



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



In the matter of:)
)
) ISCR Case No. 12-12373
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel

For Applicant: *Pro se*

12/17/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On February 21, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR set forth reasons why DOD could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. On July 5, 2014, Applicant answered the SOR allegations and requested a hearing. This case was assigned to me on September 4, 2014. On September 11, 2014, the Defense Office of Hearings and

Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for September 25, 2014. The hearing was held as scheduled.¹

At the hearing, Department Counsel objected to instant message communications attached to Applicant's Answer to the SOR. His objection was overruled. He also offered Government Exhibits (GE) 1 through 8. Applicant did not object to GE 1 through 5, but objected to GE 6 through 8 because she disagreed with the content in them. Her objections were overruled. GE 1 through 8 were admitted into evidence. Applicant testified and offered no exhibits. The transcript (Tr.) of the hearing was received on October 3, 2014.

Findings of Fact

Applicant is a 26-year-old linguist who was born overseas, entered the United States as a refugee in 2000, and became a U.S. citizen in 2005. She began working for her current employer in August 2012. She dropped out of high school in the eleventh grade so that she could help support her family. She has never been married and has no children. She held a security clearance for about a year in 2010.²

The SOR listed seven Guideline E allegations. Two asserted that Applicant was terminated from jobs under unfavorable circumstances, while the other five were falsification allegations. Applicant denied each allegation.³

In late 2007, Applicant was charged with assault in the 4th degree and malicious mischief in the 3rd degree. Both were misdemeanor charges. During this incident, Applicant and a male acquaintance had an argument. The male acquaintance reported to police that Applicant became upset because he did not give her \$5,000 that she requested to help her boyfriend who was in jail. The police report further indicated that she cracked the windshield in the acquaintance's car by kicking it and threw a set of keys at him. The keys hit him in the face below the left eye and resulted in a possible permanent eye injury. As a result of that injury, he had difficulty seeing, reading, and driving with his left eye. The damage to the car's windshield was about \$200.⁴

In a counterintelligence-focused security screening interview on September 10, 2012, Applicant was questioned about the above criminal charges. She reportedly stated that she lent the male acquaintance \$1,000; he refused to return the money because he did not want her to go on vacation with another male; and, when she pushed him away during this incident, his hand that was holding keys hit his face. Her version of the events changed somewhat at the hearing. She testified that she had

¹ At the hearing, Applicant waived the 15-day notice requirement. See Tr. 14.

² Tr. 6-8, 40-48; GE 1, 2, 3.

³ Applicant's Answer to the SOR.

⁴ GE 2, 3, 4, 5.

worked for the male acquaintance for three month, that he did not pay her for that work, and that she was seeking her unpaid wages of \$2,000 for a vacation. She further testified that “he grabbed her in the wrong place” and she pushed him. She described the male acquaintance’s version of the events as a lie. She also indicated that she pled guilty, took responsibility for this incident, but further stated she did not hit him. In August 2008, prosecution of the charges was deferred subject to Applicant having no violations in 12 months, performing 20 hours of community service, completing an anger management program, and paying a fine of \$700. In August 2009, the charges were dismissed with prejudice.⁵

In February 2011, a notice of trespass was filed against Applicant. This notice was filed because she was involved in a verbal dispute in a retail store that disrupted customers and normal business. During the dispute, she allegedly communicated threats to the store manager. The notice of trespass revoked her permission to enter the store for one year. This conduct was not alleged in the SOR.⁶

In January 2012, Applicant was working overseas as a linguist in a combat zone. On January 30, 2012, an overseas military unit released her back to her employer after a string of confrontations, both verbal and physical, with a coworker. Her behavior was described as unprofessional and detrimental to the unit’s mission. However, specifics about her behavior are unknown. On February 1, 2012, Applicant’s employer issued a termination report that reflected her employment ended under unfavorable circumstances. The report noted that Applicant was dismissed by the client (*i.e.*, the military unit) after a string of confrontations. In her Answer to the SOR, she stated that she submitted a letter of resignation that predated her termination, but her resignation was not processed properly because she refused to engage in sexual relationships with two managers.⁷

In early 2012, Applicant was rehired by the same company and worked again overseas. On March 29, 2012, she was involved in an incident in which a male friend, who some identified as her boyfriend, acted in an unprofessional and threatening manner to coworkers and managers. During the incident, Applicant stated that she knew a good lawyer and would sue the employer because she and her friend were treated unfairly. At or near the time of that incident, she also indicated that she was quitting and wanted a flight home arranged for her. After a manager talked with her, she

⁵ Tr. 37-38, 50-59, 72-75; GE 2, 3, 4, 5. In her Office of Personnel Management interview of September 7, 2012, and her Answer to the SOR, Applicant’s version of this incident was similar to what she provided during the counterintelligence-focused security screening interview.

⁶ Tr. 61-64; GE 8. Conduct not alleged in the SOR “may be considered (a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular adjudicative guideline is applicable; or (e) to provide evidence for whole-person analysis under Directive Section 6.3 . . . ISCR Case No. 00-0633 at 3 (App. Bd. Oct 24, 2003).” ISCR Case No. 03-20327 at 4 (App. Bd. Oct 26, 2006). Non-alleged conduct will only be considered for these limited purposes.

⁷ Tr. 64-72; GE 6, 7; Applicant’s Answer to the SOR.

changed her mind about quitting. At some point, she also requested to be assigned to an outlying location and asked a manager to mislead her friend into thinking she returned to the United States. On April 3, 2012, Applicant's employer issued a termination report that reflected her employment ended under unfavorable circumstances. The report noted that Applicant's performance was unprofessional and her antagonistic behavior resulted in her "boyfriend/linguist" assaulting a site manager. It also indicates that she should not be rehired. In her Answer to the SOR, she stated that she was the victim of sexual harassment in that job and that she was essentially retaliated against for filing a complaint against managers. She testified that she was treated wrongly by the company and that she decided to quit that job. She provided instant message communications in which she asked a former manager to provide her a letter indicating that she quit. The former manager declined to provide such a letter, but did indicate that he would have done so if he were still a manager there.⁸

On August 28, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). In Section 13A of the e-QIP, she listed employment as a linguist from September 2011 to February 2012. In follow-on questions addressing that employment, she was asked if she was fired, quit after being told she would be fired, left by mutual agreement following charges or allegations of misconduct, or left by mutual agreement following notice of unsatisfactory performance. She responded "No" to those questions and failed to report her terminations of employment in January 2012 and March 2012. In her Answer to the SOR, she claimed that she was unaware that she was terminated and believed her letter of resignation was the basis for the end of her employment.⁹

In Section 12 of the e-QIP, Applicant was asked about her education in the last ten years. In that section, she indicated that she attended high school from September 2002 to June 2006. She also responded "Yes" to a question that asked if she received a degree/diploma and indicated that it was a "High School Diploma" awarded in "06/2006." She testified that, when she was filling out the e-QIP, there were other people present. She was embarrassed to list that she did not graduate from high school because the other people would look down upon her. She indicated that she informed an investigator and her prospective employer that she did not graduate from high school.¹⁰

In Section 22 of the e-QIP, Applicant was asked if she had been charged with, convicted of, or sentenced for a crime in any court in the past seven years. She responded "No" to that question and failed to list the charges against her for assault in the 4th degree and malicious mischief in the 3rd degree in 2007. She testified that, when she was interviewed for her first security clearance, she told the investigator of the charges. She stated that the investigator told her there was no record of it and she did

⁸ Tr. 35, 64-72; GE 7.

⁹ GE 1.

¹⁰ Tr. 35-36, 46-50; GE 1, 3.

not have to tell the investigator about it. At the hearing, she stated the court clerk told her the charges were dismissed and she indicated that she was confused when she filled out the e-QIP. In her Answer to the SOR, she stated that she misinterpreted this question and indicated the probation officer told her this record was completely expunged, and she believed this matter need not be reported.¹¹

During an Office of Personnel Management (OPM) interview on September 7, 2012, Applicant reportedly stated that she left her linguist job in February 2012 when the contract ended. In the counterintelligence-focused security screening interview, Applicant reportedly stated that she left her linguist position in February 2012 because she was mistreated as a woman.¹²

During the counterintelligence-focused security screening interview, Applicant was also asked if she had any interaction with law enforcement authorities or the court system. The report of the interview indicated that she initially stated she did not have any interaction with law enforcement authorities or court systems. After being confronted with the assault and malicious mischief charges, she reportedly claimed the judge informed her that she did not have to mention such information because the charges were dismissed.¹³

Applicant presented letters of reference that described her as an industrious worker and very helpful. A lieutenant colonel indicated that she displayed a high degree of integrity, responsibility, and ambition.¹⁴

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AGs. In addition to brief introductory explanations for each guideline, the AGs 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(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all

¹¹ Tr. 36-38; 59-60; GE 1.

¹² Tr. 60-61; GE 2, 3.

¹³ Tr. 60-61; GE 2, 3.

¹⁴ GE 3.

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 access to classified information will be resolved in favor of 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.

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 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 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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;

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

(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 including that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior . . . ; (2) disruptive, violent, or other inappropriate behavior in the workplace; (3) a pattern of dishonesty or rule violations

In 2012, Applicant was fired twice from a linguist job for engaging in disruptive behavior. Such behavior raises questions about her reliability, trustworthiness, and good judgment. AG ¶ 16(d) applies to SOR ¶¶ 1.a and 1.b.

Applicant admitted that she intentionally provided false information in her e-QIP about graduating from high school because she thought others would look down upon her. Embarrassment is not a justification or excuse for a falsification. See ISCR Case No. 99-0557 (App. Bd. Jul. 10, 2000). AG ¶ 16(a) applies to SOR ¶ 1.g.

Applicant was not a credible witness. She made inconsistent statements about the criminal charges in 2007 and the falsification allegations. Sufficient information was presented to establish that she deliberately provided false information when she failed to disclose in Section 13A of her e-QIP and during her OPM interview that she was fired from jobs in January 2012 and April 2012. She also deliberately failed to disclose in Section 22 of her e-QIP and initially during her counterintelligence-focused security screening interview that she was charged with criminal offenses. AG ¶ 16(a) applies to SOR ¶¶ 1.c and 1.e. AG ¶ 16(b) applies to SOR ¶¶ 1.d and 1.f.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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 improper or inadequate advice of

unauthorized personnel or legal counsel advising or instructing the individual specifically concerning security clearance process. Upon being made aware of the requirement to cooperate or provide 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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant engaged in repetitive misconduct and intentionally submitted multiple false statements during the security clearance process. Her conduct raises serious security concerns. None of the above mitigating conditions 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(a):

(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 have incorporated my

comments under Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a young woman who came to this country as a refugee. She has endured many hardships. She served with the U.S. military in a combat zone. Nevertheless, her behavior raises serious security concerns and doubts about whether she can be trusted to protect classified information.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the personal conduct security concerns.

Formal Findings

Formal findings 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: AGAINST APPLICANT

Subparagraphs 1.a – 1.g: 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge