



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-03586  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esquire, Department Counsel  
For Applicant: *Pro se*

09/24/2018  
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**Decision**  
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BENSON, Pamela C., Administrative Judge:

Applicant mitigated the security concerns under Guideline E, personal conduct. Applicant's eligibility for a security clearance is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 26, 2016. On November 2, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E, personal conduct. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on November 13, 2017, and provided a notarized statement on January 4, 2018. She requested a hearing before an administrative judge. She admitted all of the SOR allegations under Guideline E. On April 16, 2018, the case

was assigned to me. On May 29, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of Hearing, setting the hearing for June 13, 2018.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence, which were admitted without objection. Applicant offered Applicant Exhibit (AE) A through K, which I entered into evidence without objection. Applicant also called a witness to testify on her behalf. I held the record open until July 13, 2018, in the event either party wanted to submit additional documentation. No additional information was received by either party. DOHA received the hearing transcript (Tr.) on June 20, 2018, and the record was closed on July 13, 2018.

### **Findings of Fact**

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 40 years old and was married in 2007 and divorced in 2014. She is the mother of one adult daughter, age 23. Applicant stated that she is 15 college credit hours away from obtaining her bachelor's degree. She is currently employed by a DOD contractor since July 2016. She has been subcontracted out to work as a receptionist for another company since November 2017. Applicant previously worked as a deputy sheriff from November 2009 to May 2015. She listed on the SCA that she left employment by mutual agreement following notice of unsatisfactory performance. She received an interim DOD security clearance, but after the SOR was issued in November 2017, Applicant's interim security clearance was revoked. (Tr. 5, 22-25, 37-38; GE 1)

The SOR cites Guideline E, (Personal Conduct), which involves a pattern of work-related misconduct while Applicant was employed as a deputy sheriff from 2009 to 2015. There are nine SOR allegations of employment violations, which involved reprimands, counseling, unpaid suspensions, and resignation from employment in lieu of termination. Applicant admitted all of the SOR allegations. (SOR ¶¶ 1.a-1.i.)

The SOR alleges in ¶ 1.a that Applicant received counseling from the sheriff's office in May 2009, for failing to complete and transmit her reports in a timely manner, a violation of the sheriff's policy and procedures. SOR allegations ¶¶ 1.b, 1.c, and 1.d, also involved two instances in 2011, and an instance in early 2012, of Applicant's failure to timely complete and transmit her reports, as required. Applicant testified that she had several occurrences of being unable to timely complete and transmit her reports. She attributed this problem to personal poor organizational and time management skills, and stated that her inability to complete her work on time was unintentional. Applicant testified that she attended classes, at her own expense, in an effort to do a better job. When the classes did not help her work situation, the sheriff's office provided additional training, such as writing courses, to help Applicant perform her employment duties. Applicant stated that even after taking these courses, she was unable to consistently submit her reports in a timely manner. (Tr. 26-30; GE 3)

SOR ¶ 1.e alleges that Applicant received an administrative final action memorandum from the sheriff's department for sustained violations of her professional responsibilities and field reporting procedures. She received a 10-hour unpaid suspension. (Tr. 30)

In March 2013, SOR ¶ 1.f alleges that Applicant received another administrative final action memorandum from the sheriff's department for sustained violations of her professional responsibilities and substandard performance. Applicant was given a 20-hour unpaid suspension. Then, eight months later, SOR ¶ 1.g alleges that in November 2013, Applicant received an administrative final action memorandum from the sheriff's department for sustained violations of her professional responsibilities and field reporting procedures. She received a 30-hour unpaid suspension. (Tr. 30-31)

SOR ¶ 1.h alleges that Applicant received counseling from the sheriff's office in January 2015, for improperly collecting and storing evidence, a violation of the sheriff's policy and procedures. Applicant had collected and improperly stored evidence in the trunk of her vehicle, and she failed to turn-in the evidence at the close of her shift.

In July 2015, SOR ¶ 1.i alleges that Applicant received an administrative final action memorandum from the sheriff's department for substandard performance, child abuse investigations, general professional responsibilities, and field reporting procedures. Applicant stated that she submitted to a polygraph to show that she did a sexual battery investigation. Applicant explained that an alleged sex crime against a child was reported during her investigation. The information that was provided was essentially a repetition of information of what had been previously reported to the sheriff's office. Applicant marked this as a report that needed to be written, but she did not write a report, and the tracking system reflected that the report was improperly closed. An investigation was initiated by the sheriff's office against Applicant, and at the conclusion of the investigation, Applicant resigned from her employment in lieu of being terminated. Applicant admitted the SOR allegation, but she disagreed that she failed to conduct a proper investigation into the alleged sex crime of a child and child abuse. Applicant also disagreed that she failed to seek guidance from her supervisor, that she failed to notify the on-call major crimes investigator, as required, or that she failed to document her efforts with a written report at that time of her investigation. She did not believe a report was necessary after an earlier report, with the same information, had been previously submitted by another deputy. (Tr. 31-34; GE 3)

Applicant's supervisor testified that he hired her in June 2016 after reviewing her qualifications. He reported that she is loved by her peers in the workplace, and for the last two years, Applicant has not missed one day of work. He has received several e-mails from clients commending her remarkable work ethic. Applicant has timely submitted all of her assigned work and she has never missed a deadline. He considers Applicant to be a valuable employee. (Tr. 41-45)

## Policies

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 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 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 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 for 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(d) credible adverse information this 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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(3) a pattern of dishonesty or rule violations.

Applicant has a pattern of rule violations during her period of employment with the sheriff's office. There is sufficient evidence to apply AG ¶ 16.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(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; and

(d) the individual 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.

Applicant admitted that she was unable to perform effectively in her employment as a deputy sheriff. Her inability to submit reports on time was a continuous, serious problem that was unintentional on her part. Applicant acknowledged the behavior and attended classes in an effort to correct her deficient work performance. Despite her best efforts, Applicant was unable to meet the minimal work expectations of her employer, and resigned in May 2015, in lieu of termination.

Not every individual is suited to successfully perform in a fast-paced, stressful work environment. That same individual, however, may excel in a different work environment. Applicant's current supervisor has testified that Applicant is considered a valuable employee. She has clearly met, and exceeded, her employer's expectations for over two years. I find that Applicant's employment as a deputy sheriff in a stressful and fast-paced environment, was not a good fit for her. Her current employment appears to be suited to her. Being unsuitable for a particular employment situation does not make one a security risk. I find that Applicant's past pattern of rule violations happened under such unique circumstances that it is unlikely to recur and does not cast doubt on her reliability, trustworthiness, or good judgment. Both AG ¶¶ 17(c) and (d) apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 40 years old and has worked for her present employer for over two years. She is doing a remarkable job for her current employer. Applicant is able to meet her assignment deadlines, and she is well-liked by her co-workers and clients.

Applicant's current conduct shows that she is reliable, trustworthy, and she uses good judgment. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concern arising under the personal conduct guideline.

### **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:	FOR APPLICANT
Subparagraph 1.a -1.i:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Pamela C. Benson  
Administrative Judge