



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-01778
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

03/31/2015

Decision

HOGAN, Erin C., Administrative Judge:

On July 2, 2014, the Defense of Defense issued a Statement of Reasons (SOR) detailing security concerns under Guideline E, Personal Conduct. 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 on September 1, 2006.

On July 10, 2014, Applicant answered the SOR and requested a decision based on the administrative record. Department Counsel prepared a File of Relevant Material (FORM) on January 20, 2015. Appellant received the FORM around February 5, 2015. Applicant was given 30 days to submit additional matters in response to the FORM. Applicant timely submitted additional matters, consisting of 27 pages. Department Counsel did not object to Applicant's Response to the FORM. The FORM consists of 7 Items which are admitted as Items 1-7. Appellant's Response to the FORM is marked and admitted as Item 8. Department Counsel's memorandum indicating no objection to Applicant's Response the FORM is marked and admitted as Item 9. On March 9, 2015, the FORM was forwarded to the Hearing Office. The case was assigned to me on

March 10, 2015. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In her answer to the SOR, Applicant admits to all the allegations in the SOR. (Item 2)

Applicant is a 40-year-old woman employed by a Department of Defense contractor who is applying for a security clearance. She has worked for her current employer since January 2010. She is a high school graduate. She is divorced and has no children. (Item 5)

From May 2002 to October 2009, Applicant worked for Company A. On October 15, 2009, she was terminated by Company A for violation of company policy. There is no information in the file from Company A which describes Applicant's specific actions that caused the termination. (Item 6)

On January 19, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP), in conjunction with her current employer. In response to Section 13C Employment Record, Applicant answered "No" to the following questions:

Has any of the following happened to you in the last 7 years?

1. Fired from a job
2. Quit after being told you would be fired
3. Left a job by mutual agreement following charges or allegations of misconduct
4. Let a job by mutual agreement following notice of unsatisfactory performance
5. Left a job for other reasons under unfavorable circumstances
6. Laid off from job by employer

She did not disclose that she was terminated from Company A in October 2009 for a Violation of Company Policy. The SOR alleges Applicant falsified material facts on an e-QIP application dated December 13, 2012, in response to Section 13C, Employment Record, because she failed to disclose her firing from Company A on October 15, 2009. (SOR ¶ 1.a) The December 13, 2012 e-QIP application is not in the case file. Her termination from Company A in October 2009 is alleged in SOR ¶ 1.b. (Item 1; Item 5)

On February 13, 2013, Applicant was interviewed by an investigator conducting her background investigation. During the interview, Applicant volunteered that she was fired from Company A for not following new rules established by her new supervisor. Her previous supervisor told Applicant to sign the time cards for physicians. She was unaware of the new rule that she was not authorized to do this. Her new supervisor told

her that she should have known the new rules and terminated her. She subsequently filed for unemployment and was awarded unemployment benefits despite the objections of Company A. The Agent's summary of Applicant's personal subject interview states: "Unemployment – During case review, subject volunteered that she was fired from [Company A]....." (Item 5).

On February 4, 2014, Applicant provided a written affidavit to another investigator during a follow-up interview. She once again indicated that she was fired from Company A for signing physician's time sheets. She was unaware of the policy that prohibited her from doing so. Her former supervisor told her to sign her supervisor's name as well as Applicant's own name to the time sheets verifying that the physician's work hours and pay were correct. She thought that was the correct policy. She never received any written or oral counseling before she was terminated. She states that she never did anything criminal or wrong. Her termination cannot be used as a basis for blackmail or coercion. (Item 7)

In her Answer to the SOR, dated July 10, 2014, Applicant admits she was terminated from Company A in October 2009. She admits providing false information on the e-QIP application, dated December 13, 2012. She failed to notice the question pertaining to her employment record was incorrect. Applicant states that during her background investigation interview, she promptly volunteered the information about her termination from Company A and the error on her e-QIP. Regarding the termination, Applicant stated that her previous supervisor at Company A authorized her to sign the timesheets of attending physicians. This practice was challenged after her supervisor retired and a new supervisor took over. (Item 3)

In her response to the FORM, Applicant repeats her past statements. She was wrongfully fired from Company A. She always received favorable performance reviews and merit increases until she was fired. Company A also falsely accused her of shredding documents. Company A unsuccessfully fought her claim for unemployment compensation. She was awarded unemployment compensation because Company A failed to provide proof that her termination was justified. Applicant believes the new management at Company A conspired to terminate her. She requests that her favorable performance reports over the past five years with her current employer be considered. (Item 8)

Applicant mentions in her response to the FORM, that in addition to her e-QIP application completed on January 19, 2010, she overlooked the answer regarding her employment record on an application to upgrade to a TS/SCI clearance in 2012. She indicates that when she completed the application for her upgrade to a TS/SCI clearance in 2012, she just resubmitted the answers on her original 2010 e-QIP application. She did not review her answers before submitting the 2012 application. As a result the same error regarding her employment record was on the 2012 application. During her first interview with an investigator in February 2013, she volunteered that she was wrongfully terminated from Company A. She later provided a signed, sworn

statement in February 2013 to a second investigator explaining the details of her termination. (Item 7, Item 8)

Applicant's performance appraisals with her current company all indicate that she fully meets standards. Her most recent appraisal dated, January 26, 2015, states that Applicant's "performance and commitment to the program has been excellent." She is "meticulous in her work and constantly strives for perfection in everything that she does and ensures that tasks are accurate and complete." She is "exceptionally trustworthy, honest, helpful, cooperative, enthusiastic and ethical in all parts of her job and her performance. She is a highly valued asset to the program and the customer is extraordinarily pleased with her sincerity." (Item 8)

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 must be considered when determining 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 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 this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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

The security concern relating to the guideline for Personal Conduct 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.

There is sufficient evidence to conclude that Applicant’s termination and omission of her termination in response to Section 13C on her December 13, 2012 security clearance application raises security concerns under personal conduct. Applicant has a substantial burden to mitigate these concerns. The following personal conduct security concerns apply:

AG ¶ 16(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);

AG ¶ 16(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: (3) a pattern of dishonesty or rule violations; and

AG ¶ 16(e) (personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing . . .).

AG ¶ 16(a) applies. Applicant admits that she failed to list her employment termination on her e-QIP application dated December 13, 2012. While there is sufficient evidence that Applicant incorrectly answered her response to Section 13C on her September 19, 2010 e-QIP application, it was not alleged in the SOR. I considered the alleged falsification of Applicant's September 19, 2010 e-QIP application as part of matters in extenuation and mitigation. The e-QIP application dated December 13, 2012, was not provided in evidence. However, Applicant admitted to the allegation in response to the SOR and discussed in her Response to the FORM that she did not list her termination from Company A on a 2012 e-QIP application to upgrade her clearance to TS/SCI. The Government is not required to present evidence on facts that the Applicant admits as true. (See Directive ¶ E3.1.14) The omissions raised concerns about Applicant's trustworthiness and reliability. Her actions raise an issue as to whether she will properly safeguard classified information.

AG ¶ 16(d) applies because Applicant's termination for violation of company policy raises issues as to Applicant's reliability and demonstrates a potential unwillingness to comply with rules and regulations. AG ¶ 16(e) applies because Applicant's initial failure to disclose her termination on her e-QIP application made her vulnerable to exploitation, manipulation, or duress.

The following personal conduct mitigating conditions potentially apply:

AG ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts);

AG ¶ 17(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);

AG ¶ 17(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

AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress).

I find AG ¶ 17(a) partially applies. During her first interview with the agent conducting her background investigation in February 2013, Applicant volunteered that she was terminated from Company A and that her answer to question 13C was wrong. I find this mitigating condition only partially applies because her voluntary disclosure cannot be considered “prompt” as required by the mitigating condition. However, I do find her disclosure was made in good-faith and was provided before being confronted with the facts. The investigator’s summary of Applicant’s Personal Subject Interview on February 13, 2013 noted that Applicant “volunteered” that she was terminated from Company A.

I find AG ¶ 17(c) applies because Applicant’s termination from Company A appears to be a departure from her standard work performance. Based on the evidence in the record, it appears Applicant’s termination was wrongful. The state unemployment commission awarded her unemployment benefits, despite Company A’s objections. It is likely Company A failed to prove sufficient cause for her termination. I find Applicant’s explanations that she was fired from Company A because she was unaware of a change in policy after a change in supervisors credible. Since her termination, Applicant has had a successful career with her current employer for the past five years with favorable performance reviews and no disciplinary problems. Her termination from Company A happened under unusual circumstances and is unlikely to recur. It does not cast doubt on her reliability, trustworthiness or good judgment.

AG ¶ 17(d) applies because Applicant volunteered the omission of her termination on her e-QIP application during the first time she was interviewed during her background investigation in February 2013. Her explanation that she resubmitted her answers to the 2010 e-QIP application on her 2012 e-QIP application without reviewing the answers is also reasonable. While it does not excuse the withholding of her October 2009 employment termination on her security clearance applications, it is a reasonable explanation. The important thing is that she recognized the error and voluntarily provided the information during her first interview with an investigator interviewing her in conjunction with her background investigation. It is unlikely that Applicant will repeat this behavior in the future.

AG ¶ 17(e) applies because Applicant’s full disclosure about her employment termination eliminates her vulnerability to exploitation, manipulation, or duress.

Overall, Applicant mitigated the security concerns raised under personal conduct.

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. Applicant's termination from Company A appears to be a departure from an otherwise successful employment history. While she omitted her termination in response to 13C Employment Record on her e-QIPs dated January 19, 2010 and December 2012, she voluntarily disclosed this information the first time she was interviewed in conjunction with her background investigation. While her voluntary disclosure cannot be considered "prompt" in accordance with AG ¶ 17(a), she provided the information before being confronted with the facts and has remained forthcoming and truthful after disclosing her omissions.

Applicant's favorable employment history with her current employer over the past five years demonstrates that she is a trustworthy and reliable employee. She has mitigated the concerns raised under 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: FOR APPLICANT

Subparagraphs 1.a – 1.b: 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge