



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



In the matter of:)
)
) ISCR Case No. 11-00030
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn D. MacKinnon, Esq., Department Counsel
For Applicant: *Pro se*

01/23/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On September 26, 2012, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On October 22, 2012, Applicant answered the SOR and elected to have her case decided on the written record. On November 2, 2012, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant,

and it was received on November 8, 2012. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on January 11, 2013.

Findings of Fact

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

Applicant is 31 years old. She earned a bachelor's degree in 2003. She married in 2008 and has no children. She has worked for a federal contractor since May 2010 and submitted a security clearance application (SCA) on May 12, 2010.

In December 2009, Applicant was required to take a polygraph examination as a condition of her employment. During the pre-test interview, Applicant told the examiner that she never used or sold any illegal drugs. The examiner advised Applicant that during the polygraph test she had significant reactions to the drug questions. At that time, Applicant admitted that she used marijuana one time when she was about 13 or 14 years old. On December 3, 2009, Applicant made the following written statement:

The examiner told me I had significant reactions to the drug question. Before the exam I stated I had no drug use however during the testing I remembered that at the age of 13-14 I was at a friend's house and tried marijuana once.¹

Applicant stated the following in her answer to SOR ¶ 1.d that alleged she provided false and misleading information during her polygraph examination: "I deny, when I recalled the information and the occasion listed I informed the polygrapher right away. The incident had happened over 10 years ago."²

On July 21, 2010, Applicant was interviewed by an Office of Personnel Management (OPM) investigator. She told the investigator that she had taken a polygraph in February 2010 and was advised that she had failed the test. She told the investigator that she was not given a reason as to why she failed the test. When she was asked by the investigator why she thought she failed the test, she indicated that she did not know why.³ In her answer to SOR ¶ 1.c that alleged that she provided false and misleading information during her OPM interview she stated: "I deny, I was not informed of the failed polygraph reason. I could only guess that the drug question was the result. No formal reason from the [agency] was given."⁴

¹ Item 5.

² Item 2.

³ Item 4.

⁴ Item 2.

In Applicant's response to interrogatories asking her why she denied knowing the reason she failed the polygraph examination when she was questioned by the OPM investigator, she stated:

When I was sent the letter notifying me of failing the polygraph it did not give [a] specific reason. I also do not recall signing the statement for the significant reactions to the drug question. I could only assume that the drug questions was the reason for the failure as I was not officially told the reason. As such, I should have discussed my assumption with the investigator.⁵

In Applicant's SCA, she responded "no" to Section 13C Employment Record indicating that she had never 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; or left a job for other reasons under unfavorable circumstances. The question also asked if she had been laid off from a job by an employer. Applicant responded in her SCA that she was laid off by an employer in February 2010 because "my services were no longer needed."⁶ She stated in her OPM interview that after her employer was advised by the agency who conducted the polygraph that she had failed it, she was no longer eligible to participate in contracts with the agency. Applicant stated her supervisor wanted to retain her, but there were no contracts for her to work on, so she was laid off.⁷

Applicant was employed by federal contractor "A" from April 2005 to January 2006. During her OPM interview, she confirmed that in the past ten years she had never been fired from a job, quit a job after being told she would be fired, or left a job by mutual agreement following allegations of misconduct or unsatisfactory performance, nor any other unfavorable circumstances. She confirmed that she had never deliberately concealed or falsified any relevant materials on any forms used to determine employment eligibility.

During Applicant's OPM interview, she indicated that she voluntarily resigned from employment with "A" because she did not like her job or her supervisor. She indicated she did not have any disciplinary problems or personality conflicts, but rather the job was not what she expected it to be. These reasons caused her to come to the decision to resign in February 2006. She indicated she would probably be eligible for rehire by "A."⁸

⁵ Item 4.

⁶ Item 2.

⁷ Item 4.

⁸ Item 4.

Applicant made a written statement to “A” signed on December 30, 2005, witnessed by two people, and stating it was true and correct to the best of her knowledge. Applicant was confronted by “A” and was told that people she was to have contacted in person and interviewed, as part of her work assignment, verified that she did not contact them as required. Applicant falsely documented in her official work report that she had contacted and interviewed these people. In her statement, she admitted she made false representations. She explained:

At the time, I was assigned a multitude of cases and felt under considerable pressure to get this work in on time as required by [supervisor]. I know there is not much more I can say and this is very much unlike me. If there is anything I can do to help [A] resolve this issue, please let me know because I will do anything I can to bring this matter to a favorable close.⁹

On January 3, 2006, “A’s” internal office mail stated: “Effective today (1/3/2006) please terminate [Applicant]. Her social security number is [XXX-XX-XXXX.] There are questions of her integrity; she was terminated due to concern of falsification.”¹⁰ An email dated January 3, 2006, from the deputy program manager stated: “The matter that led to the suspension of [Applicant] is now concluded and her employment with [A] has been terminated effective today.”¹¹ The email directed different employees to notify different entities that Applicant’s employment was terminated due to “an integrity concern (falsification)” and to “cancel her facility access” and “remove her from any and all” access across the board. Another email confirmed that Applicant turned in her credentials January 4, 2006.¹² Applicant denied SOR ¶¶ 1.a and 1.b addressing her employment termination and failure to list it on her SCA. She did not offer any other information or explanations about these allegations.

Policies

When evaluating an applicant’s suitability for a security clearance, the 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, 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

⁹ Item 6.

¹⁰ Item 6.

¹¹ Item 6.

¹² Item 6.

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 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 that an applicant may deliberately or inadvertently fail to 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

AG ¶ 15 expresses the security concern about 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.

I considered the disqualifying conditions under AG ¶ 16 that could raise a security concern and concluded the following are potentially applicable.

(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 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; 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 in activities which, if known, may affect the person's personal , professional or community standing. . . .

There is substantial evidence to conclude Applicant deliberately omitted, concealed, and falsified relevant information on her SCA and when interviewed by an OPM investigator. She deliberately failed to disclose she was terminated from employment and the circumstances surrounding it. She lied to her employer that she had completed certain work when she had not. She misled the OPM investigator about being unaware of the reason she failed her polygraph examination. The evidence also supports the allegation that she did not disclose her prior drug use until after being confronted by the examiner that she had significant reactions on the polygraph to the drug questions. Applicant attempted to minimize and conceal information about the polygraph and her employment record. Her falsifications create a vulnerability to exploitation as it is the type of activity, which, if known, would affect her personal and professional reputation. Applicant's explanations were not credible and her behavior lacked good judgment and were untrustworthy. The above disqualifying conditions apply.

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;

(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; and

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

None of the above mitigating conditions apply. Applicant did not make a prompt, good-faith effort to correct her omission, concealment, and falsification before being confronted with the facts. Her deliberate lies to her employer about her work are serious and cast doubt on her current reliability, trustworthiness and good judgment. Her pattern of dishonesty raises questions about her integrity. AG ¶¶ 17(a) and 17(b) do not apply. Despite substantial derogatory evidence, Applicant has not acknowledged the behavior or taken positive steps to alleviate the factors that caused her inappropriate behavior. I am not convinced her behavior is unlikely to recur. Therefore, AG ¶¶ 17(d) and 17(e) do not 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 relevant 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 Guideline E 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 31 years old. She intentionally failed to disclose derogatory information on her SCA about her employment record. She repeatedly misled the OPM investigator about the circumstances surrounding her polygraph failure and her employment record. Applicant has exhibited a pattern of dishonesty that demonstrates a lack of trustworthiness. Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline E, personal 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.d:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge