



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 14-00769  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

October 16, 2014

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP) on August 1, 2013. On June 2, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline E for Applicant. The action was taken under Executive Order 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 within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on June 29, 2014. She answered the SOR in writing on July 2, 2014, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on August 13, 2014. DOHA issued a notice of hearing on August 15, 2014, and I convened the hearing as scheduled on September 17, 2014. The Government offered Exhibits (GXs) 1 through 3, which were received without objection. Applicant testified on her own behalf and submitted Exhibits

(AppXs) A through F, which were received without objection. DOHA received the transcript of the hearing (TR) on September 24, 2014. The record closed on September 24, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In her Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations. She also provided additional information to support her request for eligibility for a security clearance.

### **Guideline E - Personal Conduct**

Applicant, who was born, raised and educated in Iran, is 69 years of age. (TR at page 35 line 7 to page 36 line 2.) She “immigrated to the U.S.” in 1977, and became a naturalized U.S. citizen in 1986. (TR at page 36 lines 2~8.) She worked in real estate for about 30 years as both an agent and a broker. (TR at page 36 lines 16~24.) With the “financial meltdown” in 2008 she sought employment as a linguist, and was hired in 2009. (TR at page 37 lines 2~20.) However, her employment was terminated September 6, 2011, as she “failed to meet the contractual language requirement,” as noted on her Letter of Termination. (GX 2 at pages 1 and 4.) She initialed but refused to sign this Letter of Termination. (GX 2 at page 4.) However, she did sign her written warning and release on August 26, 2011. (GX 2 at page 8.)

1.a. In answer to “**Section 13C - Employment Record**” on her August 2013 e-QIP, Applicant failed to disclose that she was “fired” from employment as noted above. (TR at page 47 line 3 to page 50 line 21, and GX 1 at page 18.) I find this to be a wilful falsification.

1.b. In answer to the “**Employment**” Section on her October 9, 2013 “Counterintelligence-Focused Security Screening Questionnaire” (CFSQ), Applicant again failed to disclose that she was terminated from employment as noted above, claiming she “left this position because HER contract ended and SHE wanted to spend time with HER family.” (TR at page 50 line 22 to page 52 line 15, and GX 3 at page 14.) I also find this to be a wilful falsification.

### **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 useful 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, these guidelines are applied in conjunction with the

factors listed in the adjudicative process. (AG Paragraph 2.) The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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 Paragraph 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 protect or 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 Executive Order 10865 provides that 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 Paragraph 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.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 16(a), “*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form*” may raise security concerns. Here, Applicant was not candid about her termination on her August 2013 e-QIP. Under Subparagraph 16(b), “*deliberately providing false or misleading information concerning relevant facts to an . . . investigator, security official . . . or other official government representative*” may also raise security concerns. Here, Applicant was again not candid about her termination during her October 2003 CFSQ. I find no countervailing mitigating condition that is applicable here. Applicant’s last willful falsification was only about a year ago.

### **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. Under AG Paragraph 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Although her former Team Leader is favorable in her comments, the record evidence leaves me with questions and doubts as to her eligibility and suitability for a security clearance. Applicant was repeatedly less than candid about her termination as a linguist. For this reason, I conclude Applicant has not mitigated the security concerns under the whole-person concept arising from her Personal Conduct.

## **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:                      AGAINST APPLICANT

Subparagraphs 1.a. and 1.b.                      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.

Richard A. Cefola  
Administrative Judge