



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



In the matter of:)
)
) ISCR Case No. 19-00542
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Catie E. Young, Esq.

September 22, 2020

Decision

TUIDER, Robert, Administrative Judge:

Applicant did not mitigate security concerns regarding Guideline E (personal conduct). Clearance is denied.

Statement of the Case

On June 9, 2017, Applicant submitted a Questionnaire for National Security Positions (SF-86). On April 16, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E. The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On July 1, 2019, Applicant submitted her Answer to the SOR through her previous counsel.

On August 9, 2019, the Defense Office of Hearings and Appeals (DOHA) assigned the case to an administrative judge (AJ-1); and on September 5, 2019, DOHA reassigned the case to another administrative judge (AJ-2). On September 25, 2019, Applicant's current counsel notified DOHA that she had been retained and requested a

change of venue. On October 28, 2019, DOHA reassigned the case to another administrative judge (AJ-3); on November 26, 2019, DOHA reassigned the case to another administrative judge (AJ-4); and on January 6, 2020, the case was reassigned to me (AJ-5). On November 21, 2019, DOHA issued a notice of hearing scheduling the hearing for January 6, 2020 before AJ-3. An amended notice later rescheduled the case for January 7, 2020, but that hearing did not take place.

On January 27, 2020, DOHA issued a notice of hearing rescheduling the hearing for March 3, 2020 before me (AJ-5). The hearing was convened as scheduled. Department Counsel submitted Government Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through M, which were admitted without objection.

I held the record open until March 20, 2020, to afford Applicant an opportunity to submit additional evidence. On March 11, 2020, DOHA received the hearing transcript (Tr.). On March 19, 2020, Applicant's counsel emailed me requesting a two-to-four week extension of the post-hearing deadline to submit additional evidence. On March 19, 2020, I emailed Applicant's counsel granting her request and extended the post-hearing due date to April 20, 2020. (Hearing Exhibit (HE) I) On May 28, 2020, Applicant's counsel submitted AE N and O, which were admitted without objection. No further exhibits were received before the record closed.

Procedural Matters

Department Counsel moved to amend both SOR ¶¶ 1.g and 1.h to read "In or around December 2018" versus "In or around June 2018." Without objection from Applicant's Counsel, I granted Department Counsel's motion. (Tr. 11)

Findings of Fact

Applicant, through previous counsel, denied SOR ¶¶ 1.a, 1.g, and 1.h; and admitted SOR ¶¶ 1.b through 1.f. (SOR Answer) During her hearing, Applicant admitted SOR ¶ 1.h (as amended). (Tr. 63) Her admissions are incorporated or adopted as findings of fact. Additional findings of fact follow.

Background Information

Applicant is a 31-year-old senior share point developer employed by a defense contractor since January 2020. (GE 1; Tr. 17-18, 20, 26) She seeks to reinstate her secret security clearance, which is a requirement of her continued employment.

Applicant received her high school diploma in June 2006. She was awarded a bachelor of science degree in mathematics and computer science in December 2015. She has completed one year of course work toward a master's degree. (GE 1; Tr. 18-20)

Applicant married in December 2015, and has two sons, ages nine and five. Her husband is employed full time as a network technician for a Fortune 500 company. (GE 1; Tr. 20-21) Applicant served in the Army National Guard (ANG) from May 2008 to May 2017, and was honorably discharged as a specialist (pay grade E-4). She was in a reserve drill status during her ANG service except for May 2009 to October 2009 when she was in an active status. Her military occupational specialty was 92A, automated logistical specialist. She successfully held a secret security clearance during her ANG service. (GE 1; Tr. 22-23, 24-26, 87-90; AE K, AE O; HE I)

Personal Conduct

SOR ¶ 1.a alleged that Applicant falsified her timesheets to her then employer (Employer A) after she had resigned in December 2016, and collected wages for hours that she did not work. As noted, she denied this allegation. Applicant testified that she submitted her resignation from Employer A on November 15, 2016, effective November 30, 2016. She added that on November 30, 2016, she submitted her final timesheet by email to Employer A and returned all work equipment. As such, she did not have access to her Employer A work email after that date, and claimed that she did not submit any additional timesheets. (SOR Answer; Tr. 31-34; GE 2)

On Monday, January 16, 2017, Employer A emailed Applicant advising her that she had submitted timesheets for pay periods ending on December 15, 2016 and December 31, 2016, reporting hours that she had not worked. Based on those timesheets, Employer A paid her \$3,335.50. Employer A attached a demand letter directing Applicant to return the funds improperly received no later than January 20, 2017, or they would pursue criminal, civil, and administrative action against her. On the Friday before Applicant received this demand letter, she had been in contact with an intermediate company official and advised him that she had not sent the timesheets in question and “wanted to understand how this happened.” (Tr. 35-37; GE 2, GE 5; AE M)

When Applicant’s counsel showed Applicant copies of the two timesheets in question, Applicant claimed that she had never seen the timesheets before her hearing. She did acknowledge that her signature was on each of the timesheets and they looked identical. Applicant did not recognize the manager approval signature, explaining that after she submitted her timesheets she never saw the “finalized document.” (Tr. 37, 80-84; GE 5) Regardless of whether Applicant personally submitted the timesheets, she acknowledged receiving wages by direct deposit based on the timesheets in question. (Tr. 38-39)

After Applicant received the demand letter from Employer A on January 16, 2017, she emailed Employer A on that same day. She wrote, “I didn’t submit these time cards so I’m not sure how this happened but I checked my account when [intermediate company official] brought this to my attention on Friday and the money is still sitting in my account so I can send it back now. Please advise how to do so.” Applicant returned the unearned wages as instructed; and on January 26, 2017, Employer A acknowledged receipt of Applicant’s check for \$3,335.50. Employer A did not take any further action after receiving the funds. (Tr. 39-40 84-85; GE 2; AE M)

SOR ¶ 1.b alleged that Applicant filed a false application for benefits under a state supplemental nutrition assistance program in February 2017. SOR ¶ 1.c alleged that Applicant failed to timely disclose to her state department of social services that her new employer was paying her a salary that would have disqualified her from receiving such benefits. As noted, she admitted both of these allegations. (SOR Answer)

Applicant and her husband moved to their present geographical area in July 2016, having both received contingent job offers. After moving, both offers “fell through.” She stated, “during that time, my husband and I both separated . . . and I had to figure out how to pretty much take care of myself and my kids.” Applicant claimed that her husband moved out of the house in July or August 2016. She testified that she applied for state nutritional benefits “around August or September of 2016.” After separating, Applicant stated that her husband did not provide any type of financial support. (Tr. 40-43, 80, 86-87)

Applicant began working for Employer A in August 2016, when she initially applied for benefits. (Tr. 75-76; GE 5) However, in December 2016 she started a new job with Employer B earning “[r]oughly (\$80,000, so about \$40 an hour,” a salary that would have disqualified her as a benefits recipient. Applicant admitted she did not report her new job with Employer B to her state, stating, “I don’t have a reason as to why not. I just didn’t.” As a benefits recipient, she was required to recertify every six months. In January 2017, she received recertification paperwork to reapply for nutritional benefits. In February 2017, she reapplied for benefits and intentionally failed to report her new position and wages with Employer B. (Tr. 43-45) Applicant stated the reason for doing so was to “clear up the debt that accrued during the time of my move and not having employment.” She estimates her debt at the time to be “a little over \$7,000.” (Tr. 45-46, 49-50)

As a nutritional benefits recipient, Applicant was receiving \$550 a month “[o]n the card” not including medical benefits. She did not pursue a child support enforcement order against her husband because she did not see her separation as “something being permanent.” (Tr. 46-47, 80, 85-86; GE 7) Applicant believes that the state agency discovered she was ineligible to receive the benefits after they contacted Employer A. The state agency notified her in mid-February 2017 that she no longer qualified for state nutritional benefits. (Tr. 47, 50, 75-76; GE 5, GE 7)

Department Counsel questioned Applicant about when she changed her maiden name to her married name after she married in December 2015. Department Counsel showed Applicant her initial benefits application dated September 14, 2016. On that application, Applicant used her maiden name and claimed that she was “Single-Never Married” in the Marital Status section. Applicant claimed that she was not sure when she changed her maiden name to her married name and “might have” changed her name when she submitted her September 2016 benefits application. When asked why she falsified her marital status, she replied, “I’m not even sure. I don’t really have a response to that.” (Tr. 73; GE 3) On that same benefits application, Applicant claimed that she was working part time for the Army National Guard and part-time for an employer (not Employer A or B) when in fact she was working full time for Employer A.

When asked why she falsified her employment information, she replied, “. . . I don’t have an answer.” (Tr. 74; GE 3)

SOR ¶ 1.d alleged that Applicant submitted a forged letter and pay stubs from Employer A to her state to obtain improperly state nutritional benefits. As noted, she admitted this allegation. Applicant explained that she submitted these forged documents to “verify my income to be able to hold onto the [state nutritional] benefits.” She stated that she used the money to pay for household expenses and daycare for her children. Applicant understands that forging such documents is a crime. She acknowledges that she made a bad decision, exercised bad judgment, and is remorseful. Applicant stated, “Everything’s paid in full.” (Tr. 52-55)

Department Counsel showed Applicant her renewal application for state nutritional benefits dated February 19, 2017. Applicant acknowledged that she again used her maiden name in lieu of her married name and claimed on that application that she was “Never Married” stating, “I’m not sure why I put never married.” Applicant also claimed on that application that she was working for Employer A, when in fact she was working for Employer B, in order to retain her nutritional benefits. Applicant also claimed on that application that she was making \$12 an hour working for Employer A, when in fact she was making “(\$)25 an hour” working for Employer B. (Tr. 76-77; GE 4) After attempting to renew her benefits, Applicant submitted a forged letter to the state on Employer A stationery, dated March 16, 2017, verifying her employment with Employer A. (Tr. 77-78; GE 5)

SOR ¶ 1.e alleged that Applicant received a one-year ban from the nutritional benefits program and was required in April 2017 to repay benefits. SOR ¶ 1.f alleged that Applicant received a two-year ban from the program based on her failure to disclose that her husband and father of her children was living with her while she was receiving benefits. As noted, she admitted both of these allegations. Applicant testified that the state concluded that her husband was living with her because he listed her address on his pay stubs. Once the state discovered that Applicant improperly received nutritional and medical benefits, they initiated the foregoing punitive action and required her to repay “[a] little over three thousand” dollars. The state did not file any criminal charges against her. Applicant stated that she began reimbursing the state for ineligible benefits received in “about March of 2017.” She produced documentation from the two state agencies responsible for administering nutritional and medical benefits reflecting that she had reimbursed them for all improperly received benefits by the end of February 2020. (Tr. 47-48, 50-60, 78-80, 86; GE 6, GE 7; AE J, AE L)

SOR ¶ 1.g alleged that Applicant provided materially false information to the investigator during her December 11, 2018 U.S. Office of Personnel Management personal subject interview (OPM PSI) when she denied that she submitted false timesheets to her former employer. As noted, she denied this allegation. (See SOR ¶ 1.a, discussed above.) Applicant testified that she told the investigator the truth about the timesheets adding that she had no reason to lie. (Tr. 62-63; GE 2)

SOR ¶ 1.h alleged that Applicant provided materially false information to the investigator during her OPM PSI when she denied that she submitted a forged letter to her state agency that administered nutritional benefits. As noted, after Department Counsel amended the SOR to reflect the date of the interview, Applicant amended her SOR Answer during her testimony and admitted this allegation. Applicant stated that she did not intend to provide false information during her interview. She added that the “forged letter was completely not at the forefront of my mind until I went home and had this discussion with my husband” After going home after the interview, Applicant discussed her OPM PSI with her husband and he “pretty much reminded me that this was done.” Applicant testified that she immediately attempted to contact the investigator and correct her statement. Post-hearing, Applicant submitted an exhibit detailing a series of texts from December 12, 2018 to December 27, 2018, that she sent to the investigator in an attempt to contact him to correct her statement regarding the forged letter to her state agency. Unable to reach the investigator, she followed up with an email dated January 14, 2019, to the investigator acknowledging that she submitted a forged letter to her state agency correcting her OPM PSI. (Tr. 63-65; GE 2; AE N; HE I)

Looking back on her actions in filing for state benefits for which she was not eligible, Applicant knew it was not the right choice, and is remorseful for what she did. (Tr. 49, 89-90) Applicant recognizes that her past conduct put her judgment and character into question. She learned that her dishonest actions were not worth it and testified that she will never engage in similar conduct. (Tr. 60-61) Applicant stated, “[T]his conduct doesn’t define me as a person.” She explained that she found herself in debt, panicked, and does not behave that way today. (Tr. 65-66)

Character Evidence

Applicant submitted character letters from the following five people: (1) coworker/six-year friend; (2) coworker/six-year friend; (3) eight-year friend; (4) non-profit business partner for eight years; and (5) former supervisor at the Pentagon (December 2016 to December 2017). In their letters, Applicant’s character references spoke highly of her work ethic, dependability, integrity, and good character. Applicant stated that all of her character references are familiar with her SOR allegations. These individuals favorably endorse Applicant’s application for a security clearance. (Tr. 28-30; AE C(1 - 5))

Applicant’s marital situation that led to her questionable behavior has improved. She and her husband have reconciled and are living together again as of April or May 2017. She stated her husband has a stable job with an annual salary is “about (\$)70,000 a year.” Applicant stated that she and her husband have regained financial stability and provided bank statements reflecting same. (Tr. 49, 56-57, 61, 80; AE E, AE D) Applicant considers herself to be loyal and patriotic. Applicant stated that she is trustworthy and dependable in all aspects of her life, as an employee, parent, and friend. (Tr. 68-69)

Applicant submitted five certificates documenting professional milestones. (AE F) She was in the process of starting a family entertainment business tailored to children

and adults of all ages. She submitted an exhibit detailing a comprehensive 2020 business plan. At the time of the hearing, she was in the process of securing funding for her business. (Tr. 66) Applicant is also involved in a community service nonprofit organization that offers a full range of programs to improve the lives of children from preschool to 12th grade. (Tr. 67-68; AE G)

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 AG ¶ 2 describing 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."

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 clearance 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

Personal Conduct

AG ¶ 15 explains why personal conduct may be a security concern, stating:

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 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 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, component medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in 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 individual may not properly safeguard classified or sensitive information; and

(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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: (1) untrustworthy or

unreliable behavior . . . ; (2) any . . . inappropriate behavior; and (3) a pattern of dishonesty or rule violations.

The SOR alleges that Applicant made multiple false statements, either orally or in writing, to her employer, to state agencies, and during her clearance background interview, largely about her eligibility to receive certain benefits under a state nutritional benefits plan – benefits to which she was not entitled based on her income and employment status. One allegation (SOR ¶ 1.a) concerns a falsified timesheet, as a result of which she received wages (later reimbursed) to which she was not entitled.

SOR ¶¶ 1.b through 1.f and 1.h are established through Applicant's admissions and evidence presented. With regard to SOR ¶ 1.a, Applicant maintains that she did not submit the falsified timesheets as alleged. To accept Applicant's explanation, one would have to accept that a person or persons unknown submitted her December 15, 2016 and December 31, 2016 timesheets, without her knowledge, on her behalf to Employer A, after she left their employment. A review of those timesheets bear Applicant's signature, which she does not dispute, and the signatures on the disputed timesheets are similar to her other signatures on various exhibits.

Applicant's denials surrounding the timesheet submissions must be evaluated in the context of her other contemporaneous conduct that raised credibility concerns documenting her intentional and deliberate falsifications. Her fraudulent deception began when she filed her initial September 14, 2016 nutritional benefits application by falsely claiming both that she was single and never married and also that she was working part-time for the ANG and part-time for an employer (not Employer A or B) when in fact she was working full time for Employer A. At the time she submitted this benefits application to the state, she was apparently eligible for the nutritional benefits based on her then income.

On February 19, 2017, she reapplied for nutritional benefits, again falsely claiming that she was single and never married. However, when she submitted this application, she had been working for Employer B since December 2016 and was clearly ineligible to receive nutritional benefits based on her income. Committed to maintaining her benefit eligibility, she forged a letter dated March 16, 2017, on Employer A stationary in an attempt to obtain nutritional benefits improperly. With regard to SOR ¶ 1.g, when Applicant was interviewed during her December 2018 OPM PSI, she denied that she submitted false timesheets to her employer.

AG ¶¶ 16(b), 16(c), and 16(d) are established, as well as the general concern discussed in AG ¶ 15. As noted, Applicant admitted six of the eight allegations alleged under this concern. After assessing the evidence and Applicant's credibility, I find her explanations are not credible with regard to the allegations she denied. Accordingly, I further find that SOR ¶¶ 1.a and 1.g are established.

AG ¶ 17 lists conditions that could mitigate security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Partial application of AG ¶¶ 17(c), 17(d), and 17(e) is appropriate for SOR ¶¶ 1.b through 1.f; and full application of AG ¶ 17(a) is appropriate for SOR ¶ 1.h. No applications of any mitigating conditions under ¶ 17 are appropriate for SOR ¶¶ 1.a and 1.g.

Applicant explained that she engaged in this conduct after the family's move to their present location in July 2016. Shortly after relocating, she and her husband were informed that their contingent job offers "fell through." In July or August 2016, Applicant and her husband separated, and she found herself as the sole support for her two young sons. In September 2016, Applicant, applied for nutritional benefits for which she was eligible based on her single-mother status and on her then income with Employer A. However, that eligibility ceased when she began working for Employer B in December 2016 with a better paying job. She failed to notify her state of her

disqualifying income from Employer B. In February 2017, when she reapplied for nutritional benefits, she failed to report her new position with Employer B and her increased wages. Moreover, in March 2017, Applicant submitted a forged letter from Employer A to her state in an attempt to continue receiving those benefits improperly.

Applicant's state discovered her fraudulent behavior, and in April 2017, banned her from receiving nutritional benefits for a one-year period and required her to repay improperly received benefits. In May 2017, her state banned her from receiving the benefits for a two-year period for failure to disclose that her husband and father of her children was living with her while receiving benefits. In March 2017, Applicant began reimbursing the two state agencies for the benefits she improperly received. She completed the reimbursement in February 2020. She has also completed her benefit eligibility bans. In January 2017, Applicant reimbursed Employer A for the wages she received that she had not earned.

Applicant has since reconciled with her husband. They have regained financial stability and the stressors that once existed in their marriage, that led to the majority of her poor choices in 2016 and 2017, have abated. Applicant also produced good character evidence from five individuals who provided favorable evidence indicative of her work ethic, dependability, integrity, and good character. She provided certificates marking professional milestones, evidence of community service, and a business plan to start a family entertainment business tailored to children and adults of all ages.

The falsification alleged in SOR ¶ 1.h is established. However, Applicant attempted to contact the investigator the day after the interview to correct her interview statement in which she falsely denied submitting a forged letter from Employer A to her state agency. She followed up with a series of texts, but was unable to reach the investigator. Her efforts culminated with a January 14, 2019 email to the investigator acknowledging that she submitted a forged letter to her state agency. In light of her prompt documented good-faith efforts to correct her misstatement, I conclude that SOR ¶ 1.h is fully mitigated under AG ¶ 17(a).

However, I am unable to accept Applicant's testimony as credible, for reasons discussed above, with regard to SOR ¶¶ 1.a and 1.g. These allegations pertain to false timesheets submitted to Employer A in December 2016 after she resigned from her position and collected wages for unearned hours, and later during her December 11, 2018 OPM PSI in which denied that she submitted those false timesheets to Employer A. Applicant's trustworthiness is further problematic because she reiterated her denials of the forged letter to Employer A during her hearing. Accordingly, I am unable to apply any mitigating conditions to SOR ¶¶ 1.a and 1.g.

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 the 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.

The ultimate determination whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). The discussion in the Analysis section under Guideline E is incorporated in this whole-person section. However, further comments are warranted.

This case falls short as one of rehabilitation or mitigation. Applicant is a 31-year-old senior share point developer employed as a defense contractor since January 2020. When confronted with a challenging personal situation in 2016, she applied for benefits in September 2016 for which she was apparently eligible. However, on that initial application she misrepresented her marital and employment status. When her employment situation improved in December 2016, rather than notify her state agency that her income disqualified her from receiving further benefits, she continued to receive those benefits. In February 2017, she reapplied for benefits for which she was not eligible and provided materially false information regarding her eligibility. She compounded her misconduct by submitting a forged letter from Employer A in March 2017. Earlier, she attempted to collect wages from Employer A for hours that she did not work by submitting false timesheets in December 2016. None of these acts of deception ended well for Applicant. Her actions called her integrity into question and raised serious doubts about her reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant is a bright and talented individual with excellent credentials. She made the mistake of letting her moral compass go adrift and has suffered adverse consequences as a result. Her actions showing poor judgment were made when she was relatively young and under financial pressure due to the separation from her spouse. These events should not define Applicant. Hopefully, these events have been a teachable moment for her and one from which she will recover. Given the cumulative nature and recency of her conduct, further time is required before a favorable national security eligibility determination can be made.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

The formal findings on the allegations set forth in the SOR are as follows:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a – 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. National security eligibility is denied.

Robert Tuider
Administrative Judge