



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



In the matter of:)	
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)	ISCR Case No. 14-01443
)	
Applicant for Security Clearance)	

Appearances

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

February 17, 2015

Decision

MOGUL, Martin H., Administrative Judge:

On July 3, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines J, H, and 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) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On August 7, 2014, Applicant replied to the SOR (RSOR) in writing, and she requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on September 15, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 16, 2014, and I convened the hearing as scheduled on October 8, 2014. The Government offered Exhibits 1 through 4, which were received without objection. Applicant testified on her own behalf and submitted Exhibit A, which was also admitted without objection. Two additional witnesses also testified on Applicant's behalf. DOHA received the transcript of the hearing (Tr) on

October 21, 2014. Based upon a review of the pleadings, exhibits, and all the testimony, eligibility for access to classified information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record discussed above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 50 years old. She has never been married, and she has three children. She is a high school graduate. Applicant is employed by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Paragraph 1 (Guideline J - Criminal Conduct)

The Government alleges that Applicant has engaged in criminal conduct, which create doubt about a person's judgement, reliability, and trustworthiness.

1.a.-1.ac. The SOR includes 29 specific allegations under Guideline J, taking place over approximately eighteen years, from August 8, 1991, through August 6, 2009. The allegations include: Criminal Damage to Property, Possession of Narcotic Controlled Substance, Possession of Drug Paraphernalia, Resisting Arrest, Obstructing Justice, Criminal Trespass, Receiving/Possessing/Selling a Stolen Vehicle, Felony Violation of a Parole, Failure to Appear Afer Written Promise, and Selling Liquor to a Minor. In her RSOR, Applicant admitted all of the SOR allegations under Guideline J.

She testified that as a result of these arrests and convictions, she served four different periods in prison or jail, including a four month term, a five month term and eight months of a 16 month sentence. (Tr at 28-33.)

Paragraph 2 (Guideline H - Drug Involvement)

The Government alleges that Applicant has had a history of long-term serious drug involvement, which can raise questions about an individual's reliability and trustworthiness. The SOR lists four allegations (1.a. through 1.d.) under Adjudicative Guideline H.

2.a. The SOR alleges, and Applicant admitted in her RSOR, that prior to her becoming sober in approximately December 2009, Applicant was addicted to illegal drugs, including crack cocaine.

2.b. The SOR alleges, and Applicant admitted in her RSOR, that she has purchased illegal drugs.

2.c. The SOR alleges, and Applicant admitted in her RSOR, that since approximately December 2009 Applicant has lived in a sober living house, and that she

has participated in a 12-step program and group rehabilitation sessions, including Alcoholics and Narcotics Anonymous.

2.d. The SOR alleges that the previous allegations, incorrectly listed on the SOR, as 2. b., c., e., h., j., k., l., m., o., p., r., v., w., and aa., but which have should have been listed as 1. b., c., e., h., j., k., l., m., o., p., r., v., w., and aa., show Drug Involvement under Guideline H. As reviewed above, Applicant admitted the underlying allegations on her RSOR.

Applicant testified that she began using and became addicted to crack cocaine (crack) in 1991. She admitted that she first used crack because of peer pressure as everyone in her neighborhood was using it. Applicant testified that as a result of the pain in her life from molestation by her uncle when she was young, the death of her daughter at 10 months of age, and the mental illness of her mother, she used alcohol and drugs to help her feel better. She used crack and was addicted to it for 18 years. She went to eight treatment centers, but finally on December 15, 2009, when she went to a sober living house, she “was ready to hear the message of recovery.” Applicant testified and wrote on her RSOR that since December 15, 2009, she has been clean and sober. She now goes to Alcoholics Anonymous (AA), Cocaine Anonymous (CA), or Narcotics Anonymous (NA) meetings five to seven days a week. (Tr at 35-43.)

Paragraph 3 (Guideline E- Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she engaged in conduct that exhibited questionable judgement, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness.

3.a. Applicant executed a Security Clearance Application (SCA) on October 4, 2013. (Exhibit 1.) The SOR alleges that Applicant falsified material facts in response to the questions under “Section 11 - Where You have Lived,” by falsely alleging that she lived in a location from January 2004 to December 2009, when in fact she was homeless for those years due to her addiction to crack cocaine. Applicant admitted this allegation in her RSOR. At the hearing Applicant testified that she was ashamed to answer accurately and truthfully that she was homeless. (Tr at 45.)

3.b. The SOR alleges that Applicant falsified material facts in response to an authorized Government investigator on November 19, 2013, by falsely alleging that she lived in a location from January 2004 to December 2009, when in fact she was homeless for those years due to her addiction to crack cocaine. Applicant admitted this allegation in her RSOR.

3.c. The SOR alleges that Applicant falsified material facts in response to the questions under “Section 13 A - Employment Activities,” of the 2013 SCA by falsely alleging that she had been employed by a company from October 2004 to the present, when in fact she was employed since approximately December 15, 2009. Applicant wrote in her RSOR that she worked for this company “off & on” since 2004, when she needed money. At the hearing Applicant testified that she knew she was furnishing the

Government with false information about her job history, but she was hoping to keep her job. (Tr at 46-47.)

3.d. The SOR alleges that Applicant falsified material facts in response to the questions under “Section 22 - Police Record,” of the 2013 SCA by falsely alleging that in the last seven years she had never been issued a summons, arrested, charged, convicted or sentenced for any offense or specifically with any drug or alcohol related offense, when in fact she failed to disclose the information listed on the SOR as 1.a. through 1.ac. Applicant admitted this allegation in her RSOR. At the hearing Applicant testified that she knew she was furnishing the Government with false information about her police record, but she was hoping to keep her job. (Tr at 48-49.)

3.e. The SOR alleges that Applicant falsified material facts in response to an authorized Government investigator on November 19, 2013, by falsely disclosing only one arrest in 1998 or 1999 for Possession of a Controlled Substance. It was only when she was confronted by the investigator’s information about all her criminal conduct as listed in 1.a. through 1.ac., above, that she conceded her conduct. She admitted that she furnished false information because she was afraid if she had been honest she would not have been able to obtain employment. Applicant admitted this allegation in her RSOR.

3.f. The SOR alleges that Applicant falsified material facts in response to the questions under “Section 23 - Illegal Use of Drugs,” of the 2013 SCA by falsely alleging that in the last seven years she had never been involved in the illegal use, purchase, or sale of illegal drugs, when in fact she failed to disclose the information listed on the SOR as 2.a and 2.b. Applicant admitted this allegation in her RSOR.

3.g. The SOR alleges that Applicant falsified material facts in response to the questions under “Section 23 - Illegal Use of Drugs . . . Voluntary Treatment,” of the 2013 SCA by failing to disclose her drug counseling and treatment, as set forth in 2.c., above. Applicant admitted this allegation in her RSOR.

Mitigation

As stated above, two additional witnesses testified on behalf of Applicant. The first witness is a retired police officer, who knows Applicant as her supervisor when she is performing security guard work. He described Applicant as someone who does something because it is the right thing to do. (Tr at 60-70.) The second witness has been Applicant’s sponsor in AA for the last four years and some months. She described Applicant as someone with a good heart, who has been reborn in sobriety and also someone who sets a good example for other recovering addicts. (Tr at 73-81.)

Finally, Applicant submitted seven laudatory character letters. (Exhibit A.) She was described as someone with “a positive character [who] is dependable, honest, and hard-working.” Her sister wrote, “ For approximately 20 years or better, [Applicant] was unable to see herself as sober and clean and setting goals. Today I am happy to see that she has made staying sober a priority working the program.”

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. The administrative judge's over-arching 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 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 ¶ 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 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

Paragraph 1 (Guideline J - Criminal Conduct)

The Government has established that Applicant engaged in criminal conduct that includes 29 specific allegations under Guideline J, taking place over approximately eighteen years, from August 8, 1991, through August 6, 2009. As a result of the subsequent arrests and convictions, Applicant served periods of time in prison or jail on four different occasions. Among the disqualifying conditions, I find that ¶ 31(a), “a single serious crime or multiple lesser offenses,” applies in this case. ¶ 31(c), “allegations or admissions of criminal conduct, regardless of whether the person was formally charged,” is also applicable to this case.

Applicant’s remorse appears sincere, and she has made excellent progress in rehabilitating her life, resolving her criminal conduct issues, and establishing a good employment record. Therefore, ¶ 32(d), could be argued to apply as a mitigating condition. However, because of the extraordinary duration and seriousness of the criminal conduct, and because Applicant was not honest in 2013 on her SCA and to a Government investigator about her criminal conduct, I cannot find that this or any other mitigating conditions under ¶ 32 are applicable. I find Paragraph 1 Guideline J, Criminal Conduct, against Applicant.

Paragraph 2 Guideline H - Drug Involvement

With respect to Guideline H, the Government has established its case. Applicant's improper and illegal drug abuse, specifically the use and purchase of crack over the course of many years, from 1991 to at least 2009, is of great concern, especially in light of her desire to have access to the nation's secrets. Applicant's overall conduct pertaining to her illegal substance abuse clearly falls within Drug Involvement ¶ 25(a) “any drug abuse,” (c) “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.”

Applicant did testify that she has been drug free since December 2009, and that she intends to abstain from drug usage in the future. However, in 2013, Applicant failed to reveal her drug usage and the resulting arrests on a security clearance application and when she subsequently spoke to a Government investigator. Because of Applicant’s lack of credibility about her drug usage, I cannot conclude that any mitigating condition is applicable under ¶ 26.

In this case, the Government has met its initial burden of proving that Applicant has used and purchased illegal drugs for many years under Guideline H. Applicant, on the other hand, has failed to introduce any persuasive evidence in rebuttal, explanation, or mitigation, which could overcome the Government's case against her. Accordingly, Guideline H of the SOR is concluded against Applicant.

Paragraph 3 (Guideline E - Personal Conduct)

With respect to Personal Conduct, the Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. If such an individual intentionally falsifies material facts or fails to furnish relevant information to the Government, it is extremely difficult to conclude that he or she nevertheless possesses the judgment, and honesty necessary for an individual given a clearance.

The Government alleges in this paragraph that Applicant is ineligible for clearance because she engaged in conduct that exhibited questionable judgement, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness.

The guideline notes several conditions that could raise security concerns and could potentially apply in this case. Because Applicant knowingly and wilfully provided to the Government false and untruthful relevant information requested on a security clearance questionnaire, and to an authorized Government investigator, I find that Applicant's conduct supports disqualifying conditions ¶ 16(a), 16(b), and 16(d) respectively; "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 . . . determine security clearance eligibility or trustworthiness . . .," "deliberately providing false or misleading information concerning relevant facts to an employer, [or] investigator . . .," and "a whole-person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations." I do not find any mitigating condition under ¶ 17 is applicable. I, therefore, resolve Guideline E against Applicant.

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 the facts and circumstances surrounding this case. Based on all of the reasons cited above

as to why the disqualifying conditions are applicable and why the mitigating conditions do not apply under the Guidelines alleged, I find that the record evidence leaves me with significant questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

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 J:	AGAINST APPLICANT
Subparagraph 1.a.-1ac.:	Against Applicant
Paragraph 3, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a.-2.d:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a.-3g.:	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.

Martin H. Mogul
Administrative Judge