



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



In the matter of:)	
)	
)	ISCR Case No. 22-01230
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Tara R. Karoian, Esquire, Department Counsel

For Applicant:
Pro se

April 26, 2023

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 12, 2020. (Item 3.) On September 30, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline E (Personal Conduct). (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DoD after June 8, 2017.

Applicant answered the SOR in writing on October 24, 2022 (Answer), and requested his case be decided on the written record in lieu of a hearing. (Item 2.) In his Answer, Applicant admitted the four SOR allegations under Guideline E and provided a personal statement. On January 10, 2023, Department Counsel submitted the Department's written case. A complete copy of the File of Relevant Material (FORM), consisting of Items 1 to 8, was provided to Applicant, who received the file on February 6, 2023.

Applicant was given 30 days from receipt of the FORM to raise objections and submit material in refutation, extenuation, or mitigation. He did not submit any additional information. The case was assigned to me on March 29, 2023. Based upon a review of the pleadings, the Government's exhibits, as well as Department Counsel's arguments set forth in the FORM, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 34 years old and married. He earned a bachelor's degree in 2011 and a master's degree in 2018. Applicant has worked for a DoD contractor as an analyst since January 2013 and was granted national security eligibility at that time. He seeks to retain his eligibility and security clearance in connection with his employment. (Item 4 at Sections 2, 12, 13A, 17, 18, 25.)

Guideline E, Personal Conduct

The SOR sets forth four allegations under the Personal Conduct guideline. The Government alleges that Applicant has engaged in questionable conduct starting in 2008, and most recently in 2021, that involved an unwillingness to comply with rules and regulations raising concerns about his reliability, trustworthiness, and ability to protect classified or sensitive information. The four allegations and supporting record evidence are summarized below:

1.a. February 2008 Arrest. Applicant was arrested in 2008 and charged with Driving Under the Influence (DUI) as a Minor. (Item 3 at 37.)

1.b. July 2013 Arrest. Applicant was arrested again in 2013 and charged with DUI with a Blood Alcohol Content of 0.15% or more. This arrest occurred within six months of Applicant starting his job with a DOD contractor and being granted a security clearance. In July 2014 he plead guilty to the charge and was sentenced to 120 days in jail, which was suspended. He was also placed on probation for 18 months and fined, and he was ordered to complete 40 hours of community service, 12 hours of a DUI education course, and a meeting of a local Victim Impact Panel. He was further ordered to abstain from drinking alcohol during the term of his probation, to submit to random testing for alcohol, and to have an ignition-interlock device installed on his vehicle. (Item 4 at 1-5.)

The terms of Applicant's sentence and probation were subsequently amended three times. On November 20, 2014, Applicant was ordered to complete Supportive Outpatient Substance Abuse treatment and all recommended aftercare. He had previously tested positive for alcohol. This condition was added by the court on the recommendation of the probation office supervising Applicant's probation. On January 8, 2016, Applicant's period of probation was extended six months to July 10, 2016, to provide Applicant with additional time to complete the terms and conditions of his probation. On April 15, 2016, Applicant probation terms were amended to add a requirement that he complete "a cognitive program" within 90 days. (Item 4 at 6-8.)

1.c. July 2016 Arrest Warrant. Applicant failed to abide by the terms of his probation and the state moved the court to revoke his probation and impose the suspended sentence of 120 days. The prosecutor's motion recites that Applicant only performed half of his 40 hours of community service, failed to participate in an outpatient substance abuse treatment program, and tested positive for alcohol on at least two occasions, once in 2014 and again in 2015. The court issued a warrant for Applicant's arrest. (Item 5 at 1-2; Item 7 at 2.)

1.d. January 2021 Revocation of Probation. In July 2020 Applicant learned about the arrest warrant. He turned himself into the county sheriff and was arrested. He appeared in court on October 2, 2020, and he was released on a \$1,000 bond. His probation was continued. He was given a new court date of January 21, 2021. At the January hearing, the court revoked Applicant's original probationary sentence and imposed a sentence of confinement for 11 days in the county jail, commencing on February 4, 2021, and a fine. (Item 6; Item 7 at 2.)

Applicant failed to timely report his 2013 DUI arrest to the security officer at his employer. He also failed to report his arrest in July 2020 for violating his probation and his October 2020 court appearance. He ultimately reported his criminal history to his employer on November 16, 2020. He updated his history in a second report in February 2021. (Item 7 at 1-2.)

Applicant noted in his Answer that he has learned from his past mistakes. He wrote that he had married, and the couple had purchased their first home as evidence of his maturity. He also commented that he loves his work and highly respects the service members he supports at his employment. (Item 2 at 1.)

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, "Any 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, "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, and has the ultimate burden of persuasion as to obtaining 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 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, "Any 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 *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline E, Personal Conduct

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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 one condition that could raise security concerns and may be disqualifying in this case:

(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.

AG ¶ 16(c) is established by Applicant's two arrests for DUI and his repeated failure to comply with the terms and conditions of his probation, which resulted in the issuance of an arrest warrant in July 2016, his arrest on the warrant in July 2020, and his jail sentence in January 2021.

AG ¶ 17 contains seven conditions that can mitigate security concerns raised by an applicant's personal conduct. The following condition potentially applies to the facts of this case:

(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.

The facts in this case do not support application of the above mitigating condition. The underlying DUI offense is not minor and Applicant's repeated refusal to comply with the terms of his probation over a period of years raises concerns that his failure to abide by rules and regulations, in this case, specific court orders and probation terms and conditions, is serious. Additional personal misconduct is likely to recur. Moreover,

Applicant's behavior casts doubt on his reliability, trustworthiness, and good judgment. Paragraph 1 of the SOR is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's potential for national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the following 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 national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have considered the potentially disqualifying and mitigating conditions and the whole-person factors listed above in light of all pertinent facts and circumstances surrounding this case. Applicant's failure to comply with the terms of his probation is serious misconduct, which continued over a number of years. He has provided no significant evidence of rehabilitation or permanent behavioral changes. In fact, Applicant failed to timely self report to his employer his 2013 DUI arrest, his conviction and probation in July 2014, and his July 2020 arrest on a warrant for failure to comply with his probation. His failure to self-report these incidents is evidence of a lack of rehabilitation. He remains potentially vulnerable to pressure, coercion, exploitation, or duress. The likelihood of recurrence of his past immature and irresponsible behavior is significant. Overall, the record evidence leaves me with questions or doubts as to Applicant's suitability for national security eligibility and a security clearance.

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 E:

AGAINST APPLICANT

Subparagraphs 1.a through 1.d:

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 for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge