



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



In the matter of:)
)
) ISCR Case No. 23-02853
)
Applicant for Security Clearance)

Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel
For Applicant: *Pro se*

10/02/2024

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guidelines J (Criminal Conduct) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 2, 2022. On March 12, 2024, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines J and E. The DoD acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG) (December 10, 2016).

Applicant submitted her Answer to the SOR on April 19, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written file of relevant material (FORM) on May 31, 2024. On, 2024, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was

given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She acknowledged receipt of the FORM on June 12, 2024, and submitted a Response with supporting letters on July 18, 2024. The case was assigned to me on August 6, 2024.

The SOR and the Answer are the pleadings in the case. FORM Items 3 through 6 are admitted into evidence without objection.

Findings of Fact

In Applicant's Answer to the SOR and in her FORM Response, she admitted not providing details about her criminal past on her SCA because of how much time had passed and being pressured at work to complete her SCA, SOR ¶¶ 1.a-1.c. She admitted the underlying criminal conduct, SOR ¶¶ 2.a-2.d. Her admissions are incorporated in my findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 53 years old. She has been married for 11 years and has four adult children. She is the guardian of a 15-year-old. Her spouse has been incarcerated for the past 15 to 20 years. She earned her GED in 2015. (Item 3, Item 5.)

SOR ¶ 1.a: Falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed by you on July 25, 2022, in your response to "Section 22 -Police Record (EVER) Other than those offenses already listed, have you EVER had the following happen to you? ... Have you EVER been charged with any felony offense? (Include those under the Uniform Code of Military Justice and non-military/civilian felony offenses). ... Have you EVER been charged with an offense involving firearms or explosives?" "Have you EVER been charged with an offense involving alcohol or drugs?" You answered "No". Applicant admitted in her Answer that she failed to disclose on her SCA that: in September 1999 she was arrested in [X] and charged with Possession of Marijuana, Possession of Stolen Goods, and Making a False Statement to a Peace Officer and found guilty of Marijuana Possession and False Statement to a Peace Officer; in February 1996, she was arrested and charged in [Y] for Larceny of a Credit Card, Felony and found guilty of Misdemeanor Larceny; and in November 1995, she was arrested in [Z] and charged with Assault with a Dangerous Weapon, a felony. She admits she did not disclose these events on her 2022 SCA. (Answer; Item 3 – Item 6.)

SOR ¶ 1.b: Falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed by you on September 16, 2019, in your response to "Section 22 Police Record c. Have you EVER been charged with any felony offense? (Include those under Uniform Code of Military Justice.)" You answered "No" and thereby deliberately failed to disclose that you were arrested and charged with a Felony set forth in subparagraph 2.b., below. Applicant admits that in February 1996, she was arrested and charged in [Y] for Larceny of a Credit Card,

a felony and was found guilty of Misdemeanor Larceny. She further admits that she did not disclose the event on her 2019 SCA. (Answer; Item 3 – Item 6.)

SOR ¶ 1.c: Applicant falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed by you on September 16, 2019, in your response to "Section 22 Police Record e. Have you ever been charged with any offenses(s) related to alcohol or drugs?" You answered "No" and thereby deliberately failed to disclose that you were charged with drug/alcohol related offense as set forth in subparagraphs 2.a., below. Applicant admits that in September 1999, in [X] she was charged with Possession of Marijuana, Possession of Stolen Goods, and Making a False Statement to a Peace Officer (SOR ¶ 2.a.) and failed to disclose this matter on her 2019 SCA. (Answer; Item 3 – Item 6.)

Applicant did not admit any of her criminal activity alleged in SOR ¶¶ 2.a through 2.c, until confronted during her security clearance interviews. In 2019 she responded no to whether she had been charged with a felony and then was confronted with the incidents. In 2022, she was asked if she had ever been arrested, charged, or convicted of any offense and the question had to be repeated before she divulged her criminal history. She provided individual statements with her Answer about each criminal event. The last offense was when she was arrested and charged in December 1999 as an accomplice to Burglary in [B] (SOR ¶ 2.d.). Since then, she has had no further involvement with law enforcement. (Answer; Item 3 – Item 6.)

Applicant states during the time that she was completing her 2022 SCA she was at work completing daily time sensitive obligations and was feeling pressured by her company's FSO to complete the SCA. In her rush to complete the SCA she left out these events from her life. She states she is a "professional, honest, hardworking and dedicated woman of God not just to myself and my family, but to my coworkers and place of employment." She states she was never trying to be deceitful. It was her mindset that she "had removed these occurrences from [her] life" and because she was "never convicted of anything, so that makes it even more hard to remember." (Item 4.) Item 6 shows guilty findings for the September 1999 incident and the 1996 incident.

Applicant's character letters she submitted with her Answer and Response reflect a dedicated employee with a positive attitude ready to work and be proactive in handling situations before they become an issue. She is in a position of trust handling sensitive information within the "described instructions and controls" and is described as having the highest character and trustworthiness. (Answer; Response.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants

eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline E, 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 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.

Applicant's deliberate failures to disclose her criminal past on her SCAs raise the following disqualifying condition under AG ¶ 16:

(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.

The following mitigating conditions, under AG ¶ 17, are potentially relevant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

AG ¶¶ 17(a) and 17(c) are not established for SOR ¶¶ 1.a, 1.b, or 1.c. Applicant's explanations are not credible. She was confronted in 2019 about the omissions and in 2022 she again failed to include these incidents on her 2022 SCA, which she only divulged under repeated questioning. The evidence reflects that she admitted her omissions to an investigator only after being confronted during her security clearance interviews. Applicant's false statements concerning her criminal past and criminal convictions are not "minor," because such statements strike at the heart of the security clearance process. See ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011). An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. See ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002). Applicant's false statements were recent and calculated to give her the most favorable profile for her application for a position requiring a security clearance.

Guideline J, Criminal Conduct

The concern under this guideline is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

Applicant's admissions in her Answer and Response are sufficient to raise the following disqualifying conditions under AG ¶ 31:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The following mitigating conditions under AG ¶ 26 are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶¶ 32(a) and 32(d) are established. Applicant's criminal conduct occurred in a specific period between 1995 and 1999 and there is no evidence of further involvement with law enforcement since 1999. Her character evidence and employment history reflect her rehabilitation. Her criminal conduct is mitigated by time and her good employment record.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common-sense 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 Guidelines E and J in my whole-person analysis and have applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guidelines E and J, and evaluating all the evidence in the context of the whole person, I conclude Applicant mitigated the security concerns under Guideline J but has not mitigated the security concerns raised by her conduct under Guideline E.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1: Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a - 1.c:	Against Applicant
Paragraph 2: Guideline J:	FOR APPLICANT
Subparagraphs 2.a - 2d:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale
Administrative Judge