



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



In the matter of:)
)
) ISCR Case No. 13-00427
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

11/20/2013

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated foreign influence security concerns, but she has not mitigated personal conduct concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 29, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and E (personal conduct). The action was taken under Executive Order (EO) 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 the DOD on September 1, 2006.

Applicant submitted a notarized response to the SOR on June 18, 2013, and requested a hearing before an administrative judge. The case was assigned to me on October 11, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 15, 2013, scheduling the hearing for October 18, 2013. The

hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on October 24, 2013.

Procedural and Evidentiary Rulings

Request for Administrative Notice

Department Counsel submitted a written request that I take administrative notice of certain facts about Afghanistan and Pakistan. The request and the attached documents were not admitted into evidence but were included in the record as Hearing Exhibit (HE) I. Applicant did not object, and I have taken administrative notice of the facts contained in HE I. The facts are summarized in the written request and will not be repeated in this decision.

Evidence

Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. The record was held open for Applicant to submit additional information. She submitted documents that were marked AE B through D and admitted without objection. Correspondence about the additional exhibits is marked HE II.

Findings of Fact

Applicant is a 21-year-old linguist seeking a security clearance for employment with a defense contractor. She graduated from high school in 2010. She has never married, and she does not have any children.¹

Applicant's parents are citizens of Afghanistan. They came to the United States before Applicant was born. When Applicant was about eight years old, her mother took her to Pakistan to visit and help care for Applicant's grandmother. They stayed in Pakistan for almost three years before returning to the United States. They returned to Pakistan about two years later, when Applicant was 12 years old, and they stayed in Pakistan until she was 16 years old.²

Applicant's parents have been separated for years. Applicant has not had any contact with her father since about 1999. She believes he is living in the United States. Applicant's mother is a permanent resident of the United States.³

Applicant has seven siblings and half-siblings. Two of her siblings were born in Pakistan, but they are now U.S. citizens. Applicant and the remainder of her siblings and half-siblings were born in the United States. One of Applicant's sisters is married to

¹ Tr. at 26, 62-63; GE 1-4; AE D.

² Tr. at 25, 45-46; Applicant's response to SOR; GE 1-4; AE C, D.

³ Tr. at 45-46; Applicant's response to SOR; GE 1-4; AE D.

a citizen of Afghanistan who is a U.S. permanent resident. Applicant's sister and brother-in-law have four children who are U.S. citizens.⁴

Applicant has two aunts who are citizens of Afghanistan, living in Pakistan. Applicant went to Pakistan in about March 2011 to have dental work. She had to have work done on multiple teeth, and it was much less expensive than what she would have paid in the United States. She stayed with her aunts in Pakistan until about June 2011. Applicant has not had any contact with her aunts since she left Pakistan in 2011. Applicant's family does not have any direct association with the Pakistani government.⁵

Applicant had a friend in high school in the United States who was from Afghanistan. Applicant has not maintained close contact with the friend, but she still occasionally runs into her around town, and they will extend greetings. The friend is attending college in another part of the United States.⁶

Applicant was hired as a linguist for a defense contractor (Contractor A), shortly after she graduated from high school in 2010. She worked in Afghanistan for about three months. She was assigned to a remote and dangerous area that had limited communication capabilities. Applicant wanted to be able to periodically contact her mother, who had a heart condition. Applicant asked for communication access at her location or to be moved to a location that had better communication. Neither option was available. She was given the choice to remain where she was working or resign and return to the United States. She elected to resign and return to the United States.⁷

Applicant was hired as a linguist for another defense contractor (Contractor B) in July 2011. She was sent to Afghanistan in August 2011. She was terminated from her position in October 2011. On October 20, 2011, her military supervisor wrote that Applicant was released back to her company⁸ "due to her inability to perform her job in a combat environment. [Applicant] is unsuitable for the work environment, and is unable to adapt to the combat environment." The military officer also wrote that their unit was "recommending that [Applicant] wait at least five years before she tries to work as a linguist in a combat zone again."⁹ An employee of Contractor B wrote in a termination report:

⁴ Tr. at 45-52; GE 1-4; AE D.

⁵ Tr. at 26, 52-58; Applicant's response to SOR; GE 1.

⁶ Tr. at 57-58; Applicant's response to SOR; GE 2, 4.

⁷ Tr. at 26-29, 60-61; GE 1, 4; AE C, D.

⁸ The military supervisor incorrectly wrote that Applicant was released to Contractor A.

⁹ Tr. at 29-32; Applicant's response to SOR; GE 1, 4; AE C, D.

[Applicant] was released by client for making excuses to prevent from going off base, and when she did go off base she was not able to keep up with [military personnel] on patrol.¹⁰

Applicant stated that she was unaware that any of the military personnel were unsatisfied with her performance. She stated that she required dental work, and that she had to fly to an area that had a dentist. She was away from her work area for about a week when she was informed that she would not return to her work area, collect her gear and return to the area where she had the dental work. She testified that “once [she] arrived to [area where dental work was done], [she] was told by [her] site manager that [she] had to go home because there’s no positions for [her] at the moment right now and that [she] got terminated.” She remained at that area in Afghanistan for a few days and was then sent home.¹¹

Applicant submitted a Questionnaire for National Security Positions (SF 86) on November 24, 2011. She had recently been hired, or was about to be hired, by a third defense contractor (Contractor C). She listed her employment with the first two defense contractors. The SF 86 asked her to provide the “[e]xplanation/reason” for leaving the two jobs. She wrote that she resigned from her first linguist position in 2010. She did not answer the question that asked why she left her linguist position in 2011.¹² Applicant answered “No” to Question 13C of the SF 86, which asked if any of the following happened to her in the previous seven years:

- 1 – Fired from a job
- 2 – Quit a job after being told you’d be fired
- 3 – Left a job by mutual agreement following allegations of misconduct
- 4 – Left a job by mutual agreement following allegations of unsatisfactory performance
- 5 – Left a job for other reasons under unfavorable circumstances
- 6 – Laid off from job by employer¹³

Applicant completed a Counterintelligence-Focused Security Screening Questionnaire on December 5, 2011. It appears that much of the questionnaire was completed by someone asking the relevant questions to Applicant and then filling in the answers for her. Applicant reported her employment with the first two defense contractors.¹⁴ The interviewer noted that Applicant provided the following explanation for why she left the second position in October 2011:

¹⁰ GE 6.

¹¹ Tr. at 29-32, 44-45; AE B.

¹² Tr. at 32-33; GE 1.

¹³ GE 1.

¹⁴ AE C.

[Applicant] stated that SHE was working in Afghanistan when SHE started to have a tooth ache. SHE was sent to receive a root canal and was away for approximately a week. SHE stated that before SHE was able to return to work, SHE received a phone call stating that SHE would not be able to return to work. SHE claims to have never received a reason why SHE was not welcome back other than that the commander SHE was working for asked HER not to return. (emphasis in original)¹⁵

Applicant was interviewed for her background investigation by an Office of Personnel Management (OPM) investigator on December 16, 2011. A signed statement was not taken, but the interview was summarized in a report of investigation (ROI). The investigator reported that Applicant stated that she was never told why her employment with Contractor B ended in October 2011, as she had no disciplinary or performance issues, and the personnel at the site liked her. She stated that her site manager told her that the only reason he could think of was that someone might have been upset that she was gone for a week with a root canal. She stated that she was supposed to be given another contract to work on, but without explanation, she was sent back to the United States three days later.¹⁶

In her June 2013 response to the SOR, Applicant wrote:

I admit that I was fired from [Contractor B] in October of 2011. I apologize for not answering it correctly. The reason why I got fired was when I was stationed in [location] Afghanistan working with the U.S. [military] I started having severe tooth pain and I told my [lieutenant] about it. He said you will have to go to [location] for a [root] canal. I went to [location] and got my [root] canal done which took a couple of days. Once I was ready to go back to my place, I was told by my site manager that pack your bags and that I was fired.

Applicant submitted an SF 86 that she certified on September 3, 2013. She wrote in the SF 86 that she was fired by Contractor B in 2011 because of a “[d]iscrepancy between my Lieutenant and myself.”¹⁷

Applicant testified that she did not intentionally provide false information on her November 2011 SF 86, when she did not list how her employment ended in October 2011. She stated that she was confused as to whether she lost her job because there were no positions available, or if it was because of performance issues. She testified that no one ever told her that the military was dissatisfied with her service in 2011. She stated that she wrote a detailed explanation as to how her job ended in the additional comments section of the SF 86, and that a security officer at Contractor C helped her prepare the explanation. There is no detailed explanation in the November 2011 SF 86

¹⁵ AE C.

¹⁶ Tr. at 41-44; GE 4.

¹⁷ AE D.

that was admitted as GE 1. Applicant stated she did not maintain her copy of the SF 86. She was given the opportunity post-hearing to obtain a copy of the SF 86 with the comments or to contact the security officer at Contractor C. She submitted a copy of the Counterintelligence-Focused Security Screening Questionnaire that she completed on December 5, 2011, and her 2013 SF 86.¹⁸

Applicant was hired as a linguist by Contractor C in November 2011. She was again sent to Afghanistan. She submitted a letter of appreciation from the U.S. military for her work in Afghanistan, noting her:

Professional achievement in the exemplary performance of her duties while serving as a linguist for the [unit] from February 201[2] in support of Operation Enduring Freedom. During her short time with [unit], [Applicant] has shown dedication to the mission through her resilience and flexibility. Her good natured disposition and maturity make her a pleasure to work with. Even after taking enemy contact on her first ever patrol with [unit], [Applicant] returned to work with a positive attitude. The [U.S. military personnel] of the [unit] greatly appreciate [Applicant's] support and look forward to working with her more in the future.¹⁹

Applicant's SF 86 indicates that she was terminated from her above employment with Contractor C in April 2012, because of "[m]edical issues." She was rehired by Contractor C in September 2013.²⁰

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(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 available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

¹⁸ Tr. at 32-41, 65, 67-68; GE 1; AE B-D.

¹⁹ AE A.

²⁰ AE D.

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.”

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 B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a

foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information.

Applicant's parents are citizens of Afghanistan. Her aunts are citizens of Afghanistan and residents of Pakistan. Applicant's foreign contacts create a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion. They also create a potential conflict of interest. AG ¶¶ 7(a) and 7(b) have been raised by the evidence.

There are no disqualifying conditions raised by Applicant's high school friend or her brother-in-law, who is a citizen of Afghanistan and a U.S. permanent resident. SOR ¶¶ 1.b and 1.d are concluded for Applicant

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

I considered the totality of Applicant's family ties to Afghanistan and Pakistan. Applicant has born in this country. Her parents are U.S. permanent residents, and she has had no contact with her father since she was a young child. Applicant has not had any contact with her aunts since she left Pakistan in 2011. Her seven siblings and half-siblings are all U.S. citizens. Applicant has worked overseas under dangerous conditions in support of the national defense. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and

can lead to a favorable result for an applicant in a Guideline B case.”²¹ AG ¶¶ 8(a), 8(b), and 8(c) are applicable.

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 condition is 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;

Applicant answered “No” to Question 13C of the November 2011 SF 86. She should have answered “Yes” because of the circumstances surrounding how her employment ended in October 2011. Applicant denied intentionally providing false information on the SF 86. She stated that she wrote a detailed explanation as to how her job ended in the additional comments section of the SF 86, and that a security officer from Contractor C helped her prepare the explanation. There is no detailed explanation in the November 2011 SF 86 that was admitted as GE 1. Applicant stated she did not maintain her copy of the SF 86. She was given the opportunity post-hearing to obtain a copy of the SF 86 with the comments or to contact the security officer. I note that Applicant stopped working for Contractor C in April 2012. However, her 2013 SF 86 reports that she was rehired by Contractor C in September 2013.

Having considered all the evidence, including Applicant’s credibility, demeanor, multiple explanations, and motive to keep this information away from not only the DOD, but also her new employer, I find that Applicant intentionally provided false information on the 2011 SF 86. AG ¶ 16(a) is applicable.

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;

²¹ ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the 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; and

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

Applicant discussed her termination from Contractor B during her December 2011 Counterintelligence-Focused Security Screening Questionnaire and with the OPM investigator in December 2011. AG ¶¶ 17(a) and 17(e) are partially applicable. However, Applicant may have been more motivated to keep the information from Contractor C than from the DOD. Moreover, having determined that Applicant intentionally provided false information on her SF 86, I have also determined that Applicant provided false testimony when she denied the omission was intentional. It would be inconsistent to find the conduct mitigated.²² I find that personal conduct security concerns remain despite the presence of some mitigation.

²² See ISCR Case 03-22819 at 4 (App. Bd. Mar. 20, 2006), in which the Appeal Board reversed the Administrative Judge's decision to grant Applicant's security clearance under similar circumstances:

Once the Administrative Judge found that Applicant deliberately falsified a security clearance application in September 2002, the Judge could not render a favorable security clearance decision without articulating a rational basis for why it would be clearly consistent with the national interest to grant or continue a security clearance for Applicant despite the falsification. Here, the Judge gives reasons as to why he considers the falsification mitigated under a "whole person" analysis, namely that Applicant has matured, has held a position of responsibility, recognizes how important it is to be candid in relation to matters relating to her security clearance, and has changed her behavior so that there is little likelihood of recurrence. However, the Judge's conclusion runs contrary to the Judge's rejection of Applicant's explanations for the security clearance application falsification. At the hearing (after earlier admitting the falsification in her March 2003 written statement to a security investigator), Applicant testified that she had not intentionally falsified her application. Given the Judge's rejection of this explanation as not being credible, it follows that the Judge could not have concluded Applicant now recognizes the importance of candor and has changed her behavior.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's work overseas and the dangers involved in that work. However, she requires some additional maturation before she can be entrusted with classified information.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated foreign influence security concerns, but she has not mitigated personal conduct concerns.

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 B:	For Applicant
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	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.

Edward W. Loughran
Administrative Judge