



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-08383
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

October 28, 2010

Decision

MOGUL, Martin H., Administrative Judge:

On April 19, 2010, 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On May 10, 2010, Applicant replied to the SOR (RSOR) in writing. (Item 3.) She requested that her case be decided on the written record in lieu of a hearing. On June 10, 2010, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and she was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on July 19, 2010. Applicant did not submit any additional evidence. The case was assigned to this Administrative Judge on August 31, 2010.

In the FORM, Department Counsel offered 10 documentary exhibits (Items 1-10). No additional documents were offered by Applicant; however Applicant had submitted an affidavit (Item 7), and responded to interrogatories on February 4, 2010, which included four attachments. (Item 8.) Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

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 following findings of fact:

Applicant is 46 years old. She is married and has two children. She served in the United States Army for 24 years, active duty from January 1983 to April 2000, and in the reserves from April 2000 to January 2007. Applicant rose to the highest rank of the senior noncommissioned officer corps, Sergeant Major, E-9. Applicant is currently employed by a defense contractor, and she seeks a DoD security clearance in connection with her employment in the defense sector.

Guideline E, Personal Conduct

The SOR lists nine 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 falsified several travel expense vouchers while serving in the United States Army, where she served from 1983 to 2007. In Applicant's RSOR, she admitted that she falsified several travel vouchers while serving in the Army. She claimed that she paid porters to handle her luggage when she actually carried it herself. Applicant contended that each incident only amounted to a few dollars per voucher, which she did on five or six vouchers that spanned a period of about two years.

1.b. It is alleged in the SOR that Applicant was charged with Confinement of Unattended Child in approximately 2003, after leaving her children, ages five and 10, in her car while she went shopping. In her RSOR, Applicant admitted that she was charged with Confinement of Unattended Child. She claimed that she and her husband were going into a liquor store for less than 15 minutes, and since they did not believe that this was a place to take a five-year-old, they felt it was more appropriate to leave both children in their vehicle, since the weather at the time was not overly hot or cold. Applicant wrote that the court set aside a determination for one year, and the case was expunged when they were not involved in any other legal situations.

1.c. It is alleged in the SOR that Applicant forged signatures on official documents pertaining to her retirement from the United States Army in approximately 2007, because she did not want to delay her retirement. In her RSOR, Applicant admitted that she forged two signatures on two documents associated with her Army

retirement, because she did not want to delay the processing of her paperwork. Applicant stated, "It was incredibly stupid of me. I regret that, as a Sergeant Major, I made such an error in judgment. I should have held to my beliefs and left the orders out rather than submit improper paperwork. I learned a lot about my weaknesses and my moral courage. I will never repeat anything like this again."

1.d. It is alleged in the SOR that Applicant filed a false insurance claim in about 2005, following a car accident, and she received about \$2,500 from the fraudulent claim. In her RSOR, Applicant admitted filing a false claim about a car accident, but stated that it was in 2003 or 2004. Applicant stated, "It was wrong. I am ashamed that I did it. I thought I was a better person than that." In her affidavit, Applicant stated that the accident was caused because she had drifted off the road and struck a guard rail, but she told the insurance company that she had skidded on ice, because she believed her insurance rates would increase if she told the truth. (Item 7.)

1.e. It is alleged in the SOR that Applicant inaccurately completed her time and attendance information for approximately 6 to 8 months at her current employment, where she has been employed since about January 2007. In her RSOR, Applicant denied that she falsified her time reports while employed by her current employer. She wrote that she had a hard time adjusting to a corporate style time reporting and that she was not sure if she was filling out the electronic timecard properly. She claimed that she spoke with the person overseeing the project about her time concerns, and she was assured that she was doing things properly.

1.f It is alleged in the SOR that Applicant submitted false travel vouchers to her current employer. In her RSOR, Applicant denied that she falsified travel vouchers with her current employer. She contended that the polygrapher must have confused her this information with her earlier military travel vouchers. She wrote that she had traveled only one time for her current employer, and that she filled out the voucher carefully and accurately.

1.g. It is alleged in the SOR that applicant took home a computer program, worth \$300, from her current employer, and uploaded it onto her personal home computer. In her RSOR, Applicant denied that she took a computer program from her employer and uploaded it onto her computer for any long-term gain. She did admit that she borrowed a computer program and uploaded it onto her computer, but she contended it was only for her son to use for a science fair project, and that she has not used the program since that one occasion.

1.h. It is alleged in the SOR that Applicant stole company T-shirts, valued at \$25 to \$30 each, from her current employer. In her RSOR, Applicant denied that she stole company T-shirts from her employer. She claimed that in earlier statements, she had said that the T-shirts were old and had outdated branding so the company could not use them. She did concede that she felt bad that she took the T-shirts without informing her boss because that would have been the courteous option. She stated, "I should have let her know that I was going to take them rather than just doing so."

1.i. It is alleged in the SOR that Applicant's access to classified information was suspended by another government agency on about July 21, 2008, due to her personal conduct, as set forth above. In her RSOR, Applicant admitted that her clearance was suspended in May 2009, because she was denied a clearance by another agency due to the allegations referred to in 1a. through 1h., above.

In July 2008, following a polygraph interview, Applicant revealed the above conduct. AGA thereafter denied her request for access to SCI, and noted the above reviewed fraudulent conduct as a basis for its denial in a letter to Applicant, dated September 15, 2008. (Item 8. b.) As a result of the denial of SCI access, the Defense Security Service thereafter suspended Applicant's security clearance. (Item 8. c.)

On the FORM, Department Counsel states Applicant denied allegations 1.f through 1.h. While Applicant did generally deny 1.e. through 1.h. on her RSOR, she did admit that she was unsure if she was filling out her electronic timecard properly, that she took home a computer program and uploaded onto her home computer without permission, and that she took company T-shirts without permission. The only allegation in the SOR that Applicant actually denied was that she had submitted false travel vouchers to her current employer.

Mitigation

Applicant submitted certificates for significant medals that she received while in the Army. (Item 8.f.) These included: several Meritorious Service Medals and her fifth Good Conduct Medal. She also submitted NCO Evaluation Reports from 2002 into 2006. (Item 8 g.) Her ratings were always extremely high. Finally, Applicant submitted her civilian evaluation performance reports for years 2007 and 2008. (Item 8.h.) These were also extremely positive.

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 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.” 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 Applicant committed conduct that could be considered to involve questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. This included the following: defrauding the government by submitting several false travel vouchers, forging of official orders and submitting them to the Army. She also committed fraud on her insurance company by submitting a false insurance claim, was guilty of the charge of confinement of her two unattended children, and the taking of company T-shirts and a company computer program without authorization from her current employer.

In reviewing the disqualifying conditions under Guideline E, I conclude that, because of Applicant’s conduct as a whole over the course of many years as reviewed in 1.a. through 1.h., above, ¶ 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. This includes but is not limited to consideration of: . . . (3) pattern of dishonesty or rules violations; (4) evidence of significant misuse of Government or other employer's time or resources" applies against Applicant.

Based on the extent of the conduct over many years, I can not 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. Based on all of the reasons cited above as to why the disqualifying condition applies, and why no mitigating condition applies, 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a.- 1. i.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge