



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



In the matter of:)	
)	
)	ISCR Case No. 23-00346
)	
Applicant for Security Clearance)	

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

11/20/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On March 29, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on April 6, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on May 5, 2023. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 8. Applicant did not provide a response to the FORM or object to any of the evidence offered. Items 1-8 are admitted in evidence. The case was assigned to me on August 23, 2023.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.d. He denied SOR ¶¶ 1.e and 1.f. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 33 years old. He never married. He has a nine-year-old child. He has worked for a federal contractor since August 2019.

Applicant completed a security clearance application (SCA) in August 2021. In response to Section 22-Police Record, that asked if he had been arrested, summoned, cited, or received a ticket to appear as a result of an offense by a police officer, sheriff, marshal or any other type of law enforcement official, he responded "yes." He disclosed an offense that occurred in March 2018, specifically: "Driving without tags or insurance, alcohol possession." (Item 2)

Applicant was arrested and charged in about January 2019 with disorderly conduct. In December 2018, he was arrested and charged with driving under the influence of alcohol (DUI), transporting an open container, vehicle liability insurance required, failing to carry/exhibit driver's license upon demand, and unlawful acts with vehicle (registration). In December 2018, he was arrested and charged with domestic battery. In March 2018, he was arrested and charged with domestic battery. Applicant did not disclose these arrests and charges on his SCA, except as noted. (Item 2)

Applicant was interviewed by a government investigator on October 6, 2021. He verified his financial information and that there was nothing about his character that could be used against him for coercion. He was interviewed again on October 16, 2021, and was confronted with his unreported arrests and activity with the police. Police reports corroborate the above arrests. (Items 3, 4, 5, 6, 7, 8)

During Applicant's background interview, he confirmed that in January 2019 he was involved in a fight with his uncle at his uncle's home and a misdemeanor charge for disorderly conduct was filed against him by the county attorney. He told the investigator that he went to court but could not recall when. He said the charge was dismissed. (Items 3, 4)

Applicant admitted during this interview that in December 2018 he was arrested for DUI, transporting an open container, lack of vehicle liability insurance, failure to carry/exhibit driver's license, and unlawful acts with a vehicle (registration). The county attorney filed charges against him. In his SCA, he disclosed only the insurance and open container offenses. He told the investigator he was at a bar and consumed four shots of

alcohol. He also had a bottle of whiskey in his car. He was pulled over by the police. He did not consent to a breathalyzer, so he was transported to a hospital where he was given a blood test. The results were not provided, but he was then arrested, handcuffed, and taken to the police station. He recalls going to court, but not when. He stated the charges were dismissed. He told the investigator that he should not have been driving after consuming alcohol. (Items 3, 5)

Applicant was arrested and charged with domestic battery in December 2018. He was involved in a fight with his uncle which began at a bar and continued at his uncle's home. He could not recall when he went to court, but he agreed that he had been charged and the charges were dismissed. (Items 3, 6)

Applicant admitted during his interview that he was arrested in March 2018 and charged with domestic battery. This incident again involved a fight with his uncle. He went to court but could not recall when. The charge was dismissed. (Items 3, 7)

Applicant was repeatedly arrested and charged with various offenses. He admitted going to court. The only arrest he disclosed on his SCA was that he failed to have proper insurance and possession of alcohol. He was also arrested at the same time with DUI, which he did not disclose. During that incident, he was handcuffed, refused to take the breathalyzer, had a blood draw at the hospital, and then was transported to jail. When confronted with these arrests by the government investigator he stated, "he did not list any of these charges because he did not think he needed to." (Item 3) He later told the government investigator that he was not charged, and the case was dismissed. I do not find his explanation credible for why he failed to disclose his numerous arrests. There is substantial evidence to conclude he deliberately failed to disclose his arrest for DUI and his other arrests. (Item 3)

Applicant was arrested and charged in August 2009 with burglary, theft, and criminal damage to property. During his background interview, he admitted he and an accomplice went to an apartment of a friend who was in prison at the time, entered and retrieved items that Applicant stated belonged to him. While there with his accomplice, the police arrived, arrested them, and charged them as stated above. Applicant told the government investigator that his friend, who was in prison, had borrowed some of his video games. He told the government investigator that when he entered his friend's apartment, he did not know it would be unlocked. He said he went to the apartment complex office to ask them to let him into the apartment, and they would not let him in. He said he then went to the apartment, and it was unlocked so he went in to get his things. He retrieved the video games and a PlayStation Three, which he said belonged to him. He told the investigator that all of the charges were dismissed except one, but he could not recall which one. He went to court and was found guilty of a charge. He was fined and placed on probation for 24 months. He could not recall the dates of his probation. (Item 3)

The police report from the incident states:

“Suspects went to Apartment complex, cut a pad lock off the door to Apartment #3 and entered into the apartment. The suspects took several items from the apartment. Suspects were apprehended later in the morning. They confessed to the crimes committed. (Item 8)

Applicant’s statement contradicts the police report which noted the pad lock was cut off the door. He did not have his friend’s permission to enter the apartment. (Items 3, 8)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(c), 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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 E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(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

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant was repeatedly involved in fights with his uncle that required police intervention and he was arrested. He also was arrested for DUI, open container, failure

to have vehicle liability insurance, failing to carry/exhibit driver's license upon demand and vehicle registration requirements. He deliberately failed to disclose on his SCA his numerous arrests for fighting with his uncle, DUI, and other offenses. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

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

(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 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; and

(g) association with person 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.

Applicant did not correct his response in his SCA regarding his past arrests. He was confronted by the investigator with his numerous arrests. I did not find his explanation to the government investigator credible. Failing to be honest on a SCA is not minor. The cornerstone of the security clearance process is that the Government trusts those who are granted security clearances to be honest and self-report issues or conduct even when no one is looking. Applicant failed to do that. AG ¶¶ 17(a) and 17(c) do not apply.

Applicant has numerous arrests for fighting with his uncle and the police intervened. He was arrested for DUI and other violations. He was also arrested in 2009 for burglary and theft. His statement contradicts the police report. He has not provided any evidence on whether he continues to associate with his uncle or any other evidence to support mitigating the security concerns raised by his conduct. Although, some of his arrests are relatively minor, there is a continuing pattern of failing to abide by rules and regulations that raise questions about his reliability, trustworthiness, and judgment. AG ¶¶ 17(c), 17(d) and 17(g) do not apply.

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 have incorporated my comments under Guideline, F in my whole-person analysis.

Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline E, personal conduct.

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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge