



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



In the matter of:)
)
) ISCR Case No. 14-00054
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

09/22/2014

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the clearance concerns generated by his multiple traffic infractions and his 2012 alcohol-related charge. Clearance is granted.

Statement of the Case

On March 13, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J, criminal conduct, and E, personal conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) as implemented by the DOD on September 1, 2006.

Applicant answered the SOR on April 29, 2014, admitting all of the allegations except subparagraph 1.e. He requested a hearing, whereupon the case was assigned to me on July 23, 2014.

On August 14, 2014, a notice of hearing was issued scheduling the case for September 4, 2014. At the hearing, I received two Government exhibits marked as Government Exhibits (GE) 1 and 2, in addition to 16 Applicant exhibits, marked as Applicant's Exhibit (AE) A through P. Also, I considered the testimony of Applicant and one character witnesses. The transcript (Tr.) was received on September 16, 2014.

Findings of Fact

Applicant is a 32-year-old married man with two children, ages eight and four. He has been married for 12 years. Applicant has a high school education and has earned multiple certifications over the years. Currently, he is working toward his undergraduate degree.

In 2001, shortly after finishing high school, Applicant joined the U.S. Air Force where he served on active duty until his honorable discharge in May 2008. (GE 1 at 15) He worked as a network integration technician. (AE M at 34) His duties included operating, securing, and monitoring data bank networks.

Applicant's performance was exceptional. In 2004, he was promoted from network integration technician (E-4) to master communications system technician (E-5), and was assigned to the White House Communications Agency, a highly selective tour of duty. (Answer at 6; AE K) He worked there from 2004 through 2008. His duties included planning worldwide telecommunications support for the President, Vice President, First Lady, and the U.S. Secret Service. (AE M at 3) In 2008, Applicant received the Joint Service Commendation Medal for "exceptionally meritorious service." (AE F at 2) Among other things, he tracked and accounted for 1,200 cryptographic assets valued at 4.6 million dollars. On one occasion, he personally coordinated simultaneous video teleconferencing sessions at five different presidential event locations for the White House staff during a White House Situation room personnel shortfall. During the 2004 Presidential Campaign, Applicant's "outstanding technical skills and meticulous attention to detail enabled 100-percent equipment readiness . . . of the highest operating tempos in the Agency's history." (AE F at 2) Although Applicant was not in a position of authority, "higher ranking enlisted [personnel] and officers alike [sought him] out several times a week to get advice . . ." (AE D at 3)

Since leaving the military, Applicant has worked as a telecommunications systems analyst in support of a federal government agency. Currently, he is a senior team manager who supervises ten employees. (AE D at 1) According to his supervisor, his performance is outstanding. (AE D at 1)

On January 12, 2011, Applicant left his home in a rush and forgot his wallet. Subsequently, he was stopped by police and charged with failure to display his

automobile registration and failure to display his driver's license to police on demand. He pleaded guilty and was ordered to pay a \$50 fine. (AE B at 2).

On October 7, 2011, Applicant left home after an argument with his wife and went to a restaurant where he consumed several alcoholic beverages. Intoxicated, Applicant backed into another car while leaving the parking lot, and later failed to stop at a red light. He was then stopped by police, arrested, and charged with the following:

- 1) driving vehicle while under the influence of alcohol (DUI);
- 2) DUI *per se*;
- 3) driving while impaired by alcohol;
- 4) driver failure to stop at a steady circular red signal;
- 5) negligent driving vehicle in careless and imprudent manner endangering property, life, and person;
- 6) failure of vehicle driver to stop after unattended vehicle damage accident; and
- 7) failure of driver in accident to locate and notify owner of unattended vehicle of damage.

On February 9, 2012, he pleaded guilty to counts two and seven, and was given two years of probation before judgment. Also, the court suspended his license for 90 days, and ordered him to attend a 16-week substance abuse education class. Applicant completed the substance abuse education class, as ordered.

On November 24, 2011, while the DUI-related charges were pending, the police stopped Applicant and charged him with several traffic-related expenses including speeding, and failure to display registration card upon demand by a police officer. (Tr. 37) Subsequently, he was fined \$572 in penalties and court costs. (AE B at 1)

On February 7, 2012, Applicant's daughter was at cheerleading practice and his wife was unable to pick her up when it was over. Applicant knew that his license was suspended, so he called a family friend to retrieve his daughter. The friend was unavailable. He then called his daughter's godparents. They were also unable to retrieve her. With no other option, Applicant drove to cheerleading practice to get his daughter. (Tr. 41) Subsequently the police stopped and charged him with driving a motor vehicle on a suspended license,¹ failure to display his driver's license to a uniformed police officer on demand, and failure to display a registration card upon demand by a police officer. On June 1, 2012, the court determined that the police stopped Applicant's car illegally, and *nolle prossed* the charges. (Tr. 35, 41)

On October 1, 2012, the police stopped Applicant after noticing that one of his car's headlights was not working, and charged him with driving on a suspended license. According to Applicant, his license was suspended because he had too many points on

¹At some time after the November 2011 traffic stop and the February 9, 2012 DUI sentencing, Applicant's license was suspended related to the DUI charge of October 2011. (Tr. 40)

his driver's license. (Tr. 47) Also, Applicant contends that he never received notification that his license had been suspended again. (Tr. 43) In January 2013, Applicant pleaded guilty and was given probation before judgment, placed on probation for a year, and ordered to perform 16 hours of community service. (Tr. 44) Since then, Applicant has not committed any additional criminal or traffic offenses. His probation expired in January 2014. (Tr. 45)

Applicant has held a security clearance for 13 years. (AE N at 1) He contends that his behavior between 2011 and 2012 was uncharacteristic and was triggered by family problems including his mother's ailing health, and his decision to provide financial support for his teenage brother when his mother² was too sick to capably care for him. The extent to which he helped his brother during his mother's illness was periodically a source of tension with his wife. Applicant's brother is now an adult. (Tr. 50-51)

Policies

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 access to classified information will be resolved in favor of national security."

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 security clearance.

Analysis

Guideline J, Criminal Conduct

Under this guideline, "criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Moreover, by its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." (AG ¶ 30) Applicant's history of traffic offenses triggers the application of AG ¶ 31(a), "a single serious crime or multiple lesser offenses."

²Applicant's mother is single.

Applicant's most serious crime, the DUI offense, occurred nearly three years ago. He completed alcohol education classes, as ordered, and has committed no alcohol-related offenses since then. Applicant's most recent charge, driving with a suspended license, occurred approximately two years ago. He served his probation, which ended in January 2014, without incident. Upon considering Applicant's stellar career trajectory, the length of time he has held a security clearance, the length of time that has elapsed since his most recent offense, and the small range of time when these offenses occurred, I conclude that Applicant's criminal conduct was an anomaly. The mitigating conditions set forth in AG ¶ 32 are applicable, as follows:

(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, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

I conclude Applicant has mitigated the criminal conduct security concerns.

Guideline E, Personal Conduct

I concluded that Applicant mitigated the criminal conduct security concerns, in part, because all of the criminal activity except the DUI were minor. However, this does not end the security clearance analysis. The repeated nature of the traffic offenses raises questions about Applicant's judgment and respect for rules and regulations, and raises a security concern under the personal conduct guideline, as set forth below:

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 information. (AG ¶ 15)

Specifically, the following disqualifying conditions under AG ¶ 16 are 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 tother characteristics indicating that the person may not properly safeguard protected information; and

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

Applicant's misconduct occurred during a twenty-month period over the course of a 14-year career. With the exception of the DUI, all of it was minor. Applicant attributes his problems, in part, to being preoccupied with an unusually high amount of family stress generated over a disagreement with his wife over the amount of care to provide for his brother, a legal minor, while Applicant's mother was disabled. Now, Applicant's brother is an adult. Although it is not inconceivable that he may again seek assistance from Applicant in the future, his status as an adult renders it less likely.

The negative security ramifications of the February 2012 episode of driving without a suspended license were partially mitigated by the unique nature of the surrounding circumstances. Nearly two years has elapsed since Applicant's most recent infraction. AG ¶ 17(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," applies.

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(a):

- (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.

The isolated nature of Applicant's conduct, the surrounding circumstances, and the amount of time that has elapsed since the most recent episode of misconduct render the potential for coercion or the likelihood of recurrence minimal. In reaching this conclusion, I noted that not only did Applicant not have any criminal or personal conduct issues before 2011; he was a stellar individual who excelled in his career both while in the Air Force and, later, in the civilian world.

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.e:	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.

MARC E. CURRY
Administrative Judge