



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



In the matter of:)
)
) ISCR Case No. 12-09886
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Department Counsel
For Applicant: *Pro se*

February 22, 2017

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing dated March 3, 2015. (Government Exhibit 1.) On May 12, 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline E for Applicant. 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 after September 1, 2006.

Applicant responded to the SOR on June 13, 2016, and she requested a hearing before a Defense Office of Hearings and Appeals Administrative Judge. This case was assigned to this Administrative Judge on October 3, 2016. A notice of hearing was issued on November 3, 2016, scheduling the hearing for December 7, 2016. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 through 6. The Applicant presented three exhibits, which were admitted without objection, referred to as Applicant's Exhibits A through C. The record remained open until close of business on December 30, 2016, to allow the Applicant to submit

supporting additional documentation. Applicant submitted three Post-Hearing Exhibits, referred to as Applicants Exhibits D through F, which were admitted without objection. These exhibits include fourteen letters of recommendation from neighbors, coworkers and managers, as well as a letter of designation for the confined space program, and an entry permit, a total of sixteen separate documents. The official transcript (Tr.) was received on December 16, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 54 years old and is divorced with one adult son. She has a high school diploma. She is employed by a defense contractor as a Structural Aircraft Mechanic and a security clearance is necessary in connection with her employment.

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for a security clearance because she has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

Applicant denied each of the allegations set forth under this guideline. The Government contends in the SOR that the Applicant has a history of using questionable judgment at work, evidenced by the number of written warnings and job terminations she has had in the past. Applicant believes that for the most part, her problems are because she works in a male dominated field. As a female she makes up only 1 percent of the work force, and she feels she is harassed and bullied consistently. Applicant began her current employment in August 2015. On November 12, 2016, she broke her wrist at work. She had surgery on the 17th and they put a plate in it. She returns to light duty on December 13, 2016.

Applicant has worked in the defense industry for the past 33 years, and has held a security clearance for much of that time. She explained that she has always been mechanically inclined. After graduating from high school, she applied for a job as an overrate operator for a defense contractor. She was hired, and learned her trade on the job. She continued to have hands on training. After a year, she was able to advance to a higher paying position, and this process continued over the years, until she learned her current trade. She, is and has always been, one of few females in her profession, and at her previous places of employment.

In 2009, while working for a defense contractor A, Applicant received a written warning, following a confrontation with a worker. Applicant explained that she was transferred to second shift, where she and one other worker were the most experienced. A number of less experienced mechanics were asking her for help, while the other experienced mechanic was visiting with someone, and not working. Applicant interrupted him to asked him to help her with the other less experienced mechanics, and he reported her to the supervisor. Applicant claims that the matter was blew out of proportion, and she ultimately received a written warning for this.

In 2010, Applicant was terminated from her employment with employer A, for allegedly making a slanderous remark about a coworker's anatomy. Applicant stated that she never made such a remark and she tried to stay away from the accusers. Applicant went to the Union for help. They tried to help her, but she was unsuccessful. Applicant also went to the EEOC about discrimination in the matter, but they did not take the case.

In April 2014, Applicant was terminated from employment at company B, for violating the company's regulations for altering a confined space entry form. Applicant explained that in order to work in a confined space, the supervisor must sign the form and date it each day to authorize the work. Applicant's supervisor came in later that day and did not sign the confined space form for the Applicant. It was a Saturday. Applicant's form was only approved for a Friday. Applicant, however, went ahead and worked in the confined space on Saturday. She states that she annotated the form on the bottom of the page to verify that she was working in the confined space on that Saturday. This is against company policy and Applicant was terminated for committing this violation. The day after she was fired, Applicant went to the Union and filed a grievance. Applicant subsequently won her grievance, signed a confidential settlement agreement, and was fully restored to her previous position, as if she never left. She worked there another four months, before she moved on to another opportunity.

In June 2014, Applicant received a written warning from her employment at company C, following a confrontation with a coworker. At the time, Applicant was working as a landscaping worker on a ranch, where she shared community housing with three other girls. Applicant was disliked by the other girls for some reason. She was moved to another facility, and eventually left the job.

In June 2015, Applicant was terminated from her employment at company D. By this time she had won her grievance from company B, and went back to her job. Applicant does not know why she was involuntarily terminated, as she was not given a reason.

Applicant provided copies of e-mails she received from a Government Human Resources Specialist, concerning a job she applied for as a Sheet Metal Worker. The e-mail indicates that she was found suitable to work as a Federal employee, as a sheet worker. (Applicant's Exhibits A and D.) Applicant ended up not taking the job because of its low pay.

Applicant provided letters of recommendations from neighbors, coworkers and managers she knows or has worked with. The letters collectively attest to her excellent skill in assembling and disassembling, her quality work, ability to problem solve, strong ambition, dependability, honesty, integrity and leadership skills. She is recommended for a security clearance. (Applicant's Post-Hearing Exhibit D.) Applicant stated that she is doing an outstanding job at her current place of employment.

Applicant's 35 year old son testified that his mother is a hard worker, and is extremely reliable and trustworthy. His father was not around, and she raised him. She

gave him his strong work ethic. He believes all of his mother's problems are because she is a threat to the men she works with. (Tr. pp. 98-99.)

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline E (Personal Conduct)

15. *The Concern.* 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.

Conditions that could raise a security concern:

16.(c) credible adverse information is several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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

16.(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, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;

- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct, which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence, which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in criminal conduct and dishonesty that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in poor personal conduct (Guideline E). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with her security clearance eligibility. Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under the above mentioned guidelines.

Applicant works in a male dominated profession, and is frequently the only female in her workplace. This in itself can present a difficult situation. History has shown that women have had a tough time working in industries that are traditionally male dominated. Applicant may at times pose a threat to the men she works with, without understanding or even being aware of it. She obviously must be careful not to offend her colleagues where egos can be easily hurt and at the same time avoid being the subject of gender abuse. That said, this is not a case where egos have been hurt or anyone has been abused. This is much different. Applicant has received too many warnings and terminations over a short period of time that show that she has violated company policy and procedure in some aspect serious enough to be terminated on three occasions. Although Applicant contends that she has done nothing wrong, without evidence to the contrary, Applicant's conduct is responsible for these problems. In reviewing the investigation in this matter, it was reported by one employer that Applicant performs outstanding work, but can be disruptive to the work force by letting her emotions get to her. Applicant was questioned about this by the investigator, and she denied letting her emotions get to her in the work place. She then stated that she wants to be treated fairly at work, and she admitted that at times she gets emotional. She also admits to getting upset and speaking or complaining to supervisors when she feels that she has been treated unfairly and not the same as her male coworkers. This in itself is not enough to result in termination, not even once.

The decision in this case may have been different, had the Applicant provided specific evidence to show otherwise. There is no evidence in the record to show that Applicant's three previous employers terminated her unjustly, or that the warnings she received were unwarranted. The grievance she won, did not prove that she followed the company regulations, in fact she admits that she did not. Applicant submitted numerous letters of recommendation from neighbors, friends, and coworkers, who know her in and out of the work place. They are all favorable. Testimony from her son was also favorable as expected. However, there is an obvious piece missing to his puzzle. It is highly unlikely and almost impossible to be terminated three times from three

different employers unless you have violated company policy and procedure or otherwise caused a serious problem in or for the workplace. An Applicant who is entrusted with the national secrets is required to do the right thing when no one else is watching, even if they might never get caught. Based upon her past history, without more evidence to prove otherwise, it is found that this Applicant cannot be trusted to do the right thing when no one is looking.

Under Guideline E, Personal Conduct, Disqualifying Condition 16.(c) credible adverse information is several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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 16.(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, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E, Personal Conduct.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole-person assessment of questionable judgment, untrustworthiness, unreliability, and an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

A security clearance is a privilege, not a right. In order to meet the qualifications for access to classified information, it must be determined that the Applicant is, and has been, sufficiently trustworthy on the job and in her everyday life to adequately protect the Government's national interest. According to the standards set forth in the Directive, based upon the conduct outlined here, this Applicant has demonstrated that she is not sufficiently trustworthy, and she does not meet the eligibility requirements for access to classified information.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.:	Against the Applicant.
Subpara. 1.b.:	Against the Applicant.
Subpara. 1.c.:	Against the Applicant.
Subpara. 1.d.:	Against the Applicant.
Subpara. 1.e:	Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge