



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 09-06975
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

March 30, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline E, Personal Conduct, and Guideline J, Criminal Conduct. Applicant’s eligibility for a security clearance is denied.

On November 1, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E and J. 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 on September 1, 2006.

Applicant provided an undated response to the SOR. She later requested a hearing before an administrative judge. The case was assigned to me on February 8, 2011. DOHA issued a Notice of Hearing on February 9, 2011. I convened the hearing as scheduled on March 9, 2011. The Government offered Exhibits (GE) 1 through 9.

Applicant did not object and they were admitted. Applicant testified on her behalf and did not offer any exhibits. DOHA received the hearing transcript (Tr.) on March 16, 2011.

Findings of Fact

Applicant admitted all the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 44 years old. She earned a bachelor's degree in business management in 1990. She was married from 1989 to 2005. She remarried her former husband in 2007. She has two children from the marriage, ages 22 and 16. The younger child lives at home. Applicant has worked for her current employer, a defense contractor, since May 2009. She held a top secret security clearance from about 2005 to 2006.¹

In 1995, Applicant worked for the federal government as a supply technician. She and a friend were arrested by the police for disorderly conduct because they were taking items that had been donated to a charity store. Applicant pled guilty, and was ordered to pay a fine and costs, which she did.²

Applicant completed a Declaration of Federal Employment in June 1996, a security clearance application (SCA) in April 1998, and another Declaration of Federal Employment in December 2002. On each document she failed to list her disorderly conduct offense.³ She stated she did not think she was arrested, but only thought she received a citation, so did not list it. In 2003, Applicant was interviewed for her background investigation and intentionally provided false information to investigators by failing to disclose her 1995 arrest. She repeatedly denied ever being arrested. She claimed she was out of town at the time the arrest occurred. She stated she had no idea who the person in the arrest and court records might have been and she asserted that she was not the person identified in the court records. She further denied that she provided fraudulent information on her SCA and Declaration of Federal Employment documents. She indicated she was willing to submit to a polygraph to resolve the matter.⁴

Applicant submitted to a polygraph on November 14, 2003, and during the pre-interview she continued to deny the 1995 arrest. During the post-polygraph interview Applicant finally divulged the 1995 arrest. Applicant acknowledged at the time she failed to disclose the arrest on her SCA, sworn statements, and interviews because she had

¹ Tr. 26-28.

² Tr. 29-31.

³ Apparently, it took from 1998 to 2005 for Applicant's security clearance application to be adjudicated.

⁴ Tr. 29-37.

just begun a new career and was afraid she would not be granted a security clearance and she needed the job. She worked for this agency from June 2003 until September 2006.⁵

On August 8, 2005, Applicant received a letter from the adjudication facility that stated:

You have a pattern of deliberately falsifying official government documents and intentionally providing false information to investigators. However, the arrest information that you repeatedly lied about is mitigated due to the time that has elapsed. Your personal conduct raises the concern of your reliability and judgment, however, the fact that the arrest information itself is considered mitigated provides mitigation for your lack of candor. Our favorable decision in this matter should not be considered as minimization of the seriousness of your behavior. You are expected to provide complete and accurate information on all official documents and be truthful during the investigative process.

* * *

[I]t has been decided that the information does not warrant a recommendation of revocation of your eligibility to occupy a sensitive position and/or access to classified information.

* * *

Should information surface in the future that you have failed to provide complete and accurate information on official documents or to an investigator, this information may be used to justify a determination to revoke your eligibility for retention in a sensitive position and/or access to classified information.⁶

Applicant's regional director was directed to hand deliver the documents notifying Applicant that a conditional security clearance was granted. He was directed to verbally advise her of its contents and the ramifications for her failure to meet any of the conditions. Applicant stated that her supervisor told her that he had gone through a lot to help her get her security clearance. She was told that in the future she needed to inform investigators about her past. She was granted a security clearance in August 2005. Her job involved ensuring government contractors were in compliance with security requirements. She was given government credentials as a special agent for the agency where she worked.⁷

⁵ Tr. 29-37.

⁶ GE 2.

⁷ Tr. 24-26, 37-39.

In July 2006, on at least two occasions, Applicant falsely pretended to be a special agent of the Federal Bureau of Investigation (FBI) upon entering a defense agency building. On at least three occasions in July 2006, Applicant falsely pretended to be a special agent of the FBI when making telephone calls to other federal government agencies, and in at least one of those telephone calls, she falsely indicated that she was working for the Department of Defense Hotline complaint.⁸

Applicant explained that in July 2006 she was dating a man employed by a defense agency. She believed he was seeing another woman, who had been calling her to tell her to stop seeing the man. Applicant determined who the woman was and that she worked for the federal government. She went to a defense agency's headquarters building, showed her special agent credentials, and identified herself as Special Agent X from the FBI. She signed and logged herself into the building as Special Agent X from the FBI. The name was a fake. She gained entry to the building and proceeded to use the telephone in the building. She contacted the operator where the woman worked, identified herself as a special agent of the FBI, and asked for the woman's supervisor. She left a message for the supervisor, identifying herself Special Agent X from the FBI, and advising the supervisor that she was calling in regard to this woman. In the message, she told the supervisor she would call back. Later she went back to the same building, again misused her government credentials, claiming she was Special Agent X, from the FBI. She again signed and logged into the building using the fake name. She again used the defense agency's telephone to call the woman's supervisor. She identified herself as Special Agent X from the FBI. This time she spoke with the supervisor and told her she was investigating a Defense Department hotline complaint about the woman. Applicant stated she did not recall the supervisor's response. Applicant admitted she also called this woman at her home directly on two occasions. The woman was not home and Applicant did not leave a message. In her answer to the SOR, Applicant indicated she took these actions because she wanted to get the woman's attention and get her to "back-off."⁹

Applicant violated Title 18, United States Code, Section 912, a felony, by impersonating a Special Agent of the FBI.¹⁰

Applicant's access to classified information and assignment to sensitive duties were suspended on September 1, 2006, by her employer because she had impersonated an FBI special agent. The regional director of her agency told her that the situation was grave because of her conduct. He gave her the opportunity to resign from the agency and told her that she would not be permitted to withdraw her resignation. On

⁸ Tr. 39-49.

⁹ Tr. 39-57; Answer to SOR; GE 4.

¹⁰ GE 9; Title 18 U.S.C § 912 states: "Whoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States or any department, agency or officer thereof, and acts as such, or in such pretended character demands or obtains any money, paper, document, or things of value, shall be fined under this title or imprisoned not more than three years, or both."

August 31, 2006, Applicant submitted her resignation and stopped working at the agency. Because she was permitted to use her remaining leave, her last official day at the agency was September 22, 2006. Later, Applicant received notification, in the mail, that her security clearance was suspended pending final resolution of the above mentioned matter.¹¹

Applicant was unemployed for a few months after she resigned. She then worked as a substitute teacher part-time.¹²

Applicant began working for a federal contractor in May 2009. She did not tell her new employer the reasons she resigned from her government job. She stated she did not tell them because they did not ask. She completed a SCA on June 26, 2009. Under Section 13C: Employment Record, Applicant was asked if in the last seven years she had been fired from a job, quit a job after being told she would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance; left a job for other reasons under unfavorable circumstances, or was laid off from a job by her employer. Applicant responded “no.” She failed to disclose she left her federal agency job and her security clearance was suspended, after she was suspected of impersonating an FBI special agent.¹³

In her SCA, Applicant was asked if she had received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace. She responded “no.” Applicant failed to disclose that in August 2005, she had received a warning letter from her federal government employer that stated:

Should information surface in the future that you have failed to provide complete and accurate information on official documents or to an investigator, this information may be used to justify a determination to revoke your eligibility for retention in a sensitive position and/or access to classified information.¹⁴

In her SCA, Section 25 asked: “to your knowledge, have you EVER had a clearance or access authorization denied, suspended, or revoked; or been debarred from government employment.” If the answer was yes, the question asked the dates of such actions and the circumstances. It also explained that an administrative downgrade or termination of a security clearance was not a revocation. Applicant responded “no” to the question.¹⁵

¹¹ Tr. 57-61; GE 5, 6.

¹² Tr. 60-61.

¹³ Tr. 28, 61; GE 7.

¹⁴ GE 2.

¹⁵ Tr. 66.

Applicant's explanation for why she failed to provide truthful answers was that she did not see where her situation was applicable because she was told to resign. She stated she would not have quit her job. She stated she left because she was told to do so by her regional director. She stated she did not disclose her conditional security clearance or warning letter because "it was an oversight."¹⁶ She did not list that her security clearance had been suspended because she stated she checked the Joint Personnel Adjudication System and her clearance was not listed as suspended. When asked why she did not inquire about this discrepancy, she did not have an answer.¹⁷

Applicant was interviewed by an investigator from the Office of Personnel Management (OPM) in July 2009. During her interview she told the investigator that she did not have any problems when she was employed by the federal government and she did not receive any disciplinary action. She told the investigator she voluntarily left the government because of personal reasons and was told by her supervisor it would be in her best interest to resign for personal issues. She did not provide the investigator any additional information and stated she could not recall the name of the supervisor at the federal agency, and she did not list him on her case papers. At her hearing, she stated she voluntarily left her employment because she did not have any problems or receive any disciplinary actions. She stated she asked the investigator what the definition of "disciplinary actions" was and was told it was if she had ever been written up. She considered her resignation as voluntarily leaving her employment for personal reasons. Applicant's testimony was not believable.¹⁸

Applicant has been consistently untruthful and dishonest about her past actions dating as far back as 1998. She continued to be deceptive and dishonest after she was granted a conditional security clearance. Applicant again lied on her most recent SCA and to the OPM investigator. Her testimony at her hearing was not credible, lacked candor, and was deceptive.

Applicant repeatedly violated Title 18, United States Code, Section 1001, a felony, by knowingly making false statements to government officials.

Applicant indicated that when she first applied for a security clearance she was going through a stressful time in her life. Her mother had passed away and she had a great deal of emotional issues and pressures in her life. She claimed that while she was working for the federal government she had no issues and was a good worker. She indicated she was not charged criminally for her actions when she impersonated an FBI special agent. She stated she is not very happy with her decisions, but attributed them

¹⁶ Tr. 65.

¹⁷ Tr. 24-26, 61-67.

¹⁸ Tr. 67-77; GE 8.

to the stress in her life. She stated she recently started counseling, but did not provide specific information about it.¹⁹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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 to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

¹⁹ Tr. 23.

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

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I have specifically considered:

(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;

(d) credible adverse information that are 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: . . . (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging activities which, if known, may affect the person's personal, professional, or community standing.

Applicant has a long history and pattern of deliberately and intentionally lying to government investigators and on government documents, which include SCA and Declarations for Federal Employment. She has deliberately provided false and misleading information concerning relevant facts to government investigators when interviewed. Her dishonesty and falsifications date back to 1998, when she intentionally provided false information to government investigators. In 2006, she pretended to be special agent of the FBI on two occasions, and on three other occasions she pretended to be a special agent of the FBI when making telephone calls. Her security clearance was suspended and she was told to resign from her job in 2006. She applied for a job with a defense contractor in 2009. On her 2009 SCA, she did not disclose that she had received a written warning from the federal agency where she was previously employed and that she was granted a conditional security clearance. She provided false statements to the OPM investigator during her background interview by falsely stating that she did not have problems when she was previously employed by a federal agency and left for personal reasons. She failed to disclose her security clearance was suspended. Her conduct, if publicly known, may affect her standing in the community and create a vulnerability to coercion. I find the above disqualifying conditions apply to Applicant's personal conduct and false statements.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

- (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 person 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 been lying about her past since 1998, when she denied she had ever been arrested for disorderly conduct, going so far as to claim she was not in the area at the time, and claiming it was another person. It was not until her post-polygraph interview that she finally disclosed her conduct. Despite her false statements, she was granted a conditional security clearance with clear warnings about her future misconduct. A year later, Applicant pretended to be an FBI special agent to gain access to a federal agency's building where she used their telephone in an obvious attempt to intimidate a woman. Applicant was told to resign from her job and she was notified that her security clearance was suspended. In 2009, she applied for a security clearance and failed to disclose any of her past transgressions. Applicant did not make a prompt, good-faith effort to correct her omissions, concealments, or falsifications. To the contrary, she continued to conceal her misconduct. AG ¶ 17(a) does not apply. There is no evidence that her omissions or concealment was caused by improper advice. AG ¶ 17(b) does not apply. Applicant's offenses are not minor. Her repeated falsifications were not infrequent and did not happen under unique circumstances. Her repeated actions cast doubt on her reliability, trustworthiness, and good judgment. I find AG ¶ 17(c) does not apply. Applicant has acknowledged she made mistakes, but was not entirely forthcoming when answering questions about her past actions. She stated she has begun some type of counseling, but did not provide specific information. I find AG ¶ 17(d) partially and marginally applies. Applicant has not provided sufficient evidence to conclude she has taken positive steps to reduce or eliminate vulnerability. She did not disclose her past transgressions to her employer. I find AG ¶ 17(e) does not apply. Applicant's testimony lacked candor and was not credible. There was no evidence to support the application of AG ¶¶ 17(f) or 17(g).

Guideline J, Criminal Conduct

AG ¶ 30 sets out the security concern relating 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.

I have considered the disqualifying conditions under Criminal Conduct AG ¶ 31 and the following are potentially applicable:

(a) a single serious crime or multiple lesser offense; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

Applicant repeatedly, deliberately, and intentionally omitted relevant information and provided false information to government investigators and in government documents, to include her SCA. These are felony violations, under Title 18 U.S.C. § 1001. In 2006, she impersonated an FBI special agent on several occasions. These are felony violations, under Title 18 U.S.C. § 912. I find the above disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and the following are potentially applicable:

(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;

(c) evidence that the person did not commit the offense; 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.

Applicant repeatedly omitted, concealed, and falsified relevant information on government documents, on her SCA, and during security interviews. Her behavior began in 1998 and continued to 2009. Her testimony at her hearing lacked candor and was not credible. Her pattern of omissions and false statements cast doubt on her reliability, trustworthiness, and good judgment. Her repeated and recent behavior in concealing her past conduct and failure to be truthful during this security clearance process, beginning in July 2009, is a serious concern. Other than expressing some remorse for her behavior, I find there is insufficient evidence to conclude Applicant is successfully rehabilitated. There is no evidence she was coerced, pressured, or did not commit the offenses. I find none of the mitigating conditions apply.

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. I have incorporated my comments under Guidelines E and J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is married and the mother of two children. She is a college graduate. Applicant repeatedly lied about her 1995 disorderly conduct offense until her post-polygraph interview. Despite her actions, she was given a written warning and a conditional security clearance. Less than a year later, in 2006, she impersonated a special agent of the FBI on several occasions and abused her position of trust by misusing her credentials. She was permitted to resign and received a letter advising her that her security clearance was suspended. In 2009, she secured employment with a federal contractor. She did not disclose her past transgressions to her new employer. She applied for a security clearance and intentionally failed to disclose her employment history and criminal conduct. She misled government investigators by deliberately providing false information. Applicant's testimony at her hearing was not credible. Applicant has a long history of lying to government investigators and in official government documents. Applicant's repeated wrongful and criminal behavior creates serious doubts as to her reliability, good judgment, and trustworthiness. Applicant failed to meet her burden of persuasion. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guidelines for Personal Conduct and Criminal Conduct.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge