



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-15388
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: William F. Savarino, Esquire

September 30, 2008

Decision

CURRY, Marc E., Administrative Judge:

On April 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on May 8, 2008, admitting SOR subparagraphs 1.a, and 1.c through 1.f, and neither admitting nor denying SOR subparagraph 1.b. In her Answer, she requested a hearing before an administrative judge. I received the case assignment on July 10, 2008. DOHA issued a notice of hearing on July 23, 2008, and I convened the hearing as scheduled on August 25, 2008. During the hearing, I received 14 government exhibits, one Applicant exhibit, and the testimony of three Applicant

witnesses. The transcript was received on September 4, 2008. Based upon a review of the record evidence, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 49-year-old, divorced woman with a bachelor of science degree in textile science earned in the early 1980s, and a master's of business administration earned in 1991. Since 2004, she has worked for a defense contractor as an interoperability architect. Currently she is providing support to DoD in records management policy (Tr. 37). From 1996 to 2004, she worked as an associate for another defense contractor.

Before joining the defense contracting industry, Applicant served as a captain in the U.S. Air Force. She entered in 1984 (Tr. 60). While in the Air Force, she met her first husband, an Air Force pilot, and married him in 1986 (Exhibit 10).

Shortly thereafter, Applicant and her husband began having marital problems. During the late 1980s, she had sexual affairs with three Air Force officers (Exhibit 13 at 2; Tr. 109). After her husband discovered her infidelity, he insisted that they attend marital counseling. She complied, and their relationship improved. In 1991, they had a child. Shortly after their child's birth, her husband was assigned to serve in the Gulf War.

After Applicant's husband returned from his Gulf War tour of duty, their marital problems recurred. In June 1993, she began having an affair with a senior master sergeant who was a direct subordinate (Exhibit 10; Tr. 94). On September 11, 1993, Applicant filed for divorce (Exhibit 8 at 4). By then, she was having an affair with both her subordinate and his wife (Exhibit 10 at 1).

In late September 1993, Applicant's husband answered the divorce petition, and filed a counterclaim alleging adultery (Exhibit 4). In her reply, Applicant denied adultery (Exhibit 5, ¶ 3). In May 1994, during the ensuing trial, Applicant reiterated her denial (Answer, SOR ¶ 1.c, Exhibit 7). At the conclusion of the trial, the court declined to make a specific finding of adultery, and granted joint custody of their child, with physical custody to Applicant's husband (Exhibit 6).¹

At some time during 1994, Applicant was nominated for a position requiring access to Sensitive Compartmented Information (SCI).² During a subsequent screening interview in June 1994, in response to the following question, "Are there any incidents in your background which might make you susceptible to blackmail or exploitation such as: extra-marital affairs, undetected theft, fraud, embezzlement, etc.?" she disclosed

¹For the past eight or nine years, Applicant has had physical custody of her daughter.

²Exhibit 8.

neither the affairs with her subordinate and his wife, nor two of her affairs in the late 1980s (Answer, ¶ 1.d; Exhibit 8 at 4).

In October 1994, a Defense Security Service (DSS) agent interviewed Applicant (Exhibit 9). She again only disclosed one episode of adultery from the late 1980s, and denied the affair with the subordinate (*Id.* at 2). By then, she had been reassigned to a different location.³

Later that year, Applicant's former commander under whom her paramour also had served discovered a disk containing romantic e-mails that the paramour had sent Applicant, which confirmed their illicit affair (Exhibit 2 at 2; Tr. 68). Subsequently, she was tried by general court-martial under the Uniform Code of Military Justice for the offenses of indecent acts, adultery, fraternization, and perjury (Answer, SOR ¶ 1.a; Exhibit 12). On January 3, 1996, she was found guilty and sentenced to dismissal from the Air Force and forfeiture of \$1200 in pay (Exhibit 12 at 3).

Applicant's official termination date was December 20, 1996 (Exhibit 14). While Applicant's termination was pending, she began interviewing with several civilian companies. In March 1996, a defense contractor hired her. The position required a security clearance. In November 1996, a DSS agent interviewed her. She then disclosed all of her extra-marital affairs, her perjury, and her dismissal from the Air Force (Exhibit 13). In January 1997, she was granted a clearance (Tr. 78).

Applicant worked eight years for the same employer without incident (Tr. 85). She held a clearance throughout that time (Tr. 79). The current security clearance application stems from a re-investigation initiated after she changed jobs in 2005 (Tr. 114).

According to Applicant's current supervisor, she has "an outstanding character and work ethic," and is a valuable employee "who will go above and beyond for the success of the company" (Exhibit A). At the hearing, a retired Air Force colonel who now works for DoD in a civilian capacity testified on Applicant's behalf. As the senior manager for the project Applicant's company supports, he evaluates her approximately once per year (Tr. 37). He characterized her as an outstanding employee who recently completed a highly complex project in an "excellent, excellent" manner (Tr. 39-40). He did not know her when she was dismissed from the Air Force, but is aware of the circumstances surrounding it.

Applicant attended therapy between 1994 and 1996. During this period, she was diagnosed with depression, and briefly hospitalized three times (Tr. 81). Her depression was successfully managed with medication (Tr. 80). The primary purpose of the therapy was to help her adjust to the loss of physical custody of her daughter and her expulsion from the Air Force (Tr. 81).

³The reassignment had nothing to do with her affair. The Air Force did not know of the conduct when it reassigned Applicant.

Applicant remarried in 1999. She divorced her second husband in 2001 for reasons unrelated to marital infidelity.

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, 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 together with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and common sense 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."

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 E, Personal Conduct

Under this guideline, "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" (AG ¶ 15). Failure to provide truthful and candid answers during the security clearance process is "of special interest" (*Id.*).

While in the U.S. Air Force, Applicant engaged in several extra-marital affairs, including a 1993 relationship with a subordinate. She lied about the 1993 affair in a state divorce proceeding, and later lied about it throughout a security clearance investigation. 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,” 16(b), “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative,” and 16(e), “personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person’s personal, professional, or community standing,” apply.

Applicant attended therapy for two years after the 1993 extramarital affair and the subsequent divorce. The primary purpose of the therapy was to assist her in coping with the loss of physical custody of her child and her Air Force expulsion, rather than the issues which compelled her to repeatedly engage in extra-marital affairs. Consequently, although her testimony reflected remorse, the therapy was not comprehensive enough to trigger the application of AG ¶ 16(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.”

Nevertheless, more than 12 years have elapsed since Applicant’s conduct, and it has not recurred. Shortly after her dismissal from the Air Force, she began to work for a company that required a security clearance. During the application process, she was forthcoming about the circumstances of the Air Force dismissal, and fully acknowledged her earlier falsifications. She was granted a clearance in 1997, and maintained it without incident for eight years. According to her supervisors, her work performance is exemplary. Also, both her supervisors and a neighbor characterized her as a trustworthy individual. AG ¶ 17(c), “. . . so much time has passed . . . that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” applies. Applicant has mitigated the personal conduct security concern.

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.

Applicant violated her responsibilities as an Air Force officer when she engaged in an affair with her subordinate. She compounded this misconduct by lying about it in a state divorce proceeding and a security clearance investigation. She was a mature, highly educated woman who was fully aware of the magnitude of her transgressions when she committed them.

Although Applicant attended therapy for two years at or about the time that she was dismissed from the Air Force, it did not specifically address the issues that compelled her to engage in the misconduct. However, twelve years have elapsed since the misconduct. She disclosed the falsifications and discussed her history of adultery comprehensively with security clearance investigators. The government granted her a security clearance in 1997 with full knowledge of her earlier misconduct.

Since being granted a clearance in 1997, Applicant's misconduct has not recurred. Instead, she has been an exemplary employee, respected at work and in her community. She is no longer married, and has had physical custody of her child for the past eight years. The serious and repetitive nature of the conduct is outweighed by its remoteness in time. I am confident that the probability of the recurrence is minimal. Upon evaluating the applicable mitigating and disqualifying conditions in the context of the whole person concept, I conclude that Applicant has mitigated the security concern.

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.e:	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.

MARC E. CURRY
Administrative Judge