



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



In the matter of:)	
)	
)	ISCR Case No. 22-02617
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

08/07/2023

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns stemming from his criminal conduct. Clearance is denied.

Statement of the Case

On February 23, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline J. criminal conduct, explaining why it was unable to find it clearly consistent with the national security to grant him security clearance eligibility. The DCSA CAS took the action 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On March 13, 2023, Applicant answered the SOR allegations, admitting all the allegations except subparagraphs 1.a, and 2.a, and requesting a decision on the written

record instead of a hearing. On April 12, 2023, the Government prepared a File of Relevant Material (FORM), consisting of a brief, together with four attachments (Items 1 – 4) in support of its position. Applicant received a copy of the FORM on April 24, 2023, and was given 30 days to file a response. He did not file a response, and on June 7, 2023, the case was assigned to me.

Findings of Fact

Applicant is a 33-year-old married man with one child, age three. He works for a defense contractor as a shipping and receiving clerk.

One night in July 2011, while driving home intoxicated, Applicant blacked out and hit the center divider with his car. (Item 3 at 2) He suffered a concussion and required hospitalization. While recuperating, the police came to the hospital and charged him with driving while intoxicated and reckless driving. (Item 3 at 2) Subsequently, he was convicted and sentenced to three years of probation. (Item 3 at 12)

In July 2012, while standing in line at a department store, Applicant's mother got into a heated exchange with another patron about who was next in line to check out. Angry at the woman for speaking rudely to his mother, Applicant yelled at the customer and walked toward her, gesticulating his hands wildly, and in the process, knocking down some water bottles from a shelf which hit the lady. (Item 3 at 3) Later that day, the police came to his home and issued a citation for assault and battery. (Item 3 at 2) Subsequently, after pleading no contest to the citation, he was convicted, sentenced to two years of probation, ordered to complete anger management classes, and to stay away from the woman whom he assaulted. (Item 3)

In May 2022, Applicant was charged with the separate offenses of presenting a false or fraudulent insurance claim and preparing a false insurance claim. (Item 4) Specifically, Applicant is alleged to have "knowingly present[ed] and cause[d] to be presented, aid, abet, solicit, and conspire with another person to knowingly present and cause to be presented, a false and fraudulent claim for payment of a loss and injury, including payment of a loss and injury under a contract of insurance." (Item 4 at 2) There is currently an open warrant for his arrest. Applicant denied this allegation but provided no explanation for the basis of the denial.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be

considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Analysis

Guideline J, Criminal Conduct

Under this guideline, "criminal activity creates doubt about a person's judgment, reliability, and trustworthiness." (AG ¶ 30) Although Applicant's assault and battery charge stemming from an argument in a department store is arguably minor, his DUI was not a minor offense. Moreover, although not convicted, his insurance fraud charge is not minor, either. Under these circumstances, AG ¶ 31(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," does not apply.

Applicant's open arrest warrant constitutes a credible allegation of criminal conduct. Together with the two previous charges, I conclude that AG ¶ 31(b), "evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted," applies.

Applicant's most recent allegation is the most troubling because it is a crime of duplicity, and as such, epitomizes the type of conduct which is disqualifying. Although Applicant denied this allegation, he provided no evidence rebutting this charge, nor any other evidence, generally, that could potentially mitigate the criminal conduct security concerns. Under these circumstances, I conclude Applicant failed to mitigate the security concerns.

Guideline F. Financial Considerations

Under this guideline, “failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” (AG ¶ 18) Applicant allegedly committed fraud to receive a settlement from an insurance company to which he was not entitled. AG ¶ 19(d), “deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust,” applies. Applicant’s conduct is disqualifying under the financial considerations security concern for the same reasons it is disqualifying under the criminal conduct security concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

I considered the whole-person concept in my application of the disqualifying and mitigating conditions of the guidelines, and they do not warrant a favorable conclusion.

Formal Findings

Formal findings for 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:	AGAINST APPLICANT
Subparagraph 1.a – 1.c	Against Applicant
Paragraph 2, Financial Considerations:	AGAINST APPLICANT
Subparagraph 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 security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge