



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



In the matter of:)	
)	
)	ISCR Case No. 23-01422
)	
)	
Applicant for Security Clearance)	

Appearances

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

01/31/2024

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On December 23, 2022, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On August 25, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline E, Personal Conduct. The action was taken under Executive Order 10865 (EO), *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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on a date uncertain and requested a hearing before an administrative judge. The case was assigned to me on November 21, 2023. The Defense Office of Hearings and Appeals issued a notice of hearing on December 5, 2023, and the hearing was convened as scheduled on January 10, 2024. The

Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. The Applicant offered three exhibits, referred to as Applicant's Exhibits A through C, which was admitted without objection. Applicant testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on January 22, 2024.

Findings of Fact

Applicant is 61 years old. She is married. She completed the 11th grade in high school in Mexico. She holds the position of Quality Control. She is seeking to obtain a security clearance in connection with her employment with a defense contractor.

Guideline E – Personal Conduct

The Government alleged that Applicant is ineligible for a clearance because she engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, all of which raise questions about her reliability, trustworthiness, and ability to protect classified.

Applicant was hired by her current employer in December 2022. She completed a security clearance application on December 23, 2022. (Government Exhibit 1.)

Applicant was previously employed with a defense contractor from 2012 through June 2021. She worked as a Semiconductor Manufacturing Technician. It was her responsibility each work day to clock in with her time card when she started her work day, and to clock out with her time card when she finished her day. In June 2021, she was terminated from her employment for time card fraud. Her employer determined that she had falsely claimed approximately \$11,620 of hours worked when she did not work those hours. (Applicant's Exhibit B.) Applicant denies that she committed time card fraud. (Answer to SOR.)

At some point, the company management became aware of discrepancies between the Applicant's self-reported time records and other evidence of her attendance at work, and they conducted an investigation. Using the company software program, called Camstar, which tracks the movement of product on which employees are working, as well as the entry door badging system and security video footage, it became apparent that Applicant was recording time that she did not actually work. (Applicant's Exhibit B.)

The investigation revealed that Applicant recorded 9 hours of work on each of 11 days in 2021, (all on the weekends) for which there is no evidence that she either badged into the building or moved any product, which was her job. Applicant was paid for those 11 days (99 hours) at the weekend overtime rate of \$38.87 per hour, which amounts to \$3,847.64 for time that she did not work. Also on weekdays, Applicant was assigned to the second shift, typically arriving for work at 2:00 p.m. and signing out between 11:30 p.m. and 12:30 a.m. (having taken an earlier dinner break.) Video

recording from cameras at the building exit doors showed that Applicant regularly left the facility for the evening about 2 hours before the time that she clocked out on her time record. Applicant's direct manager calculated that this practice, just in 2021, equated to about \$7,773.00 in pay for unworked time. This pay, plus the pay for the unworked weekends of \$3,847.64 total approximately \$11,620. This was the amount of overpayment Applicant received that was caused by her intentionally recording time that she had not actually worked. (Applicant's Exhibit B.)

Applicant was confronted by company management about her time card fraud. They showed her the time sheets, the door badging data, the Camstar logs, and the pictures of her leaving earlier than she recorded as her quitting time. Applicant stated that she charged the hours to reimburse herself for her personal expenditures for food, like pizza for employees on the second shift. She stated that her previous supervisor would give her \$350 for such purchases. Applicant admitted that no one since that last manager authorized her to incur those costs. Applicant stated that she decided on her own to put extra time on her time card to reimburse herself. (Applicant's Exhibit B.)

Applicant was placed on leave without pay. She was subsequently terminated on June 29, 2021. Company policy set forth in their handbook prohibits, "altering, falsifying, or tampering with time record, or recording time on another employee's time record are prohibited and may result in disciplinary action up to and including termination of employment." (Applicant's Exhibit B.) She stated that the Director and her Manager, quit the job about five months before she was terminated.

There are many discrepancies in Applicant's testimony. She initially denied committing time card fraud. (Answer to SOR.) Company records indicate that she put extra time on her time card and decided on her own to do it to reimburse herself. (Applicant's Exhibit B.) She stated that she had approval from her manager to leave early at times, to work overtime if she needed to, and to reimburse herself for money she spent on others for parties, luncheons, or other celebrations. (Tr. p. 33-37 and 47-48.) She stated that she did not reimburse herself for these expenses. (Tr. p. 44) She stated that she has never admitted to committing time card fraud. (Tr. p. 43)

A letter from Applicant's past manager, who approved her time cards for the period in question, and who left the company the month before Applicant was terminated, stated that there was an equipment outage that he remembers one day in May 2021, and he did allow employees to go home early. On that occasion, he stated that he encouraged the Applicant to mark her time card like everyone else. (Applicant's Exhibit A.)

Policies

When evaluating an applicant's suitability for a security clearance, 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 to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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. Under Directive ¶ E3.1.15, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 the 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 adverse 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

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Two are potentially applicable in this case:

(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.

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment .

Applicant misconduct involving time card fraud is a serious violation of company security rules and regulations. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

(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

None of the mitigating conditions apply. Applicant's misconduct is egregious. As an employee of a defense contractor, Applicant is required to follow all DoD rules, regulations, company policies, and procedures. It is not clear whether Applicant had the approval of her manager to commit this time fraud, (which sounds outlandish), or whether she committed it on her own. In any event, it does not really matter. What is of concern to the Government is the fact that Applicant did not have the requisite judgment and reliability to stop this misconduct. She knew or should have known that this conduct was at the very least questionable and she should have reported it to her company security office, or other upper management. Management discovered this discrepancy on its own. The fact that she continued with this practice demonstrates a serious character flaw.

It is apparent that Applicant does not understand the seriousness of this misconduct. Nor does she understand the great responsibility that comes with possessing a security clearance. To be eligible for a security clearance, Applicant must have the requisite judgment and reliability to make sound decisions, at all times, even when no one is looking, regardless of what is or is not authorized. Here we have a pattern of repeated incidents of false and fraudulent time card reporting. Applicant blames her manager for giving her approval to commit this fraud. This excuse is unacceptable.

A security clearance is a privilege and not a right. To be found eligible, it must be clearly consistent with the national interests to grant or continue a security clearance. This decision must be made in accordance with the DoD Directive and its guidelines. Based upon the information presented, Applicant's history of misconduct and untrustworthiness in the workplace shows poor judgment and unreliability and prevents her from being eligible for access to classified information. The Personal Conduct guideline is found against Applicant.

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 relevant 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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a.	Against Applicant

Conclusion

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

Darlene Lokey Anderson
Administrative Judge