



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



In re:)	
)	
-----)	ISCR Case No. 08-09645
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

October 30, 2009

Decision

HOWE, Philip S., Administrative Judge:

On July 13, 2007, Applicant submitted her Security Clearance Application (SF 86). On April 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines J (Criminal Conduct) and 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 April 17, 2009. She requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 26, 2009. I received the case assignment on May 27, 2009. DOHA issued a Notice of Hearing on June 5, 2009, and I convened the hearing as scheduled on June 23, 2009. The Government offered Exhibits 1 through 4, which were received without objection.

Applicant testified and submitted Exhibits A through K, without objection. DOHA received the transcript of the hearing (Tr.) on July 6, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by deleting the date of "September 8, 2008" in Subparagraph 1.a. and substituting therefore the date of "April 25, 2007." Applicant had no objection to this amendment because it inserted the correct date of her arrest on child endangerment charges for an erroneous date. I granted the motion. (Tr. 9-11)

Findings of Fact

In her Answer to the SOR, Applicant admitted all the factual allegations in the SOR, with explanations. She also provided additional information to support her request for continued eligibility for a security clearance.

Applicant is 33 years old, divorced in 2009 from her husband, and the mother of two minor children. The first child was born in 2004, and the second daughter in 2007. Applicant married her husband in November 1994, during her first semester of college. She graduated from college in 1998 with a bachelor's degree in mathematics. Since then, she has worked for a defense contractor. (Tr. 34, 40-45, 60; Exhibit 1)

Applicant's husband worked while she attended college. After she became employed upon her graduation, he became a non-working husband from 1999 until his arrest in September 2006. He was arrested on the accusations of his daughter from his first marriage that he had molested her. Her husband's daughter lived with them from 1999 to 2006. He was convicted on his guilty plea, and sentenced to five years confinement. Applicant filed for divorce from him in October 2008, and the divorce was granted in March 2009. Applicant would file for a protective order if her former husband attempted to contact her or their children. The divorce decree prohibited contact between Applicant's children and her former husband. (Tr. 40-44, 50-52, 69, 70; Exhibits 1 and 2)

When Applicant's husband was arrested in 2006, the police searched the house for evidence on the molestation charge. During that process, they found animal feces from the three dogs and one cat Applicant's family maintained, though Applicant only recalls feces in the basement area. The police reported seeing a cockroach crawl from diapers to be used for Applicant's infant daughter. Applicant admits cockroaches infested her house for months before the arrest, but she never saw any near her daughter. She attempted to kill the cockroaches with insecticides from the hardware store, but was unsuccessful. The arresting officers also reported piles of debris

throughout the house, making the house interior messy. Applicant's husband took care of the dogs, but did not clean up after them. He also did some cooking, but never washed the dishes. He was a compulsive buyer of various objects including beads for his jewelry making hobby, clothes he never put away neatly, and many other items which were never used or stored properly, resulting in the messy appearance of the home. Additionally, the police reported a repugnant odor throughout the house which Applicant claimed she did not smell. Finally, there were prescription medications kept in child-proof containers but within the reach of Applicant's daughter and step-daughter. (Tr. 36, 47-57, 77, 78; Exhibits 2-4)

Applicant's husband was diagnosed as bi-polar in 2003 and used prescription medications to treat his condition. He also controlled and manipulated Applicant from the date of their marriage until his arrest by limiting her contact with her family and friends, and exerting other forms of control over her activities. Applicant did not recognize the situation because it occurred gradually over time. She tried to keep the family together by working all day, taking care of the children, including home-schooling her step-daughter, and doing what work she could around the house without upsetting her husband. She described her actions as "walking on egg shells" when dealing with him. (Tr. 22, 30-39, 54, 66, 73, 81)

Applicant was charged in April 2007 with two counts of felony endangerment of a child under state law. She turned herself into the police to respond to the charges. She retained an attorney. The first charge referred to the endangerment of her step-daughter, and the second to her only child at that time, her daughter. The endangerment allegations were that she did not maintain a residence fit for human habitation. In April 2008, Applicant pled guilty to both felonies. She pled guilty to avoid being sentenced to jail. The state court sentenced Applicant to 90 days home confinement on the first charge, and five years confinement on the second charge. However, the confinement was suspended and Applicant was sentenced alternatively to five years probation, attendance at parenting classes, psychological evaluation and treatment as directed by the probation services in her state, and adherence to any other directives issued as part of her probation. Applicant has now served 18 months successfully on her probation. Applicant completed the parenting classes swiftly. She cleaned her house and sold it. She purchased another one, and regained custody of her oldest daughter whom the state had placed in foster care for six months. (Tr. 24, 53, 64, 65, 84, 88; Exhibits 2-4)

Applicant consulted with a marriage counselor in 1997 and 2000. She also went to a family counselor in 2006. She read books on setting personal boundaries, and consulted with friends on personal relationships. Applicant had psychological counseling in 2006 and early 2007 pursuant to court order. She testified that counseling found only her parenting skills needed improvement. Now Applicant contends her prior lack of good judgment will not recur, and she has learned and changed much in the past three years since her arrest. In Applicant's own opinion, she provides a good household for her daughters, and will not allow herself to be manipulated. Her mother's testimony is that Applicant is so organized that she prepares and freezes the meals for the upcoming

week each weekend. Applicant does not want to do anything to risk losing her children to foster care again. She is better organized and focused since her divorce. (Tr. 23, 25, 68-70, 77, 78, 84-87)

From 1998 to the present time, Applicant had a “secret” security clearance. She did not have any security violations reported in that 11-year period. In 2006, Applicant earned \$75,000 from her job. She graduated from college “summa cum laude.” Applicant made a well-organized and articulate presentation of her case. (Tr. 45, 46, 60, 64)

Applicant submitted 11 character letters. Her Answer to the SOR included a character letter from her job’s team leader. This character letter describes Applicant as sincere and dedicated to her job. Applicant is recognized as someone who maintains diligently the security of classified information. He reports that in the past Applicant had some instances of “poor performance within the team” that he ascribes to her domestic situation at the time. In the past two years, her performance has steadily improved. She also kept him and other supervisors informed about her situation. Applicant’s brother submitted a letter discussing the family situation and how it has improved after Applicant’s husband was arrested and she divorced him. The remaining character letters praise Applicant for her honest and competent work. One letter was submitted by the foster parents of Applicant’s child in 2006 and 2007. They make announced and unannounced visits to Applicant’s home, and report it is clean and safe, as are her children. (Exhibits A to K)

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 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. 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes six conditions that could raise a security concern and may be disqualifying. Of these conditions, three are potentially applicable:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and
- (d) individual is currently on parole or probation.

In April 2008, Applicant pled guilty to two state felony charges of child endangerment. Her sentence included five years of probation, starting in April 2008.

Applicant remains on probation at the present time. Thus, these three conditions are supported by the facts.

AG ¶ 32 provides five conditions that could mitigate security concerns. Three mitigating conditions apply to Applicant's situation:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life; and

(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.

The facts of Applicant's child endangerment charges occurred during an oppressive marriage to a controlling and physically lazy man. Applicant earned the household income, maintained the house, and home-schooled her stepdaughter, repeating this process each day. Her husband was arrested in 2006 for child molestation and convicted. His sentence of five years confinement allowed Applicant to break free from his control. She divorced him, sold their former home, bought a new one, and regained custody of her child. She will obtain a protective order to keep her former husband away from herself and her children. Applicant has learned to make her own decisions and be responsible for her own actions. Her character statements show persuasively that her family situation has improved greatly. During all the home turmoil, Applicant continued to perform well at her job. AG ¶ 32 (a) applies.

Applicant is intelligent and well-educated. However, she lacked personal strength to recognize that her marital situation was destructive and that she was too subservient to her husband. Her husband controlled every aspect of her life within the marriage. The pressures her husband exerted on her are gone and will not return. She divorced him and he resides in a state penitentiary for five years until 2012. AG ¶ 32 (b) applies.

Applicant reformed her life. She took control of it, although it took state criminal action and her step-daughter's complaint against her husband to start the reform process. Applicant accepted responsibility for her actions by pleading guilty to two child endangerment charges for not maintaining her house in a habitable condition. She expressed remorse for her actions during her marriage, and emphasized her commitment to her children. She vowed not to do anything in the future to jeopardize her custody of them. Her brother and mother presented evidence of Applicant's marital history and how that environment in her home has dramatically improved. Applicant attended parenting classes, and completed all probationary requirements, other than

the time period imposed by the court. Her supervisors' character statements show Applicant is well-regarded in her company for her work ethic and product. AG ¶ 32 (d) applies.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes seven conditions that could raise a security concern and may be disqualifying. One of these conditions applies to Applicant's child endangerment situation and felony convictions:

(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, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's failure to maintain a healthy home environment for her child, and her step-daughter, coupled with her continued failure over 12 years to recognize the controlling environment created by her husband and his molestation of his daughter, is personal conduct by Applicant that made her vulnerable to exploitation, manipulation, or duress. In addition, Applicant was exploited, manipulated, and placed under duress by her husband during the duration of their marriage. For an intelligent and educated

person to have acted in such a way causes serious concerns about her judgment and her ability to be manipulated easily. AG ¶ 16 (e) applies.

AG ¶ 17 provides conditions that could mitigate security concerns. Four of these mitigating conditions could apply:

(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;

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(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.

Three years have passed since Applicant's husband was removed from her life by his arrest and conviction for child molestation. She divorced him in 2009 and has not resumed any contact with him, and does not want to do so. She transformed her life, and provides a healthy and happy environment for her two daughters. While in the marriage, she attempted to do all the work in the house and earn the family income, but failed to recognize the gradual and systematic control her husband exerted over all the family members. Her judgment was overwhelmed by her husband at home. Her reliability and trustworthiness were not at issue in the work environment, nor was her judgment. (AG ¶ 17 (a) applies.

Applicant admitted her failure to keep the house and children clean, and allowing her husband to accumulate things which cluttered the house. She admits the house was a mess. Now she has her own home without her husband, and the character witnesses who have been in that home state that the children and home environment are neat and clean. Applicant participated in the court-ordered counseling, and obtained more information on her own in the past three years. The divorce prevents Applicant from continuing her past behavior, and it is unlikely to recur based on the significant changes and honest admissions Applicant made. AG ¶ 17 (d) applies.

Applicant divorced her husband and acknowledges the manipulative control he exercised over her during their marriage. She strongly asserts she is now in control of her life, and will not allow the same situation to recur. She is credible in that assertion.

It is bolstered by her demonstrated commitment to her children's welfare. AG ¶ 17 (e) applies.

Applicant's divorce removes her from the person who committed criminal activity, her former husband. He contributed largely to the mess in their house which created the unhealthy environment for Applicant's children. He also committed the criminal child molestation acts upon his daughter from his first marriage. Applicant has now removed herself totally from that unhealthy environment. She is committed to keeping her former husband away from her and her children. AG ¶ 17 (g) applies.

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.

AG ¶ 2(c) requires that each case be judged on its own merits. 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 was an educated mature adult when the unsanitary environment was created. She was not emotionally strong enough to assert herself against her husband's control, and allowed the situation to continue. Her actions were not appropriate but understandable in the context of the controlling aspects of her marriage. She has changed her behavior, admitted her wrongdoing, taken corrective action, and removed the potential for coercion, pressure, exploitation, or duress within her personal relationships. Her past behavior is not likely to recur.

Furthermore, Applicant has had a security clearance for 11 years without any security violations. She kept her personal situation separate from her work relationship.

Applicant realizes she made harmful mistakes that hurt herself and children by continuing her marriage to a controlling and manipulative man. She was not an equal

partner in that relationship. The total environment contributed to the endangerment situation that led to criminal charges. Now Applicant has corrected the problem. Her family and friends know of her past problems, and gave letters of support showing the rehabilitation Applicant has done.

Applicant's presentation was credible and persuasive on all the salient and relevant issues. She did not contest the felony charges placed against her, which is part of her rehabilitative efforts. She has clearly made the well-being of her children paramount in her life. She is successfully participating in the probation the state court imposed as her sentence on the second felony child endangerment charge. Applicant informed her supervisors of her situation, and she has been allowed to retain her job. It has been three years since her husband was arrested and removed from the home. Applicant has used that time to her advantage to acknowledge her past errors and change her behavior to benefit her children and herself.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from her criminal conduct and personal conduct. I also conclude the "whole-person" concept for Applicant.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

PHILIP S. HOWE
Administrative Judge