



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



In the matter of:)	
)	
)	ISCR Case No. 20-00563
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

09/27/2022

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline J, criminal conduct, and Guideline E, personal conduct. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On September 10, 2020, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline J, Criminal Conduct, and Guideline E, Personal Conduct. The DOD acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR with an undated response, and requested a hearing. The case was assigned to me on May 4, 2022. On May 13, 2022, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 14, 2022. The hearing was held as scheduled using video teleconference capabilities of the Teams platform. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. The Government's exhibit list and discovery letter were marked as hearing exhibits (HE) I and II. Applicant testified and offered exhibit (AE) A, which was admitted without objection. Post-hearing, Applicant submitted AE B-C, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 27, 2022.

Findings of Fact

Applicant admitted all the SOR allegations with detailed explanations. The admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 35 years old. He has worked for his current government contractor-employer since April 2018 as an aircraft mechanic. He is seeking his first security clearance. He holds a bachelor's degree. He is engaged and has four children. (Tr. 6, 20, 27-28; GE 1; AE B)

The SOR alleged, under Guideline J, Applicant's 12 different arrests starting in 2000 and ending in 2017 (SOR ¶¶ 1.a-1.l). Three of these arrests occurred when Applicant was a juvenile. The most serious arrests include: in June 2012, an arrest and charge for distribution and possession of a controlled substance; in May 2013, an arrest and charge for an assault causing bodily injury; in September 2013, an arrest and charge for failure to obey a police officer and resisting arrest; and in April 2017, an arrest and charge for impeding the breathing of a house member (SOR ¶¶ 1.h, 1.j-1.l). All these allegations were also cross-alleged under Guideline E (SOR ¶ 2.a).

As stated above, Applicant admitted all the allegations and during his testimony accepted responsibility for his actions. He committed to being a changed man since he engaged in this criminal conduct as a teenager and into his 20s. By way of explanation, he described his difficult upbringing. He and his siblings were raised by his grandparents because his parents were not in the picture. They lived in a rough intercity neighborhood. His grandmother passed away when he was 17, so his grandfather became his primary care giver through high school. He served as Applicant's role model. His grandfather passed away in 2010 when Applicant was still in college and that started some difficult times and bad decisions by him. (Tr. 19-22)

Applicant is the first of his family to graduate from college. He bought a home a year ago where he lives with his fiancé and his kids. While he does not associate with anyone in his old neighborhood where he grew up, he does mentor high-risk kids from that neighborhood to provide them guidance so that they can avoid trouble-filled paths. He also participates in fundraising events that help fund scholarship programs for these kids. (Tr. 19-20, 23-24)

A summary of the offenses admitted by Applicant include:

- a burglary charge in 2000, another burglary charge in February 2003, and a possession of a controlled substance charge in May 2003. All three were treated as juvenile offenses; (GE 3; Answer to SOR)
- a June 2005 driving without a license charge was dismissed; (GE 3)
- an October 2005 possession of marijuana charge and a March 2006 driving on a suspended license charge. He was found guilty of both charges; (GE 3)
- a May 2012 criminal mischief charge was dismissed; (GE 3; Answer to SOR)
- a June 2012 manufacturing of a controlled substance charge resulted in a deferred adjudication after he successfully completed two years of supervised probation; (Tr. 50-52; GE 3; Answer to SOR)
- a May 2013 charge of assault by causing bodily harm was dismissed and a September 2013 resisting arrest charge was also dismissed; (Tr. 38, 41, 43, 44, 46-49; GE 3; Answer to SOR)
- a April 2017 charge of assaulting a house member was reduced to assault by contact to which he pleaded “no contest.” (Tr.33-35; GE 3; Answer to SOR)
- Applicant has not been arrested or charged with any other criminal offense since April 2017. (Tr. 53)

In addition to Applicant’s job with a government contractor, he started a vehicle transport limited liability company (LLC) in 2020. He has one employee who transports vehicles to various parts of the country. The business has been very successful to date, earning him between \$70,000 and \$90,000 per year in extra income. He is also in the process of selling an investment property that he “flipped” and that will also generate additional income. (Tr. 55-58; AE C)

Applicant is well thought of by his employer as evidenced by three letters of recommendation he submitted from a supervisor and two coworkers. Applicant’s current supervisor described him as having “the highest moral character.” He also stated that Applicant is well respected by his coworkers and is a leader for his work group. The supervisor has held a security clearance for 30 years and recommended that Applicant also receive a clearance. Applicant’s two coworkers describe him in similar ways and also support his effort to receive a clearance. (AE A)

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(a), the entire process is a careful weighing 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.

Under Directive ¶ E3.1.14, the Government must 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 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 in this case. 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 judgment, reliability, or trustworthiness; and

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

Applicant has a long history of criminal conduct going back to when he was a juvenile. His admissions and documentary evidence establish both disqualifying conditions.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and considered the following relevant:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant came from a difficult childhood upbringing and allowed that situation to influence him resulting in bad decisions through his teenage years and early 20s. He ended up committing these various criminal offenses. However, since 2017, he has got his life on the right track with a good job, purchasing a home, starting a viable second-

income business, and staying out of any further trouble. His supervisor and coworkers praise his qualities and support his effort to obtain a clearance. Recognizing the difficulties he experienced as a youth, he has taken upon himself the role of mentoring at-risk-youths so that they can avoid the pitfalls he encountered. Based upon the above, AG ¶¶ 32(a) and (d) apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(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 to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

SOR ¶ 2.a alleges the same conduct also alleged in SOR ¶ 1.a under Guideline J. By the explicit language of both AG ¶¶ 16(c) and 16(d), since Guideline J is specifically applicable to the alleged conduct, those AGs do not apply to SOR ¶¶ 2.a. However, if they did apply, Applicant's conduct would be mitigated for the same reasons stated under the Guideline J discussion above, and by the application of AGs ¶¶ 17(c) and 17(d). He accepted responsibility for his past criminal behavior and changed his life by becoming a good citizen who mentors at-risk-youths. So much time has passed since Applicant's last criminal act, and he has reformed his life so much that similar acts are unlikely to recur. Therefore, his remote criminal actions do not cast doubt on his reliability, trustworthiness, or good judgment.

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.

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 considered the evidence of Applicant's good character, his mentoring, and his clean criminal record since 2017. The criminal conduct security concerns are mitigated and personal conduct security concerns were either not applicable or were mitigated.

Overall the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated all the 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 J:	FOR APPLICANT
Subparagraphs 1.a – 1.l:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge