



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



In the matter of:)
)
) ISCR Case No. 12-03970
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: Corey R. Williams, Esquire

07/25/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified Electronic Questionnaires for Investigations Processing (e-QIP) on October 18, 2005, December 6, 2007, and November 17, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on February 27, 2014, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on March 3, 2014, and she answered it through counsel on March 29, 2014. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on May 9, 2014, and I received the case assignment on May 15, 2014. DOHA issued a Notice of Hearing on June 2, 2014, and I convened the hearing as scheduled on June 12, 2014. The Government requested that a letter of rights and obligations, dated April 25, 2014 and mailed to Applicant, be received as hearing exhibit (HE) 1. Applicant did not object, and HE 1 was received in the record. In its case in chief, the Government offered exhibits marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant and four witnesses testified. She submitted exhibits marked as AE A through AE G, which were received and admitted into evidence without objection. I held the record open until June 24, 2014, for Applicant to submit additional matters. Applicant timely submitted AE H - AE J, which were received and admitted without objection. The record closed on June 24, 2014. DOHA received the hearing transcript (Tr.) on June 27, 2014.

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of her right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. After consulting with counsel, Applicant affirmatively waived this right under the Directive. (Tr. 9.)

Findings of Fact

In her Answer to the SOR, Applicant denied the factual allegations in ¶¶ 1.a-1.e of the SOR.¹ She also provided additional information to support her request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 37 years old, works as a senior industrial security specialist and program security representative for a DOD contractor. She began working for her current employer in late 2007 or early January 2008. Her performance review rated her work as “meets requirements” for the year 2008. Her performance reviews rated her work as “exceeds requirements” for the years 2009 through 2013.²

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. “That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern.” See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²AE A.

Four witnesses testified on Applicant's behalf. Witness B and Witness C read the SOR and Applicant's response, and Witness A and Witness D indicated knowledge of the SOR allegations. Witness A met Applicant in 1998 when Applicant started working as a cashier at a retail store. At that time, Witness A was the head cashier. She later became the officer manager and Applicant's direct supervisor. Applicant eventually became the head cashier. As a cashier, Applicant handled significant amounts of money. Witness A never experienced any incidents with Applicant's cash draw and because of this, she considers Applicant trustworthy. As her supervisor, she did reprimand Applicant for tardiness. They have remained friends since Applicant left her cashier position. Witness A considers Applicant trustworthy and honest and a person with good judgment. Applicant told her that she had been laid off from a job in 2006. She never said that she was fired from this job. Witness A would rehire Applicant, but would not rehire anyone she fired.³

Witness B met Applicant in 2011. She works with Applicant at her current job and has observed Applicant's work. They interact with each other on a daily basis, either in person or by telephone. Over time, they have become friends and occasionally socialize outside of work. Witness B does not question Applicant's honesty, trustworthiness, reliability, and good judgment after observing her at work and outside of work.⁴

Witness C met Applicant in 2011 during her interview. He worked with Applicant on a daily basis for two years. Because he was her team leader, he reviewed her performance, and he physically observed her work. He does not question her honesty, trustworthiness, reliability, or good judgment. He is now a supervisor, but he does not have supervisory authority over Applicant. Applicant has never indicated to him that she was fired from a job nor has she asked for access to company computers for matters not related to work. He continues to socialize with Applicant a few times a week at work or outside of work.⁵

Witness D met Applicant in 2007 at her current place of employment. He was her direct supervisor from 2007 until 2011 when he became a senior department manager. While under his supervision, Applicant never inappropriately accessed company computers or asked to access a work computer. During this time, he saw her daily. He does not question her honesty, trustworthiness, reliability, or good judgment. He never reprimanded her for any issues. Applicant never told him that she had been fired from a job, but did tell him she had been laid off from a job in the past. He had no reason to suspect she had lied to him about being laid off. In late 2013, he and Applicant began dating after two years of infrequent and casual contact at work.⁶

³Tr. 23-34.

⁴AE B; Tr. 35-40.

⁵Tr. 41-51.

⁶Tr. 53-62.

Along with witness testimony, Applicant provided six letters of recommendation from a manager at a former job, two managers from her current job, and three coworkers. They describe her as trustworthy and honest. To them, she is a person with integrity. They praised her work skills, her motivation, and her professionalism. One stated that he had never known her to take short cuts or deviate from approved methods and procedures. All recommended her for a security clearance. None indicate that they have reviewed the SOR or her response.⁷

Applicant is single. She received an AGECA certification in 2003. She also graduated from college the same year with a bachelor's degree. After college, Applicant continued working as a head cashier for the retail store. She also worked as an office manager and an administrative assistant at two separate companies. In October 2005, she accepted a position with Company A as a security administrative assistant. Her work with this company ended on June 7, 2006. The end of this job and Applicant's subsequent actions concerning the end of this job are the basis of the SOR. At this same time, one of Applicant's sister's was on life support after attempting suicide for the second time.⁸

While working at Company A, Applicant developed a friendship with an information technology (IT) employee (employee B). She also began dating employee C when both worked at Company A. Her dating relationship with employee C experienced problems, which she at times discussed with her IT friend, employee B. Through her friendship with employee B, Applicant learned that employee B knew how to obtain information about other Company A employees or documents from Company A's computers belonging to individual employees. On June 1, 2006, after previous discussions with employee B, Applicant sent a cryptic email to employee B asking him to obtain a personal, nonbusiness document from the computer of employee C. Applicant never personally accessed employee C's computer. Employee B reported Applicant's request to his facility security officer (FSO), who reported the incident to human resources.⁹

Company A suspended Applicant pending an investigation on Friday, June 2, 2006. The next Wednesday, June 7, 2006, Company A terminated Applicant's employment. Company A provided the Government with a copy of its internal documentation regarding Applicant's termination. The documentation includes a counseling notice signed by Applicant, emails between the human resources vice president and upper management, an email from the Company A's FSO, a meeting

⁷AE B. At the hearing, Applicant testified that of those who wrote letters of recommendation, at least four were aware of the SOR. Tr. 100-102.

⁸SOR; GE 1; AE D; AE E.

⁹GE 5; Tr. 69-71. Applicant believes that employee B was coerced by his wife to report the incident. Tr. 74.

summary, an undated apology letter from Applicant, and a copy of an employee handbook receipt.¹⁰

The counseling notice is dated June 6, 2006. At the top, it contains a large box with smaller boxes internally. A small box for suspension pending investigation is marked as is a small box for separation. The counseling notice contains specific details of this incident as discussed above, but no witness signature. The document next inquires if there has been any previous discipline, and no answer is given. The next section requests the preparer to discuss the corrective action to be taken to avoid further infractions of Company A rules, policies, or procedures and indicates that failure to meet the corrective action or to improve work performance may be cause for further disciplinary action including separation, then the following has been typed: "the position of Security Assistant requires unquestioning trustworthiness, honesty and adherence to company policies. Violating company policies, willful misconduct and missuse of authority are grounds for separation." No further typed information follows this statement. The above statement is followed by this statement: "having read the report and been given a chance to discuss it with my supervisor, I acknowledge that I know of [Company A's] rules and requirements involved. Signing this report does not necessarily indicate my agreement with the disciplinary action taken, but that it has been communicated to me." Other than the check mark in the separation box, no mention of disciplinary action is written in this document. Applicant and the human resources vice president signed this document on June 7, 2006.¹¹

The emails from the human resources vice president to upper management reflect that the vice president wanted to fire Applicant for inappropriate use of authority and misconduct and included unknown documents. Upper management wanted to know the basis for firing Applicant, and the human resources vice president advised that Applicant's conduct violated the Code of Conduct set forth in the employee handbook. Specifically, the human resources vice president identified willful misconduct, violation of IT policy and misuse of authority as actions which may result in immediate dismissal without notice. There is no response from upper management. A copy of Applicant's acknowledged receipt of the employee handbook is included. In an unsigned company confidential memo, author unknown, dated June 7, 2006, the author reviews discussions with Applicant in a June 7, 2006 meeting as follows. Applicant acknowledged that she engaged in the conduct and that it was a violation. Applicant indicated that her action related to her personal life and did not have anything to do with her job or the company. She apologized. The author then stated that Applicant was advised that her actions left no recourse other than to terminate her employment for cause based on misuse of authority and misconduct. The author gave Applicant the counseling notice, which Applicant signed, briefed Applicant, and completed final processing work. Finally, the FSO escorted Applicant to her desk. Applicant denied

¹⁰GE 5. Applicant had not seen several of these documents until the documents were provided in discovery. Tr. 80.

¹¹GE 5.

receiving any papers from Company A that indicated she was terminated or that she is not eligible for rehire. She does not remember the conversation with the human resources vice president. She only remembers meeting with the FSO with whom she had multiple conversations about this incident.¹²

Applicant wrote an undated apology letter to unspecified persons. Applicant acknowledged that she exercised poor judgment and allowed her personal life to compromise hers and Company A's integrity. She understood what she had done and expressed a willingness to take every step necessary to rectify the situation. She expressed a hope that she would not be terminated. The FSO wrote an email to the vice president outlining information provided to him by Applicant about the behavior of employee B. No further information has been provided from the company. At the hearing, Applicant did not deny her conduct and accepted responsibility for this incident.¹³

Applicant completed e-QIPs on October 18, 2005, December 6, 2007, and November 17, 2011. Her answers on her 2005 e-QIP are not at issue in this case. Her answers on the 2007 and 2011 e-QIPs are at issue. Applicant met with an Office of Personnel Management (OPM) investigator on January 9, 2012 and February 9, 2012. Her answers to the OPM investigator's questions and the information she provided during these interviews are also at issue in this case.¹⁴

When she completed her 2007 e-QIP, Applicant listed her employment at Company A in Section 11, giving the dates of October 2005 to June 2006 and her position title as security administrative assistant. She gave no reason for leaving this position nor does the e-QIP ask her to provide a reason for leaving. In Section 22, she answered "no" to the following questions:

Has any of the following happened to you in the last 7 years?

1. Fired from a job
2. Quit a job after being told you'd be fired.
3. Left a job by mutual agreement following allegations of misconduct.
4. Left a job by mutual agreement following allegations of unsatisfactory performance.
5. Left a job for other reasons under unfavorable circumstances.

She listed a 2002 driving under the influence (DUI) charge and acknowledged alcohol counseling on this e-QIP.¹⁵

¹²GE 5; Tr. 68, 79-81.

¹³GE 5; Tr. 69-70, 74-76, 90.

¹⁴SOR; GE 1- GE 4.

¹⁵GE 2.

When she completed an e-QIP on November 17, 2011, Applicant listed her employment at Company A in Section 13A, giving the dates of October 2005 to June 2006 and her position title as security administrative assistant. She indicated that she was laid off from this company. She also answered “no” to the following questions in this section:

Has any of the following happened to you in the last 7 years?

1. Fired from a job
2. Quit a job after being told you’d be fired.
3. Left a job by mutual agreement following allegations of misconduct.
4. Left a job by mutual agreement following allegations of unsatisfactory performance.

She also answered “no” to this question: “For this employment, **in the last seven (7) years** have you received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?” This question and the above four questions were again asked in Section 13C, and Applicant answered “no”. She provided no other information about the circumstances leading up to the loss of her job on June 7, 2006. On her November 2011 e-QIP, she also listed her 2002 DUI and counseling related to her DUI, and she acknowledged internet contact with foreign nationals with whom she had worked.¹⁶

Applicant denies intentionally falsifying her answers on her 2007 and 2011 e-QIPs. Her supervisor, who was also the FSO, told her that her departure was being determined a lay off, and she should list it as that on future job applications. She states that since she was laid off, she did not believe that she had been fired from her job with Company A. She provided a letter from her former supervisor, the FSO, at Company A. He indicated that he had been told that Applicant was laid off and that he told Applicant that she was laid off. In her view, Company A decided to end her employment. She and Company A did not reach a mutual agreement.¹⁷

Applicant met with an OPM investigator on January 9, 2012. She told the OPM investigator that she had been laid off from Company A and that she received two or three verbal warnings for being late to work by her supervisor, the FSO. She discussed her 2002 DUI and counseling and her internet friends. She also provided information about her siblings’ use of illegal drugs.¹⁸

One month later, Applicant again met with the OPM investigator, who reviewed Applicant’s employment history listed on her e-QIPs. Concerning Company A, Applicant

¹⁶GE 1.

¹⁷Response to SOR; AE H; AE I; Tr. 78- 80, 90-95, 108-111.

¹⁸GE 4, p. 3-5.

denied any disciplinary actions and accusations of employee theft, but acknowledged one written warning for being late. She further indicated that no one at Company A would question her conduct or behavior to include personality conflicts. Applicant indicated that she had not violated any oral, written, or otherwise-recorded agreement between her and Company A and that she did not leave under duress. The OPM investigator then pressed Applicant for more specific details about discipline in the work place, specifically about misconduct. Applicant acknowledged verbal counseling from her supervisor (FSO) about letting her personal life interfere with her work, and she discussed her relationship with employee C. The OPM investigator directly asked Applicant if she had been fired, left or quit a job under unfavorable circumstances, or under duress, Applicant answered no. Applicant said she was laid off from Company A, which is what her supervisor (FSO) told her in a telephone call. When asked by the OPM investigator if she had been disciplined for violation of a security policy, if she deliberately concealed or falsified relevant information on any form to determine employment benefits or if she left Company A under allegations of misconduct, she said that her supervisor told her not to come back as she had been laid off. She denied directly asking employee B to access the computer of employee C, or sending such a request to him. When presented with the June 1, 2006 email to employee B, she could not recall sending it. She denied accessing employee C's computer. Applicant denied writing an apology letter and when confronted with it, she did not recall writing it. She denied a meeting with Company A management on June 7, 2006, and again when confronted with documents of the meeting, said she did not recall. She denied that she was attempting to hide information from the government about her departure from Company A. She indicated that the year following her departure from Company A was a blur because her sister attempted suicide and later died, which was very traumatic for her. Applicant told the OPM investigator that she did not recall anything about the information provided from Company A about her departure.¹⁹

In her response to the SOR and at the hearing, Applicant denied intentionally falsifying her e-QIP. She also denied providing false information to the OPM investigator. She provided details about her departure from Company A. She indicated no specific recall about writing the email or the apology letter, but does not deny either. She acknowledged the apology letter was a correct assessment of the situation. She stated that she had little memory of the events in June 2006. She also testified that she should not have discussed accessing other employee information with employee B and has not done so again.²⁰

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

¹⁹GE 4.

²⁰Tr. 69-82. Applicant stated that to her knowledge, her present employer conducted a background investigation of her which did not reveal that she had been fired from Company A. Tr. 68.

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.

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. . . ." An applicant has the ultimate burden of persuasion for 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 an 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

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 the disqualifying conditions that could raise security concerns. I have considered all the conditions, and 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;

(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; 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

The Government alleges in SOR ¶ 1.a that while employed at Company A, Applicant attempted to gain unauthorized access to another employee's computer and that she was counseled and terminated as a result. Applicant acknowledged that she and employee B discussed obtaining a personal document from employee C's computer, that employee B told her he could access other employees' computers, that she made such a request to employee B, and that employee B reported her request. Although she never personally attempted to access the computer of employee C, a security concern is established under AG ¶ 16(d) because Applicant sought this information and enlisted the help of employee B to obtain a document to which she had no access or authority to obtain.

The Government alleges one incident of falsification by Applicant when she completed her 2007 e-QIP (SOR ¶ 1.b); one incident of falsification when she completed her 2011 e-QIP (SOR ¶ 1.c), one incident of falsification when she met with the security clearance investigator in January 2012 (SOR ¶ 1.d); and one incident of falsification when she met with the security clearance investigator in February 2012 (SOR ¶ 1.e). For AG ¶ 16(a) to apply, Applicant's omissions must be deliberate. The Government established that Applicant omitted material facts from her 2007 and 2011 security clearance applications when she answered "no" to questions asking about negative circumstances related to her employment at Company A. She also omitted material facts about her departure from her position at Company A during her two 2012 personal subject interviews. This information is material to the evaluation of Applicant's trustworthiness and honesty. Applicant denied intentionally falsifying her 2007 and 2011 e-QIPs and providing false information about her departure from Company A in her 2012 personal subject interviews in her response and at the hearing.

When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.²¹

Company A decided to terminate Applicant after she asked employee B to access the computer of employee C, a violation of company policy and procedure. Applicant is correct that this was a company decision, and not a mutual agreement. Her termination was not related to work performance, but to conduct. On its face, the counseling notice provides conflicting information because the checked box reflects that she was separated, but then provides a place for corrective action. In this space, Applicant is told that violations of company policy, wilful misconduct, and misuse of authority are grounds for termination; however, no statement is made which tells her that this is the disciplinary action being taken. Applicant's supervisor was told she was

²¹ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

laid off and told this to Applicant. Overall, this is a less than clear document showing that she was fired for cause.

Applicant answered “no” to all questions seeking negative information related to her employment at Company A. Applicant knew that her conduct in the days before June 7, 2006 had resulted in a suspension on June 2, 2006 and that she had been separated from her position at Company A. The e-QIP specifically asked if she left this job for other reasons under unfavorable circumstances, and she said no. When she completed her e-QIP in 2007 and 2011, she was fully aware that her conduct in the days before June 7, 2006 had come under question and that she had acted in a manner inconsistent with workplace rules and policies. She had a duty to be forthright and candid in her e-QIP answers about the circumstances leading to her departure from Company A, not simply stating that she was laid off. AG ¶ 16(a) applies.

When she met with the OPM investigator in January 2012, she stated that she was laid off from Company A and advised that she had received two or three verbal warnings for being late to work. She did not mention her suspension just prior to her lay off. When the OPM investigator pressed her for more detailed information about the circumstances leading up to her departure from Company A, Applicant denied that any negative circumstances were the reason for leaving Company A, reasserting again that she was laid off. When she was presented with documents from Company A showing her conduct just prior to June 7, 2006, she could not recall her actions. Applicant’s statements to the OPM investigator are not credible. She is an adult, and she knew that Company A had decided to end her work relationship because of her conduct. The Government has established intentional falsification. AG ¶ 16(b) applies.

The personal conduct guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶¶ 17(a) through ¶ 17(g), and the following are potentially applicable:

(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;

(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.

Concerning SOR allegation 1.a, this incident occurred eight years ago. Coworkers, who have known Applicant since 2008 or later, attest to positive conduct in the work place. She has not asked any of them to access work computers inappropriately nor has she been disciplined for accessing coworkers' computers or for violating company policies, procedures, and rules. She learned from her experience at Company A. For eight years, she has followed the rules on access to computers and acted appropriately in the work place. She took positive steps to reduce and eliminate any vulnerability to exploitation, manipulation, or duress. There is little likelihood that this conduct will occur in the future. She has mitigated any security concerns related to her conduct while employed at Company A under AG ¶¶ 17(d) and 17(e) and SOR allegation 1.a is found in favor of Applicant.

Concerning the falsification allegations, Applicant has not mitigated the security concerns raised. During her interviews with the OPM investigator, Applicant was less than candid about all the circumstances surrounding her departure from Company A. Accepting that she was laid off, she avoided providing all the relevant information that influenced the decision of Company A to end their employment relationship. Her actions during the investigation interviews remain a concern.

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 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's coworkers, supervisors, and former supervisors all attested to her honesty and trustworthiness. Two read the SOR and her responses, and still they agreed that she was honest and trustworthy. She does not take shortcuts and has excellent work skills. Applicant changed her behavior and attitude about how she acts at work. She provided negative information on her e-QIPs and volunteered negative information to the OPM investigator. Her failure to be candid and forthright with the OPM investigator about all the circumstances surrounding her departure from Company A outweighs the positive evidence in this record. Telling a prospective employer that she was laid off may well be sufficient for a job application since her immediate supervisor at Company A would support this information. In the security clearance process, more is required. To hold a security clearance, an applicant must be completely forthright and honest in all aspects of the process. Applicant has not done so in this process.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her personal conduct under Guideline E.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge