



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



In the matter of:)
)
) ISCR Case No. 16-01419
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: John DelCampo, Esq., Personal Representative

06/01/2018

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to revoke her eligibility for a security clearance to work in the defense industry. Applicant's violation of her former employer's time and attendance policy is mitigated by the passage of time. However, the security concerns raised by her intentional falsification of statements about the incident on her security clearance application and in multiple background interviews continues to cast doubt on Applicant's continued trustworthiness and reliability. Clearance is denied.

Statement of the Case

On October 15, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the personal conduct guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to

¹ The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a decision on the administrative record. However, Department Counsel exercised its right under Directive ¶ E3.1.7 to have a hearing in this case and provided discovery to Applicant in January 2017.² The case was scheduled for January 17, 2018 and Applicant waived the 15-day notice requirement.³ At the hearing, Applicant confirmed her notice waiver on the record and indicated she was ready to proceed.⁴ I admitted Government's Exhibits (GE) 1 and 2, and Applicant's Exhibits (AE) A through C, without objection. DOHA received the transcript (Tr.) on January 24, 2018.

Procedural Matters

Implementation of Revised Adjudicative Guidelines

While the case was pending decision, the Direct of National Security (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded those implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have decided this case under the 2017 AG.

Findings of Fact

Applicant, 62, has worked for her current employer since June 2014. She has worked for federal contracting companies since 1986 and has had access to classified information and access to sensitive compartmented information since. She served in the U.S. Navy Reserves as an intelligence officer from 1986 to her retirement in 2015 as an O-6. On her most recent security clearance application, submitted in July 2014, Applicant did not disclose any derogatory information. The investigation revealed that Applicant was terminated from her previous position for violating her employer's time reporting policy.⁵

Applicant held her previous position from 1995 to 2014, working for two different federal contracting companies. She possessed a vast amount of institutional knowledge and was well regarded by her customer. The federal contractor that employed Applicant from 2006 to 2014 allowed employees to accumulate paid time off (PTO) without

² Hearing Exhibits (HE) I and II.

³ HE III.

⁴ Tr. 6 -7.

⁵ GE 1.

distinction between sick and vacation leave. In February 2014, Applicant planned a vacation and prepaid some of the travel and lodging costs for the trip. However, less than two weeks before the trip, Applicant became ill and could not report to work. She did not have enough PTO accrued to accommodate the leave she needed for recovery from her illness and her upcoming vacation. The company did not have policies authorizing unpaid leave or advanced leave. Because she had a new supervisor, Applicant did not feel comfortable discussing the problem with him. Instead, Applicant decided to enter the 64 hours she was out sick as hours worked with the intention of making up the hours in the future. However, her supervisor, who worked in another location, learned from the client that Applicant had been out of the office for part of the pay period.⁶

When confronted by her supervisor about her attendance and her time card entry, Applicant admitted that she provided false information on the time card. Pending approval from the corporate office, Applicant's supervisor intended to settle the matter with a formal reprimand. However, the corporate office ordered Applicant's immediate termination for cause. Applicant was unemployed for four months before securing her current job in June 2014. Applicant completed a security clearance application in connection with a periodic reinvestigation. In response to Section 13A: Employment Activities, Applicant listed her previous employer, but reported that she left the job after being laid off. She answered 'no' to the follow-up question about having been terminated or disciplined by the employer.⁷

In May 2015, Applicant participated in a routine interview with a background investigator. According the interview summary, the information Applicant provided in the interview was consistent with her disclosures in the security questionnaire. Three months later, in August 2015, the investigator conducted a second interview with Applicant. The investigator asked Applicant directly if she had ever been fired from a previous job. Applicant said that she had not. The investigator told Applicant that information from her previous employer indicated that she was terminated for violating the company's time reporting and attendance policy. Applicant again denied being terminated and explained that the employer eliminated her position to reduce redundant positions. The investigator then told Applicant about a memorandum she and her former supervisor signed, detailing the policy violation. Applicant denied signing any such memorandum and indicated she left the job under favorable circumstances.⁸

After the interview, Applicant scoured her personal files for the memorandum referenced by the investigator. After she found it, Applicant contacted the investigator for a third interview to discuss her statements in the earlier interviews. In the third interview, Applicant admitted that her previous employer terminated her for violating the

⁶ Tr. 29-31, 41-43; GE 1.

⁷ Tr. 31-32; GE 1.

⁸ Tr. 33-34, 43 – 48; GE 2.

company's time and attendance policy. Applicant admitted she lied in the earlier interviews because she was afraid of losing her job.⁹

The SOR alleges that Applicant's termination from a position in February 2014, for violating her employer's time and attendance policy (SOR ¶ 1.a); that she intentionally falsified her July 2014 security clearance application by characterizing the termination of that employment as a lay off (SOR ¶ 1.b); and that she intentionally provided false information during two background interviews (SOR ¶ 1.c). Applicant admitted that she lied on her security clearance application because she was concerned that given her age, her career would be over if she could not maintain access to classified information. Applicant was also concerned that she would soon be the only income earner in her household because of her husband's uncertain employment situation. She admitted that she was not truthful during the first two interviews with the investigator because she was making an effort to stick with her original story. She decided to tell the truth after she uncovered the memorandum she signed detailing her misconduct.¹⁰

Applicant claims that her behavior was totally out of character and not representative of the 27 years she has held access to classified information. She stated that she would not act similarly in the future. At the hearing, Applicant presented one witness and three character reference letters. The witness and the character references described Applicant as being honest and trustworthy. The hearing witness, a current coworker, admitted that she did not know the issues alleged in the SOR. Applicant admits that she did not disclose the incident to the witness, because the witness did not know her at the time of the incident. Applicant claims that that three character references, all of whom worked with Applicant at the time of the incident, were aware of Applicant's actions. However, none of the references mentions the policy violation in their discussion of Applicant's character.¹¹

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 AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an Applicant's eligibility for access to classified information.

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." 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

⁹ Tr. 34.

¹⁰ Tr. 32-33, 36, 43, 48.

¹¹ Tr. 21-26, 36, 54-56; AE A-C.

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 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 protect 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 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

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 cooperate or provide truthful answers during national security investigative or adjudicative process.¹²

Applicant admits disqualifying conduct under the personal conduct guideline. She admits deliberately making false statements on her July 2014 security clearance application and in two background interviews in May and August 2015, respectively. When the multiple falsifications are considered together with Applicant’s intentional violation of her previous employer’s time and attendance policy, an incident that is neither disqualifying under any other guideline nor enough to warrant disqualification on its own, the record supports a negative whole-person assessment of Applicant’s judgment, and trustworthiness.¹³

The underlying conduct, the policy violation itself is an isolated incident and is mitigated by the passage of time.¹⁴ However, Applicant’s falsification of her July 2014 security clearance application and her repeated false statements to an investigator, despite being confronted with evidence of her misconduct cannot be considered minor. Despite being given multiple opportunities to correct her false statement, Applicant only took steps to do so after she realized the investigator had direct evidence of her lies. An

¹² AG ¶ 15.

¹³ AG ¶ 16 (a), (b), and (d).

¹⁴ AG ¶ 17(c).

applicant is expected to provide full, frank, and candid answers throughout the investigative process. Anything less provides a rational basis for a finding against an applicant's security worthiness. Here, Applicant has repeatedly provided false information to the government, establishing a pattern of misconduct that cannot be ignored. Applicant failed to present sufficient information to mitigate reliability and trustworthiness concerns raised by her multiple false statements throughout this adjudication.

Whole-Person Concept

I have significant reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). The purpose of the security clearance adjudication is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."¹⁵ Although Applicant has a long tenure as a clearance holder, her actions during the current adjudication raises doubts about her ongoing security worthiness. Given her behavior, the Government cannot trust Applicant to self-report derogatory information that may adversely affect her self-interests. This concern presents a security risk that must be resolved in favor of the Government. Clearance is denied.

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, Personal Conduct:

AGAINST APPLICANT

Subparagraph 1.a-1.b:

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. Clearance is denied.

Nichole L. Noel
Administrative Judge

¹⁵ AG ¶ 2(d).