



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-10451
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

April 22, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s history of criminal and civil infractions, together with her falsification of a 2007 security clearance application, make her an unacceptable candidate for a security clearance. Clearance is denied.

Statement of the Case

On April 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J and E. 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 for SORs issued after September 1, 2006.

Applicant answered the SOR on May 5, 2008, and requested an administrative determination. On October 15, 2009, Department Counsel prepared a File of Relevant

Material. (FORM) Applicant received the FORM on October 22, 2009, and did not respond. The case was assigned to me on January 8, 2010.

Findings of Fact

Applicant is a 26-year-old single woman with two children. She earned a GED in 2002. For the past four years, she has worked for a defense contractor as a stockroom associate. (Item 8 at 9)

Applicant and her ex-boyfriend, the father of her two children, had a contentious relationship that led to multiple conflicts requiring police intervention during an 18-month period between 2003 and 2004. In May 2003, Applicant attempted to break the apartment window of a woman whom her boyfriend had been dating secretly. (Item 11 at 1-3, 8) Subsequently, Applicant was charged with malicious destruction of property. (Item 10 at 4) Applicant pleaded guilty, and the court deferred judgment. Applicant was fined and placed on probation for three months. After serving probation without incident, the court dismissed the case.

In November 2003, Applicant's boyfriend filed a domestic violence charge against her. (Item 14 at 25) The charge was later nolle prossed. (Item 10 at 6)

In January 2004, Applicant punctured the tires of her boyfriend's car after an argument. (Item 9 at 3) She was charged with malicious destruction of property. After pleading guilty, she was fined, sentenced to 12 months of probation, and ordered to pay restitution.

In February 2004, Applicant, enraged at her boyfriend's continuing infidelity, scratched his car with a box cutter and attempted to slash his tires. (Item 9 at 3) Subsequently, she was arrested and charged with malicious destruction of property. Applicant pleaded guilty, and the court sentenced her to two days in jail, twelve months probation, and ordered her to pay restitution. (Item 11 at 10-11)

In April 2004, Applicant was arrested and charged with retail fraud and disturbing the peace after a department store security officer detained her and two friends for allegedly shoplifting. (Item 14 at 16) Later, the court dropped the retail fraud charge, and Applicant pleaded guilty to the remaining charge, whereupon the court imposed a fine. (Item 10 at 17)

The arresting officer interviewed Applicant shortly after the arrest. She told him she was in the store shopping with her friends when she observed them shoplifting. (Item 13 at 19) When discussing this incident with an Office of Personnel Management (OPM) investigator in 2007, Applicant stated that she was sitting in the car in the store's parking lot while her friends were shopping and did not know anything was awry until they ran out of the store followed by police officers. (Item 9 at 3) I find that Applicant was in the store when her friends began shoplifting items and observed the criminal activity as it occurred.

In August 2004, Applicant was working as a cashier in a convenience store. (Item 11 at 30) One evening, she became irritated after her supervisor reprimanded her. Her supervisor then instructed her to go to the office area in the back of the store to “calm down.” The supervisor followed Applicant to the office to speak with her further about her performance. During the discussion, Applicant punched the supervisor in the jaw and sprayed her with pepper spray. The supervisor then ran from the room and instructed another employee to call the police.

Subsequently, Applicant was arrested and charged with (1) assault with a dangerous weapon, and (2) assault and battery. (Item 10 at 19) At a plea hearing on September 22, 2004, Applicant pleaded guilty to the first charge. (Item 10 at 21) On September 28, 2004, the court dismissed the second charge, and sentenced Applicant to 60 days in jail to be served with electronic monitoring. (Item 10 at 21) Also, the court ordered Applicant to report to jail for installation of electronic monitoring by October 1, 2004. Applicant failed to report to court for the installation of the electronic monitor, prompting the court, on October 7, 2004, to issue a bench warrant for her arrest.

On September 28, 2004, the same day Applicant was sentenced for assault with a dangerous weapon, she drove her car toward two women sitting in a parked vehicle. (Item 14 at 3) When she reached the side of the car, she reached out of the window with a box cutter and scratched the side of their car. (Item 14 at 4) Once the victim drove the car out of the parking lot, Applicant continued to harass her by following her, and nearly forcing her off the road. Subsequently, Applicant was charged with malicious destruction of property.

When Applicant appeared at court for her arraignment on October 26, 2004, she was arrested on the outstanding warrant stemming from the September 2004 assault and battery conviction. (Item 14 at 30) That day, the court consolidated the case stemming from the August 2004 offense and the case stemming from the September 2004 offense, then amended the September order by requiring Applicant to spend 12 days in jail. (Item 14 at 12) Next, the court scheduled a sentencing hearing for December 2004 for the malicious destruction of property offense.

On December 13, 2004, court sentenced Applicant to 48 days in jail (Item 14 at 25). It is unclear from the record whether Applicant actually served any of this time. Contrary to the allegation listed in SOR subparagraph 1.h, Applicant was not charged with any additional criminal offenses after the September 2004 incident.

Between 2003 and 2004, Applicant was ticketed four times for traffic infractions. One of them, which she received for following too close behind a vehicle, stemmed from an incident where she rammed her car into the back of her then-boyfriend's vehicle while he was at a stop sign preparing to cross an intersection. (Item 12 at 1)

Applicant was raised in an unstable home by an abusive, alcoholic mother (Item 4 at 3). Her troubled childhood, particularly the physical abuse she experienced, left her

unable to cope with stressors, such as the troubled relationship with her then-boyfriend, without resorting to violence.

Applicant and her boyfriend are no longer together. In May 2006, she relocated to an area more than a thousand miles away from where she had her difficulties with the law. (Item 8 at 5) She enrolled in community college and, as of the date of the SOR answer, was on schedule to graduate. (Item 7 at 4) She has been working steadily at her job, and recently received a raise.

Applicant completed a security clearance application in 2007. She did not disclose any of her arrests, as required in response to Section 23.f. (Item 8 at 25) In her answer, Applicant contends that she “misunderstood the charges or convictions that were held against [her],” mistakenly assuming that she was only to list felonies. (Item 7 at 1; Item 9 at 4)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

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. 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.”

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.

Analysis

Guideline J, Criminal Conduct

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” (AG ¶ 30) Also, “by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” (*Id.*)

Applicant’s history of criminal conduct triggers the application of AG ¶¶ 31(a), “a single serious crime, or multiple lesser offenses,” and 31(c), “allegation or admission of criminal conduct, regardless of whether the person was formally charged or convicted.” For the past four years, Applicant has been focused on working, raising her children, and attending college. She has not committed any criminal incidents similar to those she committed before relocating.

However, Applicant’s 2007 falsification of her security clearance application¹ constitutes a crime under 18 USC § 1001. Consequently, she has not been completely free of criminal behavior since ending the relationship with her boyfriend and moving to another state. I conclude that her college attendance is enough to trigger the partial application of AG ¶ 32(d), “there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.” However, it is insufficient to mitigate the criminal conduct security concern in light of the seriousness of the conduct and her recent failure to disclose it on her security clearance application. Applicant has failed to mitigate the criminal conduct security concern.

Guideline E, Personal Conduct

The security concern under this adjudicative guideline is set forth in Paragraph 15, as follows:

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.

Applicant’s omission of her criminal arrests from the 2007 security clearance application raises the issue of whether 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

¹For an analysis of this issue, See Personal Conduct section of the Decision, *infra*.

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” applies.

Applicant was arrested four times and charged with crimes on three additional occasions between 2003 and 2004. Four of Applicant’s charges were for the same crime, malicious destruction of property. Under these circumstances, Applicant’s contention that she omitted the charges from the security clearance application because she did not understand their nature is not credible. I conclude Applicant falsified Question 23.f of the security clearance application, and AG ¶ 16(a) applies without mitigation.

SOR subparagraph 2.f alleges as follows:

During a February 5, 2007 interview with an authorized investigator for the Department of Defense concerning the information set for in subparagraph 1.e, above, you falsified material facts in that you stated that you had purchased some items at a store and returned to the car to wait for your acquaintances who had shoplifted without your knowledge; whereas in truth, you deliberately failed to disclose that you had placed items in a cart from where your acquaintances would then conceal them in their coats and that all of you were apprehended as you left the store.

The record evidence does not establish that Applicant placed items in the shopping cart “from where [her] acquaintances would then conceal them in their coats.” However, the evidence does establish that Applicant’s explanation to the OPM investigator regarding what she was doing while her friends were shoplifting contradicted her earlier explanation to the arresting officer. Consequently, I conclude Applicant falsified SOR subparagraph 2.f, also. Applicant has failed to mitigate the Personal Conduct security concerns.

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.

Applicant was in her late teens and early twenties when she committed the criminal conduct. She appears to have matured, as demonstrated by her maintaining a steady job and attending college, while raising her children.

However, Applicant's falsifications during the investigative process generate questions about her credibility and undercut the presence of rehabilitation. After evaluating this case in the context of the whole-person concept, I conclude Applicant has failed to mitigate the security concerns.

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
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.f:	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.

MARC E. CURRY
Administrative Judge