



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



In the matter of:)
)
) ISCR Case No. 16-01098
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Gregory F. Greiner, Esq.

03/09/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the handling protected information security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On April 26, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and K (handling protected information). Applicant responded to the SOR on May 26, 2017, and requested a hearing before an administrative judge.

The case was assigned to another administrative judge on July 24, 2017, and reassigned to me on December 15, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 30, 2018, scheduling the hearing for February 22, 2018. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on March 1, 2018.

Procedural and Evidentiary Rulings

SOR Amendment

Department Counsel amended the SOR by withdrawing the personal conduct allegation in ¶ 2.b.

Evidence

Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through H, which were admitted without objection.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor where she has worked since 1988. She seeks to retain her security clearance, which she has held since 2002. She attended college for a period without earning a degree. She is single with four children.¹

Applicant had three security-significant incidents between 2010 and 2014. In 2010, she was required to ship a crate of equipment that was designated confidential. She had done this many times without incident. On this occasion, the crate was delivered to her company's shipping department without the correct personnel at the shipping department being aware that it was arriving. The crate sat at the shipping department overnight without being properly secured. Applicant thought at the time that she handled the situation properly. The company concluded that Applicant failed to "effectively communicate with Security to ensure their coordination with inspection, transportation and determination of appropriate storage options prior to shipping." There was no compromise of classified information.²

In March 2013, Applicant returned from lunch and saw two cleared personnel waiting for her outside a controlled area that prohibited cell phones and other non-classified media. She momentarily forgot that she still had her cell phone on her and walked into the controlled area with the two cleared personnel. They noticed the cell phone and brought it to her attention. She immediately removed the cell phone from the controlled area. There was no compromise of classified information. Applicant received an oral warning and a security re-briefing.³

In June 2014, Applicant's children placed her tablet computer (tablet) in a bag of clothes without her knowledge. She brought the bag of clothes into the controlled area without realizing that the tablet was in the bag. The tablet did not have cellular service,

¹ Tr. at 12-14, 28; GE 1.

² Tr. at 15-18, 30-31; Applicant's response to SOR; GE 2.

³ Tr. at 18-22, 31-33; Applicant's response to SOR; GE 3.

but it was connected by Wi-Fi to her cell phone that was outside the controlled area. When she discovered the tablet, she did not immediately remove it from the controlled area. Instead, she used it over the course of several hours to search the Internet. Her use of the tablet was discovered by her company. There was no evidence that classified information was compromised. Applicant was suspended without pay for five days; she was required to attend a security update briefing; and she was removed from part of her security duties.⁴

Applicant is extremely remorseful for her conduct. There have been no additional security violations. She submitted documents and letters attesting to her excellent job performance. She is praised for her diligence in following security procedures, trustworthiness, loyalty, dedication, work ethic, reliability, and integrity. The authors of the letters are convinced she has learned from her experiences and there will be no further incidents.⁵

Policies

This case is adjudicated under Executive Order (EO) 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 (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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(a), 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 national security eligibility will be resolved in favor of the national security."

⁴ Tr. at 22-26, 33; Applicant's response to SOR; GE 4.

⁵ Tr. at 25-29, 33; Applicant's response to SOR; AE A, D-F, H.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 K, Handling Protected Information

The security concern for handling protected information is set out in AG ¶ 33:

Deliberate or negligent failure to comply with rules and regulations for handling protected information-which includes classified and other sensitive government information, and proprietary information-raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

AG ¶ 34 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (g) any failure to comply with rules for the protection of classified or sensitive information; and
- (h) negligence or lax security habits that persist despite counseling by management.

Applicant committed three security-significant incidents between 2010 and 2014. The evidence raises the above disqualifying conditions.

Conditions that could mitigate handling protected information security concerns are provided under AG ¶ 35. The following are potentially applicable:

- (a) so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
- (b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities.

Applicant is clearly remorseful for her conduct. There have been no additional security violations. Her supervisors and co-workers attest to her diligence in following security procedures. They are convinced she has learned from her experiences and there will be no further incidents. I am satisfied that Applicant possesses a positive attitude toward the discharge of her security responsibilities, and that additional security violations are unlikely to recur. Both mitigating conditions are applicable.

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(d):

- (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 K in my whole-person analysis.

I considered Applicant's long employment with the same company and her favorable character evidence. Security violations and infractions are some of the strongest possible reasons for denying or revoking access to classified information, as they raise very serious questions about an applicant's suitability for access to classified

information. Once it is established that an applicant has committed a security violation or infraction, he or she has a very heavy burden of demonstrating that being entrusted with classified information is warranted. Because security violations and infractions strike at the very heart of the industrial security program, an administrative judge must give any claims of reform and rehabilitation strict scrutiny. In many security clearance cases, applicants are denied a clearance for having an indicator of a risk that they might commit a security violation or infraction (e.g., alcohol abuse, delinquent debts, or drug use). Security violation and infraction cases reveal more than simply an indicator of risk.⁶ The frequency and duration of the security violations and infractions are also aggravating factors.⁷

Nonetheless, I am convinced of Applicant's sincerity. I further believe the experience of going through the adjudicative process had an additional value, in that Applicant is cognizant that she must be more diligent in her responsibilities for safeguarding classified information. She has met her heavy burden of demonstrating that it is clearly consistent with the national interest to continue her security clearance.

The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the handling protected information 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 K:	For Applicant
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline E:	Withdrawn
Subparagraph 2.a:	Withdrawn

Conclusion

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge

⁶ ISCR Case No. 03-26888 (App. Bd. Oct. 5, 2006).

⁷ ISCR Case No. 97-0435 at 5 (App. Bd. July 14, 1998).