



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



In the matter of:)
)
) ISCR Case No. 14-01262
)
Applicant for Security Clearance)

Appearances

For Government: Philip John Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

10/30/2015

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I grant Applicant's clearance.

On 11 September 2014, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, Personal Conduct.² Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 18 July 2015 and I convened a hearing 9 September 2015. DOHA received the transcript 17 September 2015.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-3, hearing exhibit (HE I), and Applicant exhibits (AE) A-C. AE C was timely received post-hearing. The record in this case closed on 29 September 2015, the day Department Counsel stated no objection to AE C.

²DoD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted the SOR allegations. She is a 42-year-old secretary employed by a defense contractor since March 2013. She has been employed continuously in similar jobs since May 2000, except for a period of unemployment from July 2008 to October 2009. She seeks to retain the clearance she was issued in June 2010 (GE 1).

From March 2009 to November 2013, Applicant lived with her boyfriend, a convicted drug dealer, who ostensibly continued to associate with drug dealers after his release from prison (SOR 1.a). He had an extensive criminal record between March 1986 and September 1992 (GE 3), but no further criminal activity after his release from prison. Applicant knew her boyfriend had a criminal record (Tr. 29), but also believed he was granted early release from parole (Tr. 34). He moved out of Applicant's house in November 2013 because she caught him cheating on her (Tr. 33). She has had no contact with him since then.

Applicant is close to her brother who also has a criminal record, and was recently released from prison (SOR 1.b). He also received early release from parole (Tr. 28). He has a job, is taking care of his family, and is engaged to be married.

Applicant's co-worker considers her honest and trustworthy (Tr. 23-25), as do her friends and character references (AE A-C). However, only her co-worker (who knew about her boyfriend's criminal record) (Tr. 25), and her best friend (AE C) appear to be aware of the issues raised in the SOR.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a

compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.³

Analysis

The Government established a case for disqualification under Guideline E, but Applicant mitigated the security concerns. Applicant lived with her boyfriend for over four years and has regular contact with her brother.⁴ The disqualifying condition is broad enough to contemplate association with individuals who are currently involved in criminal activity and individuals whose involvement in criminal activity has ceased.

In Applicant’s case, her cohabitation with her boyfriend began 17 years after his last criminal involvement. Moreover, he had been granted early release from his parole. Finally, their relationship ended nearly two years ago. Under any reasonable reading of the disqualifying condition, her association with her former boyfriend has ceased. In similar fashion, while her brother’s release from prison is more recent, he, too, was granted early release from parole. And by all appearances, he has put his criminal activity behind him. Consequently, Applicant’s association with her former boyfriend meets the first prong of the only applicable mitigating condition, while her association with her brother falls within the second prong.⁵ Finally, Applicant’s co-worker, friends, and character references consider her honest and trustworthy. Coupled with the fact that she has held a clearance since June 2010 without apparent incident, these references support continuation of her clearance. The whole-person factors require no other result, and indeed support this result. I resolve Guideline E for Applicant.

Formal Findings

Paragraph 1. Guideline E:	FOR APPLICANT
Subparagraphs a-b:	For Applicant

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶ 16 (g) association with persons involved in criminal activity.

⁵¶ 17(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual’s reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge