



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



In the matter of:)
)
) ISCR Case No. 23-02659
)
Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: I. Charles McCullough, III, Esq.

08/06/2025

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the sole personal conduct security concern. Eligibility for access to classified information is granted.

Statement of the Case

On April 24, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing a security concern under Guideline E (Personal Conduct). The action was taken 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 adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on May 7, 2024, and requested a hearing before an administrative judge. The case was assigned to me on January 13, 2025. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 21, 2025, scheduling a video conference hearing for February 13, 2025. I convened the hearing as scheduled.

Government Exhibits (GE) 1-3 and Applicant's Exhibit (AE) A were admitted in evidence without objection. Neither party requested to keep the record open and it closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on February 24, 2025.

Findings of Fact

Applicant is 38 years old. She graduated from high school in 2005, and she earned an associate degree in 2007, a bachelor's degree in 2010, and a master's degree in 2015. She has also earned various certifications. She resided with a cohabitant as of her December 2022 security clearance application (SCA). (Answer; Tr. 48-54; GE 1)

Since 2009, Applicant has primarily worked for various DOD contractors, to include her current employer. She was first granted a clearance in 2009 and it was suspended in approximately September 2022, as further discussed below. She has an offer of employment as a testing system engineer from another company, also a DOD contractor, who is sponsoring her for a clearance. (Answer; Tr. 5-6, 49-55, 80-81; GE 1-2)

Personal Conduct

The SOR alleges Applicant submitted approximately 427 false labor hours while employed by a DOD contractor (Company A) from about August 2021 to May 2022, a consequence of which was her clearance being suspended and her employment terminated in about September 2022. Applicant denied the SOR allegation in her Answer.

Applicant worked as a scrum master for Company A, assigned to Another Government Agency (AGA), from August 2021 to September 2022. She previously worked for two other DOD contractors--first Company B, and then Company C. She left Company B to work for Company C because of downsizing on the contract in which she worked during the COVID-19 pandemic. When she did so, she turned down an offer of employment from Mr. X to work for his company, Company D. However, Company C was the prime contractor for Company D, and Mr. X became Applicant's team lead at Company C, as the subcontractor for Company C. She testified that Mr. X was "very, very angry that I took that position over one with his . . . company," and he continually harassed her at Company C, creating a hostile work environment. (Tr. 57) He micromanaged her and sent her threatening messages telling her he would get her removed. She reported Mr. X's harassment to Company C, who investigated his conduct, substantiated the harassment, and removed him as team lead but retained him as a subject-matter expert. She testified that the harassment continued because Mr. X was "very, very angry about getting demoted as the team lead." (Tr. 57) Applicant consequently left Company C to work for Company A, but he continued to harass her. (Tr. 54-58, 82-92, 106-107)

Immediately upon her arrival at Company A, contrary to being told by its recruiters before accepting employment that she would be extremely busy in her role as scrum master, she lacked work. She reported her lack of work to Company A officials and requested to be moved to another AGA contract. Company A officials told her to "sit tight,"

as they did not want to risk losing her billet on the contract, and that her work invoices should reflect her daily shifts at AGA and that she was “billing for [her] availability.” (Tr. 63) Despite the lack of work, she continued to timely report to work at AGA daily, she timely departed AGA at the end of her workday, and she billed accordingly. (Tr. 54-55, 58-68, 77-80, 85-97, 114-116)

Applicant experienced anxiety about her lack of work, the optics of occupying a workspace at AGA with little work to do, and the feeling that she was not a meaningful contributor. Her anxiety enflamed a medical condition she had been diagnosed with in 2017. Compounding her anxiety was the harassment she continued to suffer from Mr. X. To relieve her anxiety, she followed the suggestion of one of her U.S. Government leads and began to take frequent walks outside the AGA building in which she worked, while remaining on AGA property. At times, she was accompanied by U.S. Government employees or DOD contractors and they would discuss unclassified work-related matters. On the occasions when she had “an extreme amount of downtime,” she sat in front of the AGA building in which she worked and read unclassified work-related materials or met with clients. (Tr. 58-71, 77-80, 85-98, 101-109, 116, 119-120; GE 2; AE A)

In approximately June 2022, Applicant was notified to report to the AGA Office of Inspector General’s (OIG) office. She was informed that an AGA OIG investigation of her turnstile entry and exit records and work invoices revealed she was improperly charging for hours when she was outside the AGA building, where she was no longer considered to be working, in violation of the Federal Acquisition Regulation. She learned from Mr. X that he reported her sitting outside during work hours to the AGA OIG’s office. She reported to the AGA OIG’s office her belief that Mr. X’s actions were in retaliation for her complaint of harassment against him and his consequent removal as team lead at Company C. She explained she continued to work when she went outside of the AGA building, which she did to escape Mr. X’s harassment. She ceased going outside the AGA building during work hours from June to September 2022, after she was informed that her conduct was impermissible. (Tr. 55-58, 71-78, 85-100, 105-114; GE 2-3)

AGA OIG records from September 2022 reflect its investigation substantiated contract labor mischarging submitted by Applicant totaling 427 hours, or an estimated loss of \$68,770, from August 2021 to February 2022. (GE 3) Applicant maintained this was the first time she learned her conduct was impermissible. She stated she received an email from the OIG that she did not engage in criminal conduct. (GE 2)

In September 2022, Applicant’s clearance was suspended. As required, she reported to Company A human resources where she was terminated, as a clearance was required for the job. She forfeited to Company A all her paid time off and leave. She was notified by Company A that it would conduct its own investigation but it considered her to be at fault and wanted her to repay Company A mischarged labor in the amount of \$68,770. Although her attorney was prepared to negotiate with Company A, they did not receive any communication from Company A after February 2022, and the company was sold in February 2023. (Tr. 74-77, 99-100, 105-112, 116-119; GE 2)

Applicant listed her clearance suspension and employment termination, due to time misuse allegations by Company A, on her December 2022 SCA. She also discussed this information during her June 2023 background interview and March 2024 response to interrogatories. (GE 1-2) She had no other performance issues or disciplinary actions. (Tr. 75-76, 84-85, 96, 112-113; GE 1-2) She stated in her SCA, "In my year with this company I was never reprimanded or provided any warning from prime, my company, or government employees. There was a misunderstanding of hours spent inside a building vs. on the secured compound." (GE 1)

Numerous character references vouched for Applicant's judgment, reliability, and trustworthiness. (Answer) Two witnesses testified, to include a close friend of over 20 years, and a former team member who served as her team leader from approximately 2016 through 2020, who has held a clearance since 1998. The latter provided favorable input into Applicant's performance evaluations. Both attested to Applicant's judgment, honesty, reliability, trustworthiness, and willingness to abide by rules and regulations. (Answer; Tr. 14-47, 54-55)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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."

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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Section 7 of Exec. Or. 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* Exec. Or. 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 cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

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

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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;

(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 . . . ;

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

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

Applicant submitted approximately 427 false labor hours while employed by a DOD contractor from about August 2021 to May 2022, as discussed above, which raises questions about her judgment, trustworthiness, and reliability. AG ¶¶ 16(c), 16(d)(1), 16(d)(2), and 16(d)(4) apply.

AG ¶ 17 describes the following relevant conditions that could mitigate the personal conduct security concerns:

(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.

Applicant followed the suggestion of one of her U.S. Government leads when she exited the AGA building in which she worked while remaining on AGA property during her work hours. She followed the instruction given her by Company A officials and submitted work invoices that reflected her availability during her daily shifts at AGA. The first time she learned her conduct was impermissible was when she was notified by the AGA OIG's office in June 2022, and she immediately ceased going outside the AGA building during work hours until her termination in September 2022. She forfeited to Company A all her paid time off and leave and was prepared to negotiate with Company A to repay the mischarged labor, but Company A has not communicated with her since approximately February 2022. She listed her clearance suspension and consequent employment termination due to time misuse allegations by Company A on her SCA, and she also discussed this information during her background interview and in her response to interrogatories. She has had no other performance issues or disciplinary actions. Her conduct is isolated, happened under unique circumstances, is unlikely to recur, and does not continue to raise doubts about her reliability, trustworthiness, and judgment. AG ¶¶ 17(c) and 17(d) apply.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the personal conduct security concern.

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

Subparagraph 1.a: For Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge