

KEYWORD: Personal Conduct

DIGEST: Applicant is a 35-year-old employee of a defense contractor. Applicant was terminated from employment in December 2003, after she inadvertently submitted a timecard which reported about three more hours than she actually worked. Applicant’s unintentional mistake does not raise security concerns. Clearance is granted.

CASENO: 03-19967.h1

DATE: July 17, 2007

In re:)	
)	
-----)	ISCR Case No. 03-19967
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

William F. Savarino, Esq.

SYNOPSIS

Applicant is a 35-year-old employee of a defense contractor. Applicant was terminated from employment in December 2003, after she inadvertently submitted a timecard which reported about three more hours than she actually worked. Applicant’s unintentional mistake does not raise security concerns. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 22, 2004, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on February 28, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on May 16, 2007. A Notice of Hearing was issued on May 21, 2007, scheduling the hearing for June 19, 2007. Applicant’s counsel requested a delay in the case. That request was granted. An Amended Notice of Hearing was issued on May 30, 2007, scheduling the hearing for June 26, 2007. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on July 6, 2007.

RULINGS ON EVIDENCE AND PROCEDURE

A Motion to Amend the Statement of Reasons was granted to change Applicant’s last name in the caption of the SOR to her married name, which is Applicant’s current name. The previous name remains in the caption in brackets.

The Government offered four exhibits that were marked as Government Exhibits (GE) 1 through 4, and admitted without objections. Applicant testified and offered one exhibit that was marked Applicant Exhibit (AE) A, and admitted without objection.

FINDINGS OF FACT

Applicant’s admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 35-year-old employee of a defense contractor. She is married, with no children. Applicant holds a bachelor’s degree. She has held a security clearance since 1999.²

Applicant worked for a company from January 2000 to December 2003. When Applicant and other employees would enter and exit the work facility of this company, the company required them to utilize an iris scanner to gain access. The iris scanner also monitored and kept an electronic record of when employees entered and left the facility. A timekeeper had access to that data. Employees would often ask the timekeeper what hours they worked when submitting their timecards, for pay

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

²Tr. at 17, 43-44; GE 1.

purposes. The employees were paid every two weeks, and submitted their timecards at the end of the two-week pay period.³

Applicant married her third husband on the morning of December 1, 2003, a Monday, in a civil ceremony at the County Courthouse. The marriage certificate states the marriage occurred at 8:56.⁴ Applicant took several hours off work in the morning for the ceremony, then went to work late. December 1, 2003 was the first day of a new two-week pay period. Applicant's timecard for that pay period would have been due after the last day of the pay period, which was Friday, December 12, 2003. When Applicant submitted her timecard, she asked the timekeeper for her hours. The hours he told her did not reflect that Applicant was off the morning of December 1, 2003. Applicant did not remember to correctly annotate that she only worked about five hours on December 1, 2003, and submitted a timecard that stated she worked eight hours on that date.⁵ I find this was an inadvertent mistake on Applicant's part, and not an intentional falsification of her timecard.

On December 16, 2003, Applicant's employment was terminated. A letter from the company stated:

This letter is to inform you that [employer] has elected to exercise the "at will" option to terminate the employment relationship, effective 16 December 2003. The basis for this decision is for Violation of Company Policy . . . We wish you good luck in your future endeavors.⁶

There were no employer records submitted as evidence, and no witnesses called to testify as to the nature of the violation of company policy. Applicant's company provided her a copy of the termination letter when she was terminated, but would not provide specific details as to the nature of the violation. Applicant testified she was eventually told by corporate officials that the termination occurred because she submitted the timecard which reported hours that she did not work.⁷

Applicant was interviewed for her background investigation on April 30, 2004. Applicant was asked about three complaints on file from her former employer. She admitted she did not work a full day on December 1, 2003, but denied she intentionally falsified her timecard. Applicant denied knowledge of the other complaints. The investigator did not inform Applicant of the exact nature of the complaints. The statement contains no specifics, but it appears there may have been allegations of a sexual comment and harassment of a co-worker. Applicant wrote she was never informed of any complaints, and that she could not defend herself against the allegations since she did not know what the allegations were. Applicant did admit there were several employees she did not get along with,

³Tr. at 25-30.

⁴GE 2.

⁵Tr. at 31-34, 36-37, 42-43.

⁶GE 3.

⁷Tr. at 35.

or had some type of run-in with.⁸ No additional evidence was submitted about the alleged incidents during Applicant's employment with this company. As noted above, I find Applicant unintentionally submitted a timecard which reflected more hours than she actually worked. There is no reliable evidence to support a finding that Applicant violated any other company policies.

A former supervisor of Applicant testified she was a trustworthy person who followed company rules and policy.⁹ Another former supervisor wrote that Applicant's work ethic was superb; she was diligent, dependable, reliable, honest, trustworthy, and always willing to abide by company and client rules.¹⁰

POLICIES

"[N]o one has a 'right' to a security clearance."¹¹ 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 occupy a position . . . that will give that person access to such information."¹² The President 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."¹³ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.¹⁴ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁵ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.¹⁶

The Directive sets forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the

⁸GE 4.

⁹Tr. at 49.

¹⁰AE A.

¹¹*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹²*Id.* at 527.

¹³Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹⁴ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁵*Id.*; Directive, ¶ E2.2.2.

¹⁶Exec. Or. 10865 § 7.

whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 and ¶ E2.2.1., of the Directive.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline E: Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

There are four Personal Conduct Disqualifying Conditions (PC DC) potentially applicable to this case. They are PC DC E2.A5.1.2.1 (*Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*), PC DC E2.A5.1.2.2 (*The deliberate omission, concealment or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*), PC DC E2.A5.1.2.4 (*Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation, or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*), and PC DC E2.A5.1.2.5 (*A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*).

Applicant submitted a timecard that reflected more hours than she actually worked. This was an unintentional, inadvertent act. Department Counsel stated that the Government's concern in this case was that Applicant intentionally falsified her timecard for monetary gain, and that an unintentional or inadvertent act did not raise any concerns.¹⁷ No disqualifying condition applies in this case.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process

¹⁷Tr. at 69-70.

factors listed in the Directive. I have also considered every finding of fact and conclusion discussed above.

Applicant was terminated from her employment in December 2003, for submitting an incorrect timecard. This was an inadvertent act, with no intent to defraud her company. There were vague accusations of other complaints raised in Applicant's statement to her background investigator. Applicant admitted she did not get along with several co-workers, but denied knowledge of any other complaints. The Government did not submit independent evidence of co-worker complaints or allegations. Two of Applicant's former supervisors attested to her trustworthiness, dependability, reliability, honesty, and to her compliance with company and clients' rules and policy.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on her personal conduct.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline E: FOR APPLICANT

 Subparagraph 1.a: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Edward W. Loughran
Administrative Judge