



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



In the matter of:)	
)	
)	ISCR Case No. 10-05949
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

April 12, 2012

Decision

CEFOLA, Richard A., Administrative Judge:

The Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on April 10, 2009. On October 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines J and E for the Applicant. 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), effective within the Department of Defense after September 1, 2006.

The Applicant acknowledged receipt of the SOR on October 18, 2011. He answered the SOR in writing through counsel on November 12, 2011, and requested a hearing before an Administrative Judge. DOHA received the request on November 17, 2011, and I received the case assignment on January 23, 2012. DOHA issued a notice of hearing on February 8, 2012, and I convened the hearing as scheduled on February 27, 2012. The Government offered Exhibits (GXs) 1 through 5, which were received

without objection. The Applicant testified on his own behalf and submitted Exhibits (AppXs) A through K, which were received without objection. DOHA received the transcript of the hearing (TR) on March 9, 2012. I granted the Applicant's request to keep the record open until March 27, 2012, to submit additional matters. On or about March 19, 2012, he submitted Exhibits M through O, which were received without objection. The record closed on March 27, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, the Applicant admitted the factual allegations in Subparagraphs 1.a. through 1.g., and 2.a. of the SOR, with explanations. He denied the factual allegations in Subparagraphs 1.h. and 1.i. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Guideline J - Criminal Conduct & Guideline E - Personal Conduct

1.a.~1.i. and 2.a. In March of 1991, the Applicant was arrested for, and subsequently found guilty of, Driving Under the Influence. (TR at page 31 lines 2~10, at page 44 line 19 to page 46 line 23, and GXs 4 and 5.) As a result of this conviction, he was confined for several days, and fined about \$1,500. (*Id.*)

Six years later, in August of 1997, the Applicant was again arrested for, and subsequently found guilty of, Driving Under the Influence. (TR at page 31 lines 11~15, at page 47 line 19 to page 49 line 1, and GXs 4 and 5.) As a result of this conviction, he was also confined for several days, and fined about \$1,500. (*Id.*)

Three years later, in July of 2000, the Applicant was arrested, in part, for Driving Under the Influence, and found guilty as charged. (TR at page 31 lines 16~24, at page 49 line 2 to page 54 line 23, and GXs 4 and 5.) As a result of this third conviction, he was confined for several days, ordered to complete a Drinking Driving Program, his driver's license was restricted, and he was fined about \$1,700. (*Id.*) This was the Applicant's last alcohol related incident.

From 2002 until January of 2007, the Applicant was arrested for an unspecified probation violation, and was convicted four times for Driving on a Suspended License. (TR at page 31 line 25 to page 35 line 1, at page 55 lines 14~23, and GXs 4 and 5.) As a result of these four convictions, he was required to perform public service work, which he did. (*Id.*) Since his last January 2007 arrest, the Applicant no longer drives a motor vehicle. (TR at page 35 line 2 to page 36 line 24.) He car pools and relies upon public transportation. (*Id.*) He has been working with his current employer, holding a security clearance, since December of 2003, and has never had a security violation, as verified by his Facility Security Officer (FSO). (TR at page 55 line 20 to page 57 line 6, and AppX B.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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. Paragraph 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 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 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 information.

Section 7 of Executive Order 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

Paragraph 30 of the adjudicative guidelines sets out the security concern relating to Criminal Conduct:

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.

The adjudicative guidelines set out certain conditions that could raise security concerns. Paragraph 31(a) provides that an "*a single serious crime or multiple lesser offenses,*" may raise security concerns. The Applicant has seven convictions beginning in March of 1991, and ending in January of 2007. However, this is countered by Subparagraph 32(a) as "*so much time has elapsed since the criminal behavior happened . . . that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.*" All of the Applicant's convictions involve his driving a motor vehicle. His last conviction was five years ago, and he has not driven a motor vehicle since then.

Guideline E - Personal Conduct

The security concern for Personal Conduct is set out in AG Paragraph 15:

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.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 16(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 person may not properly safeguard protected information.*" Here, the Applicant has seven convictions, again stretching over a period of 16 years. This is countered, however, by Subparagraph 17(c) as "*so much time has passed . . . that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgement.*" The Applicant's last conviction was five years ago. Since then, he has decided to not drive a motor vehicle, an activity to which all of his convictions are related. Furthermore, those who know the Applicant in the work place and in the community do not question his integrity or personal conduct. (AppXs A, B, and D~H.)

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. Under AG Paragraph 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole-person concept. The Administrative Judge should also consider the nine adjudicative process factors listed at AG Paragraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Again, the Applicant has the unqualified support of those who know him in the work place and in the community. (AppXs A, B, and D~H.) The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his Criminal Conduct and related 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 J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant

Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Richard A. Cefola
Administrative Judge