



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



In the matter of:)	
)	
)	ISCR Case No. 09-00818
)	
Applicant for Security Clearance)	

Appearances

For Government: Raashid Williams, Esq., Department Counsel
For Applicant: *Pro se*

September 19, 2011

Decision

LYNCH, Noreen, A., Administrative Judge:

On April 12, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) alleging security concerns arising 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) implemented in September 2006.

Applicant timely answered the SOR and requested a decision without a hearing. On June 6, 2011, the Government requested a hearing pursuant to the Directive. DOHA assigned the case to me on July 7, 2011. DOHA issued a Notice of Hearing on July 18, 2011, and I convened the hearing on August 16, 2011. Department Counsel offered three exhibits, which were admitted as Government Exhibits (GE) 1-3. Applicant testified, presented one witness, and submitted six exhibits (AE), A through F, which were admitted into the record. DOHA received the transcript on August 24, 2011. Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her answer to the SOR, Applicant admitted the factual allegation under Guideline E (Personal Conduct). Applicant is a 48-year-old employee of a defense contractor. She received her undergraduate degree in May 2004. She has never married and has no children. Applicant has worked for her current employer since 1988. She has held a security clearance for almost 26 years. (Tr. 38)

Applicant readily acknowledges that she is in a committed relationship with A.G., who has an extensive history of involvement with criminal activities. He has lived with her in a committed relationship for 24 years. She has known him since 1988. (Tr. 22) She is aware of his criminal past and his 2005 conviction for possession of crack cocaine, for which he was imprisoned for eight years. However, she did not know all the details of all the charges and convictions over the years.

In July 1998, as part of a security clearance investigation, Applicant told the Office of Personnel (OPM) interviewers about her relationship with A.G. She acknowledged that she knew about the bank robbery and his drug problem. Applicant testified that she did not understand that continuing a relationship with A.G. might jeopardize her security clearance. She knew about his background. She cared for him and believed that he would change. She acknowledged that it might not be a good idea to continue a relationship with A.G. She also thought about leaving him if his behavior did not change. (Tr. 43) However, she wanted to be a “hero” and savior for him. From 1994 until 2005, A.G. was free of any criminal charges or convictions. (GE 3)

A.G. had been arrested five times before he met Applicant. In 1971 and 1982, he was convicted of bank robbery. During the relationship, A.G. was in and out of jail approximately five times. Applicant visited him once a week while he was in jail. While Applicant and A.G. lived together, his criminal record included a 1988 assault with intent to maim; a 1989 possession of controlled substance and assault and battery; a 1991 possession of unregistered ammunition with no permit; a 1991 charges of petty larceny, grand larceny, and burglary; a 1993 breaking and entering; a 1994 possession of heroin; a 1994 possession of a pistol; and a 2003 grand larceny. (GE 3):

At the hearing, Applicant testified that she has been a faithful employee for 23 years and would never risk her security clearance or destroy all that she has achieved in her professional life by distributing classified information to her friend. She noted the relationship with him on all security clearance applications.

She also submitted documentation that shows A.G. has made great strides in a positive direction to put his criminal activities behind him. After his 2005 arrest and conviction for possession of crack cocaine, he was confined in prison until 2008. He completed a residential drug rehabilitation program in 2009. (AE B) A.G. completed the Drug Offender Workforce Development Program in 2010. (AE D) He completed a matrix social support program in December 2010. (AE C) She testified that she has seen a definite change in A.G since the 2005 drug arrest. She attributes this change to his employment and his drug rehabilitation. He also does not have the same friends.

(Tr. 57) Applicant was credible describing her current relationship with A.G, which now involves them in family activities with his sister. (Tr. 57)

At the hearing, Applicant testified that she never saw AG use drugs and that she did not have drugs in her home. When she first met him, she did not know he had an extensive drug problem. She later learned he had a heroin addiction. (Tr. 23) She admitted that she also asked him about property (jewelry) in the house that she thought might be stolen. She saw an unassembled gun in the home. At the time, he was a convicted felon and was not allowed to own a gun. Applicant did not report this to authorities because it was unassembled. (Tr. 31)

A.G. testified at the hearing that he has lived with Applicant since 1988. He considers her his fiancée, and describes her as a compassionate and loyal person. He described his full-time employment and his certification in HVAC. He completed the apprentice course in 2011. (AE A)

A.G. acknowledged that his criminal behavior began in 1971 when he was convicted of bank robbery. He admitted all his other convictions and his drug problems with heroin and cocaine. (Tr. 65) He stated that he never used drugs in Applicant's presence. He testified credibly that he is now working hard to do the right thing as a citizen. He works seven days a week and continues to go to school. He does not associate with the same friends. He has not used drugs since 2005. He was released from prison in 2008. He continues with drug counseling and attends meetings. He meets with his probation officer once a month and is subject to random urinalysis. (Tr. 69) He is also subject to random home visits. His probation ends in 2011. A.G. appears sincere in his devotion to Applicant and his desire to remain drug free. He has a support system and has resources to keep him on the right path.

Applicant's colleague, who is a lieutenant colonel (retired), and who has known her for ten years, praises her professionalism and trustworthiness. He has known her in a professional and a personal capacity. He describes Applicant's strong work ethic and loyalty. During her long tenure with the company, she has safeguarded classified information without incident. Applicant is described a successful leader. (AE E)

Another character reference presented details about Applicant's efficiency, competency, and organization. She is described as an honest and well-balanced person. (AE F)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision.

Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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;

(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:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information,

unauthorized release of sensitive corporate or other government protected information;

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources;

(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;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment; and

(g) association with persons involved in criminal activity.

Applicant has lived with A.G., a person with an extensive criminal history, since 1989. She disclosed this information on her security clearance applications from the start of her career. She knew of his criminal activities. AG ¶¶ 16(d) and (g) apply.

AG ¶ 17 provides conditions that could mitigate security concerns:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(f) the information was unsubstantiated or from a source of questionable reliability; 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.

Applicant has held a security clearance for almost 26 years. She has received high praise from her colleagues. When she completed her security clearance applications she listed A.G. as the person with whom she lived. Although A.G. had a criminal history before Applicant met him, he continued his criminal behavior during their relationship. She acknowledged in 1998 that it might not be a good idea to continue the relationship with him. However, she believed he would change, and she cared for him. He had a drug problem, which also contributed to his robbery and theft charges. Applicant remained faithful to him and visited him in jail. From 1994 until 2005, A.G. did not have any criminal incidents. However, in 2005, he again was sent to prison for a drug charge. He served his time, completed a drug rehabilitation program, and is now working. Although it may have been more prudent to leave the relationship, Applicant did not. Her strong commitment to A.G. may not be totally understandable, but is not untrustworthy behavior. She did not associate with any of his friends. She did not associate with his drug use. She was as loyal and supportive to him as she apparently has been to her profession. She has a long, unblemished professional and personal record. A.G. has changed his behavior and is on the right track. I do not have doubts about Applicant's reliability or willingness to comply with rules and regulations. I find that she has mitigated the concerns 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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the “whole-person” factors. Applicant has held a security clearance for almost 26 years without incident. She has excellent recommendations and a stellar career record. She was forthright and honest in her security investigations from the beginning. She told investigators in 1998 that she was living with A.G. She did not dispute his criminal record, but did not realize the relationship might jeopardize her security clearance. She discussed the situation with A.G. and wanted to help him. She did not associate herself with his friends. She did not know all the specifics of his crimes. She did visit him in jail. She knew about his addiction to heroin. She at no time believed she had a duty to report him to the authorities.

From 1994 until 2005, A.G. had no criminal incidents. He has had one arrest in 16 years. After his 2005 charge and time in prison, he appears to have taken his drug problem seriously. He has attended drug rehabilitation. He has been drug free since 2005. He is employed. He completes his probation this year. He testified at the hearing and is aware of the importance of Applicant’s security clearance. He respects her work and did not involve Applicant in his criminal activities. He knows the value of Applicant’s security clearance and during the relationship with her he did not engage in criminal acts in the home. He was sincere in his desire to “do the right things as a citizen.” He now has resources to keep him on the right path.

Applicant is not vulnerable to any coercion or pressure. She has disclosed the extent of her relationship over the years. She has had no incidents in 26 years while holding a security clearance. Applicant has met her burden. She has mitigated the security concerns under personal conduct. Clearance is granted.

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
Subparagraph 1.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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge