ability to help others, dedication, ability to successfully balance priorities, and contributions to an outstanding cyber-readiness inspection. (AE E-G) She submitted letters of recommendation from her division manager, site supervisor, command operations officer and a supporting contractor that comment favorably on her judgment, reliability, trustworthiness, performance, expertise, mentorship, security awareness, and what a pleasure it is to work with her. (AE H-K) She received awards for excellence and performance in March and August 2022. (AE L)

Policies

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.

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 common sense 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.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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.” 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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.

Applicant’s admissions and record evidence of five involuntary terminations including one termination for falsifying her resume establish the following disqualifying conditions under AG ¶ 16:

(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. 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 government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

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

(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[.]

Five mitigating conditions under AG ¶ 17 are potentially applicable in this case:

(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 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.

AG ¶¶ 17(a) and (b) are not established for the conduct alleged in SOR ¶ 1.b. There is insufficient evidence to conclude that Applicant falsified her resume based upon advice of a person with professional responsibilities for advising her or that she made prompt or good-faith efforts to correct that falsification. However, she voluntarily disclosed that she had falsified her resume in 2015 and had been fired for doing so to a background investigator.

AG ¶¶ 17(c) through (e) are established for the conduct alleged in SOR ¶¶ 1.a-1.e. Applicant's termination history and conduct alleged on the SOR occurred from five to 15

years ago. She has explained each incident, acknowledged her responsibility and gained insight into the reasons for her concerning behavior. Her former spouse and source of years of abuse passed away in 2015. In 2018, she sought and received treatment including counseling, therapy, and mentoring for her alcohol problems and to deal with stressors in her life. She abstained from using alcohol for more than four years and has only occasionally consumed 1-2 beers at social events since. She successfully completed courses in anger management, parenting and coping skills. She has established an excellent reputation and sound record of performance for her employer and DoD client over the past four years. She has taken positive steps to eliminate vulnerability to exploitation, manipulation, or duress. The security concerning behavior is unlikely to recur and does not cast doubt on her current reliability, trustworthiness, or judgment.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

I have incorporated my comments under Guideline E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant was well-prepared, sincere, candid, and credible at the hearing. After weighing the disqualifying and mitigating conditions under Guideline E and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her 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 E: FOR APPLICANT

Subparagraphs 1.a – 1.e: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Eric C. Price
Administrative Judge