



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



In the matter of:)
)
) ISCR Case No. 13-01322
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

July 15, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Security concerns were raised under the Guideline for Personal Conduct because Applicant was terminated by her employer for misconduct. Applicant mitigated the Personal Conduct concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on May 29, 2012. On March 12, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the guideline for Personal Conduct. The 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) effective after September 1, 2006.

Applicant answered the SOR (Answer) on April 10, 2014, and requested a hearing in this matter. The case was assigned to me on May 12, 2014. A notice of hearing was issued to Applicant on May 13, 2014, scheduling a hearing for June 3, 2014. Applicant requested the hearing date be amended to June 2, 2014, and the hearing was rescheduled to that date. On June 2, 2014, the hearing convened as scheduled.

The Government presented Hearing Exhibit (HE) I and Exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified on her own behalf, and offered Applicant's Exhibits (AE) A through F, which were admitted into the record without objection. Applicant requested that the record be left open to allow her to submit additional evidence and her request was granted. Applicant presented additional exhibits, marked AE G through AE N. Department Counsel had no objection to AE G through N, and they were admitted into the record. DOHA received the transcript of the hearing (Tr.) on June 10, 2014. The record closed on July 7, 2014.

Findings of Fact

Applicant is 42 years old. She is married and has two adult children. She has worked for her current employer, a Government contractor, since April 2012. She seeks a security clearance in connection with her employment. (GE 1.)

The Government alleged that Applicant is ineligible for a clearance because she engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. The SOR alleged Applicant was terminated by her employer, a Government contractor (GC1), in July 2011 due to her violation of business ethics and the company's code of conduct. Applicant worked for GC1 from January 2006 to July 2011. Applicant admitted this allegation, with explanations. (Answer; GE 1.)

Applicant's employment with GC1 was suspended in May 2011, and she was terminated in July 2011, for continued violation of GC1's business ethics and code of conduct policy for "Insubordination" and "Respect Peers." The termination letter stated, "Specifically, you worked from your home and charged time on your timecard after being told by your supervisor in writing, through an email, which you acknowledged, not to do so." Additionally, Applicant's "dress and behavior had become disruptive." The termination letter referenced disruptive behaviors such as visiting her work area after being directed not to, and speaking disrespectfully to her supervisor, co-workers, and employer. (GE 2; GE 3.)

Applicant acknowledged each of the identified causes for her termination and accepted responsibility for her improper actions. She offered explanations for her actions, but understood that she did not exercise good judgment despite her feelings or justifications at the time of the incidents. She believed she was performing in accordance with her Government customer's policies and demands, despite the fact

that those policies may have conflicted with the policies of GC1. (Tr. 37, 41-42, 46, 57-59.)

Applicant admitted she went against her supervisor's instructions and worked from home on a laptop provided by her Government customer "for the purposes of working from home." Applicant's supervisor emailed her on December 17, 2010, and indicated, "I would rather have you work comp time [than] take stuff home. Bringing work home can lead to security issues." She responded to her supervisor that her Government customer indicated there were no security issues involved, but that she would comply with his request. She testified that her supervisor later verbally told her to "do whatever it took to get the job done," and she incorrectly took that statement to mean it was acceptable to work from home. (GE 2; GE 3; Tr. 55-66.)

She acknowledged dressing in polo shirts, yoga pants, and jeans due to a back injury that made it uncomfortable for her to adhere to her employer's dress code. She informally discussed her injury with the Government customer's director, who gave her permission for such attire, but she failed to discuss it with her supervisor at GC1. (GE 3; Tr. 62-65.)

She admitted that she had an on-going conflict with her GC1 supervisor, in part because she received less pay than a male co-worker with commensurate level of experience and requested equal compensation.¹ A former co-worker, employed by the Government customer, wrote letters of support on Applicant's behalf and verified that the events of 2011 were initially generated over "discrimination in pay." That letter acknowledged, "[m]istakes were made on both sides and the situation rapidly spiraled out of control due to a personality conflict between [Applicant] and a new supervisor at [GC1]." Applicant acknowledged she acted inappropriately in her final days of employment in May 2011 including crying at work, using profanity, and yelling at her supervisor in front of others. She failed to fulfill tasks her supervisor assigned to her. (GE 3; AE D; Tr. 20-66.)

The Director for the Government customer wrote a letter of recommendation on Applicant's behalf. He indicated:

I hand chose [Applicant] for this position because of her exceptional work ethic and dedication to the successful completion of any task assigned. In getting this new position created, there seemed to be a lot of confusion at the [GC1] management level concerning what the requirements were and how this work fit into their current Letter of Technical Direction. In the end they decided to not write a new position for several months but instructed [Applicant] to "do whatever the customer wanted," where this position was concerned. With this direction from her supervisors, the [Government customer] issued [Applicant] a laptop in order to complete work at home if needed. There was a very short deadline looming with the [Government customer requirements]. Although the laptop was issued for the purpose

¹ Applicant's husband is employed by GC1. They feared retribution against him if she filed any type of lawsuit. (Tr. 52.)

of working from home, I cannot recall if or how many times [Applicant] performed work at home. In my time working with [Applicant], she was always willing to go above and beyond what was required in order to get the job done and ensure the important mission of [Government customer] was accomplished. (AE H.)

Applicant's Government customer was very happy with her performance. In fact, while Applicant was suspended from her position with GC1, she was also awarded the Top Civilian Support Staff award by her Government customer for her work leading up to her suspension. (AE K; Tr. 38-39.)

Applicant is highly respected by those that know her personally and professionally. She is regarded as a hardworking, trustworthy, and an ethical employee. She has no other disciplinary actions against her in her employment record. Applicant's current employer finds she meets or exceeds all performance measurement criteria and recommends her for a clearance. She was also nominated and won two awards for outstanding performance with her present employer. (AE E; AE F; AE G; AE H; AE I; AE J; AE K; AE N.)

After Applicant was suspended by GC1, she independently sought counseling for employment related stress. She documented her participation in a six-week group therapy course on how to manage workplace conflict. She successfully completed the counseling. She testified that the counseling gave her new tools to help her communicate calmly in disagreements. She recounted examples of how she uses these tools to manage workplace stress and avoid inappropriate conflict in her current position. (AE L; Tr. 68-71.)

Applicant also returned to college after her termination. In May 2014 she was awarded a Bachelor of Science degree. Applicant's two children both serve in the Air Force. She testified that she is a loyal American and would never jeopardize U.S. security. (AE M; AE N; Tr. 43-45, 48.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing 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.

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 the decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. The 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 as to 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 the Personal Conduct guideline is set out in AG ¶ 15:

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:

(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 person may not properly safeguard protected information. This includes but is not limited to consideration of:

(2) disruptive, violent, or other inappropriate behavior in the workplace; and

(3) a pattern of dishonesty or rule violations.

Applicant's conduct, which resulted her termination from GC1, support a whole-person assessment that she may continue to exercise questionable judgment, untrustworthiness, unreliability, lack of candor, and unwillingness to comply with rules and regulations; and therefore may not properly safeguard protected information. She engaged in inappropriate workplace behavior and displayed a pattern of rule violations. AG ¶ 16(c) applies.

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

(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 acknowledged her rule violations and inappropriate workplace behavior. She obtained counseling to change her behavior and learned techniques that she utilizes in stressful workplace disagreements to alleviate stressors. Her counseling has given her skills that reduce or eliminate vulnerability. She is unlikely to violate workplace policy again. She is well respected by her current employer and future unreliable or inappropriate behavior is unlikely to occur. AG ¶ 17(d) and 17(e) 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 the 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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a hardworking and patriotic government contractor. She is well regarded by those that know her. She is dedicated to the U.S. military and success of it's mission. She was forthright in acknowledging her improper actions that led to her termination. While she thought her conduct was justified due to what she believed was workplace discrimination, she now understands that her behavior was improper. She learned new tools to deal with workplace stressors through her participation in group therapy. Future improper conduct and rule violations are unlikely to recur.

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 grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge