



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 06-22986
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Department Counsel
For Applicant: *Pro Se*

September 25, 2008

Decision

LOKEY-ANDERSON, Darlene, Administrative Judge:

Applicant submitted her Questionnaire National Security Positions (SF-86) dated November 10, 2004. (See Government Exhibit 1). On May 9, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant answered the SOR in writing on June 5, 2008, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on July 9, 2008. A notice of hearing was issued on July 9, 2008, and the matter was scheduled for hearing on August 5, 2008. The Government presented sixteen exhibits, referred to as Government Exhibits 1 through 16, which were received without objection. The Applicant presented twenty-two exhibits, referred to as Applicant's Exhibits A through V. The Applicant also testified on her own behalf. The record remained open until close of business on August 20, 2008 to allow the Applicant the opportunity to submit additional documentation. Applicant submitted one Post-Hearing

Exhibit that was admitted into evidence. DOHA received the transcript of the hearing (Tr.) on August 12, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 44 years old and has a high school diploma. She is employed by a defense contractor as a Security Officer, and is applying for a security clearance in connection with her employment.

Paragraph 1 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because she engaged in criminal conduct.

Paragraph 2 (Guideline I - Psychological Conditions). The Government alleges that the Applicant is ineligible for clearance because she has certain emotional mental, and personality conditions that can impair her judgment, reliability or trustworthiness.

On October 8, 1997, the Applicant was arrested and charged with Threatening a Federal Official in violation of 18 U.S.C. Sections 115 and 1114, both felonies. (See Government Exhibits 2, 3, 5 and 14).

The charges were based upon the following information: The Applicant is said to have made numerous telephone calls and sent letters to a Congressman's office which contained verbal assaults and threats to kill members of his staff. The Applicant is said to have contacted the congressman's office in order to solicit assistance in obtaining passports for herself and her three children.

On June 14, 1997, the Applicant wrote a letter to Congressman A's office in which she requested assistance in resolving a custody battle. The letter was forwarded to Congressman's B's office who responded requesting additional information regarding the custody matter, and also provided the Applicant with a point of contact. During the months of July and August 1997, the Applicant made numerous telephone calls to Congressman's B's office in efforts to schedule an appointment.

On August 12, 1997, the Applicant was advised that she would not be granted an appointment. On August 13, 1997, the Applicant telephoned Congressman B's office and stated that because he had not solved her problems, she intended to go to his home to obtain his help.

On September 15, 1997, the Applicant arrived at Congressman B's office in Washington D.C. She stated that she and the Congressman had met in San Diego and had been long-time friends. It was noted by the office staff member that the Applicant was rambling and incoherent in her conversation and appeared to be delusional. On the recommendation of the staff member, who was the only one working in the congressman's office at that time, and who was frightened and intimidated by the Applicant's demeanor, the Applicant was to leave and return later that day. When the Applicant returned to the office, she related details of a complex custody case and spoke of mental and physical abuse she and her three children have experienced by an

unknown individual. The Applicant became belligerent as the conversation progressed and then demanded, "What are you going to do?". The Congressman's staff members who witnessed the conversation with the Applicant, described her as irrational and delusional with deep rooted "mental problems". While in the Congressman's office she became increasingly aggravated and violent. One staff member was prepared to forcibly remove the Applicant from the office when she turned and walked out.

On September 28, 1997, a telephone voice mail message was received by Congressman B's office. The caller identified herself stating, "Hi this is Lolita, I live at six seven four Palm Avenue, Imperial Beach,...I'd like to tell you something if you dare me, United States of the Government, I swear to God to put a bullet in your head. Now will you take me to court for threatening you". (See Government Exhibit 2).

On September 29, 1997, a staff assistant from the Congressman's office in San Diego, received a telephone call from the Applicant. The Applicant stated, "I'll have my father show you to your graves." Two handwritten letters were received at Congressman's San Diego office during the months of June and July 1997. The letters were both signed by the Applicant.

Following an investigation into the matter, the Applicant was arrested and charged with violating 18 United States Code, Section 115, which is influencing, impeding, or retaliating against a Federal Officer by threatening or injuring a family member, and Section 1114, assaulting, resisting, or impeding certain officers or employees. (See Government Exhibits 2, 3, 5 and 14).

On December 4, 1997, the court found that the Applicant was suffering from a mental defect, rendering her incompetent to understand the nature and consequences of the proceeding against her. It was ordered that she undergo psychiatric treatment. The Applicant was committed to the custody of the Attorney General for about 120 days of treatment. (See Government Exhibit 2). The Applicant stated that she spent approximately two years in custody.

On March 13, 1998, the Federal Bureau of Prisons issued a report to the presiding judge stating that the Applicant was at that point competent to stand trial. The report indicates that the Applicant suffers from Bipolar Disorder, delusions, including a belief in a government conspiracy against her and that she will need treatment for her illness in the foreseeable future. The Applicant had not been compliant with treatment efforts. (See Government Exhibit 2).

The Applicant was released from treatment and appeared in court in May 1998. The court placed her in a deferred prosecution program where she was on probation for about 18 months, with the condition that she remain medicine compliant and in treatment and not contact the Congressman's office. After completing the deferred prosecution program, the case against the Applicant was dismissed.

Based upon the Applicant's past psychological history, the Department of Defense requested that the Applicant undergo a psychiatric evaluation. Although the Applicant went to her evaluations, she was uncooperative with the doctors. A brief psychological report from a clinical psychologist who tried to evaluate the Applicant

indicates that the nature of her illness or condition was impossible to determine because she was completely uncooperative. (See Government Exhibits 8 and 9). A letter from another physician at a Psychiatric Center dated November 14, 2007, indicates that the Applicant was seen and evaluated on September 13, 2007, for a security clearance evaluation, but the Applicant denied any psychiatric history and no records were available or provided to the physician at the time. Upon review of the records, the physician indicates that she can no longer recommend the Applicant for a security clearance. She recommended that the Applicant receive an extensive evaluation or psychological testing to determine whether she is fit for work. (See Government Exhibit 11).

The Applicant denies that she has ever had a mental illness of any sort. (Tr.p. 144). A letter to DOHA from the Applicant in her own handwriting states in part, " Keep in mind I don't want classified, secret, or Top Secret clearances at this time. I explained I'm not skilled and or trained enough or worth enough for those positions". (See Government Exhibit 13).

The Applicant testified that the address from which the telephone calls were to have come from was where she lived from time to time, but that there were other individuals who lived at the residence who were convicted felons. (Tr. p 50). Applicant indicated that she had moved to Clovis with her three children. Two weeks later, her children were taken from her. She believes that her ex-boyfriend, whose brother or brother-in-law is a police officer, had something to do with it. One page of a police report offered by the Applicant indicates that the Applicant and her boyfriend were having on- going relationship problems and were in a conflict over who was the father of one of their children. The Applicant's boyfriend was given temporary custody of the Applicant's children and the Applicant was ordered to move out of the apartment. The Applicant indicates that she has not seen her children since 1997. For assistance with the matter, the Applicant admits that she contacted congressman B's office. She denies any criminal behavior on her part. She contends that she wrote only one letter to the Congressman and that she never called or went to the Congressman's San Diego office.

The Applicant submitted various types of documentary evidence in an attempt to show that she has no mental defect, but is functional and talented. Among other documents, she placed into evidence a copy of her business license for her cleaning service. Her business is called, "Brain Dead", named after her cousin who died. (Tr. p. 31 and Applicant's Exhibit A); a truck driver's daily log book, (Applicant's Exhibit B), articles on a contemporary fan design by her cousin, (Applicant's Exhibit C), pictures of family members who have contributed to society in some way, including pictures of her three children, (Applicant's Exhibit D), her social security card, commercial driver's license and Haz-Mat endorsement (Applicant's Exhibit E), a letter from an elementary school concerning her children (Applicant's Exhibit G), a court summons related to the incident with her boyfriend, (Applicant's Exhibit H) and various other correspondence, including a letter from the registrar of voters with whom the Applicant volunteers (Applicant's Exhibit I), birth certificates of her children (Applicant's Exhibit L), one page of a police report when her children were removed from her home (Applicant's Exhibit M), a negative drug screening test (Applicant Exhibit S), her leave and earning report to show that she pays taxes, (Applicant's Exhibit T), and a letter from Congressman's B

office dated July 10, 1997, (Applicant's Exhibit V). In open court for my review she offered an acrylic art piece, a tray, that she had painted using stencil that was quite beautiful. (Tr. p. 84).

The Applicant has received numerous Certificates of Completion, Certificates of Achievement, and other awards for her outstanding performance in various capacities the past. (Applicant's Exhibit R).

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

Applicant completed a Questionnaire for National Security Positions, (SF-86) dated November 10, 2004, which asked, Question 21, "In the last 7 years, have you consulted with a mental health professional (psychiatrist, psychologist, counselor, etc.), or have you consulted with another health care provider about a mental health related condition?" The Applicant answered, "No". (See Government Exhibit 1). The Applicant indicated that upon the advise of her attorney she answered the question in that manner. (Tr. p. 102).

Question 23(a) of the same application asked the Applicant if he has ever been charged with or convicted of a felony? The Applicant answered, "No". (See Government Exhibit 1). The Applicant indicated that she consulted with a defense attorney who reminded her that she was not convicted and so she answered the question the way she did. (Tr. p. 102).

On June 16, 2006, in response to a request by a DoD investigator, the Applicant refused to sign a medical release for counseling and treatment records concerning her hospitalization at Federal Medical Center, Carswell, Fort Worth, Texas. The Applicant gave no excuse for this refusal. (Tr. p. 103).

On September 13, 2007, during an evaluation at the Psychiatric Centers in San Diego, the Applicant provided false information to the medical provider by failing to disclose her history of psychiatric treatment and hospitalization in December 1997 and from January 1998, to March 1998 at the Federal Medical Center, Federal Bureau of Prisons, Carswell, Fort Worth, Texas. The Applicant contends that all she did was stare at the physician during the entire visit. (Tr. p. 105).

Based upon the evidence presented, I find that the Applicant deliberately falsified her security clearance application by failing to disclose her psychiatric history and felony charges. She also failed to cooperate with the DoD authorities during her background investigation, by refusing to sign a medical release for her records. The Applicant's deliberate falsifications in his security clearance application, are violations of Title 18 of the United States Code, Section 1001, a felony.

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline J (Criminal Conduct)

30. *The Concern.* Criminal activity creates a 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.

Conditions that could raise a security concern:

31.(a) a single serious crime or multiple offenses;

31.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Condition that could mitigate security concerns:

None.

Guideline I (Psychological Conditions)

27. *The Concern.* Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

Conditions that could raise security concerns:

28.(a) behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior;

28.(b) an opinion by a duly qualified mental health professional that the individual has a condition not covered under any guideline that may impair judgment, reliability, or trustworthiness;

28.(c) the individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g., failure to take prescribed medication.

Conditions that could mitigate security concerns include:

None.

Guideline E (Personal Conduct)

15. *The Concern.* 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.

Conditions that could raise a security concern:

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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

16.(b) Deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct

- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “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. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in criminal conduct, psychological conditions, and dishonesty that demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in criminal conduct (Guideline J), Psychological Conditions (Guideline I), and dishonesty (Guideline E). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant’s conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines J , I and E of the SOR.

Under Guideline J, Criminal Conduct, disqualifying conditions, *31.(a) a single serious crime or multiple offenses* and *31.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted* apply. None of the mitigating conditions are applicable. The Applicant's arrest and two felony charges for Threatening a Public Official occurred in October 1997. Although she was arrested only once, the series of criminal incidents that led up to the charges were extremely serious. In 2004, she deliberately falsified her security clearance application by concealing material information concerning her psychological history and her felony charges. By doing so, she committed violations of Title 18, United States Code, Section 1001.

Under Guideline I, Psychological Conditions, disqualifying conditions *28.(a) behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior*, and *28.(b) an opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness* apply. None of the mitigating conditions are applicable.

The Applicant was diagnosed with Bipolar Disorder, delusions, including a belief in a government conspiracy against her. It was determined that she would need treatment for her illness in the foreseeable future. However, the Applicant has not been compliant with treatment efforts. More importantly, she has not been honest with her doctors concerning her condition and therefore they have been unable to make a reliable assessment as to whether, based on her current condition, she is or is not eligible for access to classified information. Accordingly, without a proper assessment, given her past diagnosis, I find against the Applicant under this guideline.

Applicant's conduct under Guideline E, Personal Conduct is also very troubling. She has not been honest with the Government in answering questions on her security clearance application about her psychological history and her felony charges. She deliberately tried to conceal the truth. So much dishonesty confirms to the Government that the Applicant's credibility is a security concern. It is obvious that she intentionally concealed this information from the Government, hoping to minimize the seriousness of the matter. Consequently, her dishonesty with the Government concerning this matter is unacceptable.

Under Guideline E, Personal Conduct, disqualifying condition *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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of her

personal background. None of the mitigating factors set forth in the Directive under Guidelines E or J apply.

I have also considered the “whole person concept” in evaluating the Applicant’s eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information.

The Applicant has not demonstrated that she is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guidelines J (Criminal Conduct), I (Psychological Conditions) and E (Personal Conduct).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2 and 3 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.
Subpara. 1.a.: Against the Applicant.

Paragraph 2: Against the Applicant.
Subpara. 2.a.: Against the Applicant.
Subpara. 2.b.: Against the Applicant.

Paragraph 3: Against the Applicant.
Subpara. 3.a.: For the Applicant.
Subpara. 3.b.: Against the Applicant.
Subpara. 3.c.: Against the Applicant.
Subpara. 3.d.: Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge