



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 09-04648
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)
Applicant for Security Clearance)

Appearances

For Government: Phillip J. Katauskas, Department Counsel
For Applicant: *Pro se*

September 15, 2011

Decision

MOGUL, Martin H., Administrative Judge:

On March 23, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline E for Applicant. (Item 1.) 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.

On April 13, 2011, Applicant replied to the SOR (RSOR) in writing, and she requested that her case be decided on the written record in lieu of a hearing. (Item 4.) On May 10, 2011, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered six documentary exhibits. (Items 1-6.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on June 25, 2011. Applicant submitted one additional document, dated June 14, 2011, which has been identified and entered

into evidence without objection as Item A. The case was assigned to this Administrative Judge on July 5, 2011. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her RSOR, Applicant admitted all of the SOR allegations, 1.a. through 1.i. under Guideline E. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the FORM, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 55 years old. She is employed by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Paragraph 1 Guideline E, Personal Conduct

The SOR lists 12 allegations (1.a. through 1.i.) under Adjudicative Guideline E. The allegations will be discussed below in the same order as they were listed on the SOR:

1.a. It is alleged in the SOR that Applicant is the mother of her daughter, who was born on April 24, 1996.

1.b. It is alleged in the SOR that Person A is the father of Applicant's daughter.

1.c. It is alleged in the SOR that on or about May 2008, the County Department of Children and Family Services (DCFS) filed a petition in Superior Court alleging, in part, that Applicant had physically abused her daughter.

1.d. It is alleged in the SOR that on or about June 2008, Applicant appeared in Children's Court.

1.e. It is alleged in the SOR that on or about June 2008, the Court determined that Applicant could no longer live with Applicant and her father.

1.f. It is alleged in the SOR that on or about June 2008, Applicant's daughter was placed in a foster home. As of June 14, 2011, the date of Applicant's reply to the FORM, the daughter still did not live with Applicant, but continued to live in a foster home. (Item 1.)

1.g. It is alleged in the SOR that on or about June 2008, the Court ordered Applicant to complete parenting classes for one year.

1.h. It is alleged in the SOR that on or about June 2008, the Court ordered Applicant to complete anger management classes for one year.

1.i. It is alleged in the SOR that on or about June 2008, the Court ordered Applicant to complete family counseling classes for one year.

1.j. It is alleged in the SOR that Applicant failed to complete Court ordered parenting classes.

1.k. It is alleged in the SOR that Applicant failed to complete Court ordered anger management classes.

1.l. It is alleged in the SOR that Applicant failed to complete Court ordered family counseling classes.

As reviewed above, in her RSOR, Applicant admitted all of the SOR allegations. In her reply to the FORM, Applicant wrote that there was no physical evidence of any abuse to her daughter, but the Juvenile Court believed the DCFS over her word. (Item A). However, Applicant offered no evidence on what the DCFS based its allegations or to what she testified in Juvenile Court. She further states that her daughter continues to come to her house for the last three years because she does not want to be in the Foster System, and Applicant argues that her daughter would not want to visit her if she was afraid that Applicant would harm her.

Regarding why Applicant did not attend the classes to which she was ordered, she wrote that since she was wrongfully convicted she simply decided to not go to the classes that were “unjustly placed” on her.

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 over-arching 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, 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

Guideline E, Personal Conduct

With respect to Guideline E, the evidence has established that the County DCFS filed a petition in Superior Court alleging, in part, that Applicant had physically abused her daughter. The Children’s Court determined that her daughter could no longer live with Applicant and the girl’s father, because Applicant had physically abused her daughter. As of June 14, 2011, the daughter still did not live with Applicant, but continued to live in a foster home. In June 2008, the Court ordered Applicant to attend parenting classes, anger management classes, and family counseling classes, each for one year. Despite the Court’s orders, Applicant has attended no classes.

In reviewing the disqualifying conditions under Guideline E, I conclude that because of Applicant’s conduct as a whole that ¶ 16(d) “credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for 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 prefer properly safeguard protected information” applicable to this case.

Based on the extent of the conduct, especially Applicant’s failure to comply with the orders from the Court, I cannot conclude that any mitigating condition under Guideline E ¶ 17 is applicable. I therefore, resolve Guideline E against Applicant.

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, including all of the reasons cited above as to why the Disqualifying Condition applies and no Mitigating Condition is applicable under Guideline E. Also, since this case is an Administrative Determination, I have not had the opportunity to assess the credibility of the Applicant in person, nor has any independent evidence concerning Applicant’s character been submitted. Therefore, I find that the record evidence leaves me with significant questions and doubts as to Applicant’s eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.c. through 1.l.:	Against Applicant

Subparagraphs 1.a. and 1.b.:

For 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.

Martin H. Mogul
Administrative Judge