



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



In the matter of:)	
)	
)	ISCR Case: 18-01481
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Department Counsel
For Applicant: *Pro se*

January 11, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On November 13, 2016, Applicant submitted a security clearance application (e-QIP). On June 13, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline J, Criminal Conduct and Guideline E, Personal Conduct. The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on June 29, 2018. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On July 29, 2018, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant on July 31, 2018, and received by him on August 7, 2018. The

FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant failed to respond to the FORM. Applicant did not object to Items 1 through 5, and they are admitted into evidence. Hereinafter, they are referenced as Government Exhibits 1 through 5.

Findings of Fact

Applicant is 39 years old and is married. He has a high school diploma and an HVAC certificate. He is employed by a defense contractor as a Cable Technician. He is seeking to obtain a security clearance in connection with his employment.

Applicant began working for his current employer in December 2014. He has never held a security clearance before. Applicant admits each of the allegations set forth in the SOR under both the criminal conduct guideline and the personal conduct guideline. He admits to a serious history of criminal conduct that began in about 1994, at the age of 16, which continued until at least 2006. Applicant admits that at the age of 16, he was convicted for attempted robbery, (a felony) and by age 28, he was convicted and charged with an additional four felonies.

As mentioned above, in 1994, Applicant was charged with Felony Attempted Robbery. Applicant and a friend attempted to steal a woman's purse, when she screamed, and they ran back to his friend's house. Five minutes later, the police arrived at his friend's house to arrest the Applicant. Applicant was convicted of the charge and sentenced to six months detention. (Government Exhibits 4 and 5.)

In January 1999, he was charged with two counts of Assault and Battery. He was convicted of one count of Assault. In October 1999, he was charged with Profane, Threatening Language Over Public Airway. In May 2000, he was charged with Possession of Marijuana, and convicted of the offense. In July 2000, Applicant was charged with Destruction of Property. He was convicted of this offense. (Government Exhibits 4 and 5.)

In October 2000, Applicant was charged with Driving After Forfeiture of License and Driving After Illegally Consuming Alcohol. Applicant stated that he was drinking and driving after leaving a bar. He dropped off a friend, and then got into an accident where he wrecked his car in a storm drain. Applicant left his car at the wreck location and walked home. Five minutes later, the police arrived and Applicant was arrested. He was convicted of Driving Under the Influence of Alcohol, and sentenced to 6 months suspended. (Government Exhibits 4 and 5.)

In March 2006, Applicant was charged with three counts of Felony Manufacture, Sale, Possession, of Controlled Substance; Felony Possession of Firearm While in Possession of Drugs; Felony Sale, Distribute Marijuana; and Felony Possession of

Controlled Substance. Applicant's house was raided by the police department. Applicant states that he not at home at the time, but his wife was, and she was charged with one count of possession of a controlled substance (cocaine) and was taken to jail immediately after the raid. Applicant states that when his wife was in jail, he was contacted by a police officer who told him to turn himself in or his wife would be charged with all seven felony counts. Applicant states that he turned himself in and took the blame for all of the charges to prevent his wife from being charged for all of them. Applicant contends that the firearms were not his, but belonged to, and were registered to a friend, consisting of two handguns. Applicant's stated that his friend had left the firearms at his house, as they would go to the shooting range together. Applicant also contends that the drugs were not his and that he did not purchase them. In fact, he states that he does not know how they ended up in his bedroom. Applicant was initially charged with seven felonies consisting of two firearm charges and five substance charges which included psilocybin, marijuana, hash, mescaline and cocaine. These charges were dropped to four felonies. On May 1, 2007, Applicant pled guilty to and was convicted of two felony counts of Possession with Intent to Distribute and two felony counts of Possession of Firearm while in Possession of Drugs. Applicant was sentenced to 20 years in prison with 15 years suspended. He was incarcerated for five years from May 2007 to about November 2012. He was then placed on parole for three years. (Government Exhibits 4 and 5.)

Applicant states that he no longer associates with the people who were involved in his prior convictions. He further states that he does not smoke, drink, or use drugs anymore. He now spends his time with his family, watching movies and going to work. (Government Exhibit 5.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant 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.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual’s judgement, reliability, or trustworthiness; and

- (b) evidence (including, but not limited to, a credible allegation, an admission, and matter of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted or convicted.

None of the mitigating conditions are applicable. Although over ten years has passed since Applicant's last conviction and imprisonment, he has not established that he is sufficiently reliable and trustworthy to access classified information. Applicant has been convicted of at least six felonies for various criminal conduct discussed above. The offenses give rise to serious concerns about Applicant's judgment, reliability and trustworthiness, both because of the nature of the offenses, and the circumstances surrounding the offense. The beforementioned disqualifying conditions have been established.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15.

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.

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

- (c) 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 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. This includes, but is not limited to, consideration of:

- (2) any disruptive, violent, or other inappropriate behavior; and

- (3) a pattern of dishonesty or rule violations.

None of the mitigating conditions are applicable. Applicant has failed to provide any evidence in mitigation.

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(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a 39-year-old adult, who has an extensive criminal history that displays poor judgment and unreliability. Applicant has also failed to provide any evidence in mitigation. At this point, Applicant has not demonstrated sufficient responsibility on any level to be eligible for access to classified information. Overall the record evidence leaves me with serious doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He has not met his burden to mitigate the security concerns arising under the guidelines for Criminal Conduct and Personal Conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraphs 1.a	Against Applicant
Subparagraphs 1.b	Against Applicant
Subparagraphs 1.c	Against Applicant
Subparagraphs 1.d	Against Applicant
Subparagraphs 1.e	Against Applicant
Subparagraphs 1.f	Against Applicant
Subparagraphs 1.g	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraphs 2.a

Against Applicant

Conclusion

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

Darlene Lokey Anderson
Administrative Judge