



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



In the matter of: )  
)  
) ISCR Case No. 10-09174  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Philip J. Katauskas, Esquire, Department Counsel  
For Applicant: Alan V. Edmunds, Esquire

02/11/2013

---

**Decision**

---

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> Applicant's clearance is denied.

On 4 April 2012 and 22 June 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, Personal Conduct.<sup>2</sup> Applicant timely answered, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 16 July 2012, and I convened a hearing 13 August 2012. DOHA received the transcript (Tr.) 21 August 2012.

---

<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-9, and Applicant exhibits (AE) A-D and F-H.

<sup>2</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 1 September 2006.

## **Findings of Fact**

Applicant admitted SOR allegations 1.a-1.e and denied allegations 1.f-1.i, on the advice of counsel. He otherwise admitted the underlying conduct for those allegations. He is a 30-year-old server team engineer employed by a defense contractor since December 2008. He has not previously held a clearance.

Applicant has an extensive history of minor encounters with law enforcement officials, resulting in a variety of dispositions and charges. Most of the incidents involve traffic stops, although the resulting charges have not always been directly related to the motor vehicle code.

Between July 2002 and August 2007, Applicant appears to have been stopped on six occasions, resulting in four speeding violations, two driving on suspended license charges, and two no-insurance charges (SOR 1.e). In addition, in February 2005, he violated a protective order obtained by his girlfriend by calling her and going to visit her after the order was issued (SOR 1.d; GE 5). In April 2006, he was charged with driving on a suspended license and possessing marijuana (SOR 1.c). The marijuana charge was without merit, and both charges were later dismissed.

In October 2008, Applicant was charged with marijuana possession when the police smelled marijuana in his room at college (SOR 1.b; GE 3). He was ordered to perform 48 hours of community service and the charge was placed on the stet docket. In November 2008, he was cited for disobeying a traffic sign, pleaded guilty, and was fined (SOR 1.i; GE 9). In September 2009, he was charged with driving on a suspended out-of-state license, driving without current license plates, failure to produce a registration card on demand, failure to apply for a registration card, operating an unregistered motor vehicle, and failure to use a seatbelt (SOR 1.h; GE 8). He pleaded guilty to operating an unregistered vehicle and not using a seatbelt and received probation before judgment. The remaining charges were nolle prossed.

In October 2009, Applicant was charged with negligent driving and speeding (100 MPH in a 55 zone)(SOR 1.g; GE 7). He was found guilty of the speeding charge and fined; he received probation before judgment on the negligent driving charge. In November 2009, he was cited for driving without wearing a seatbelt, pleaded guilty, and was fined (SOR 1.f; GE 6).

In February 2010, Applicant was stopped for failing to properly display license plates. During the stop, the police officer determined that he was driving on a suspended license. Applicant did not believe he was driving on a suspended license, and refused to sign the citations indicating that he would appear in court as scheduled. Although Applicant insists that he did not pick an argument with the officer, or otherwise adopt a combative attitude, he acknowledged that a third party observing the traffic stop would probably have thought that he had demonstrated a confrontational attitude (Tr. 50-53). Predictably, the officer arrested Applicant and charged him with the original two offenses, as well as disorderly conduct, resisting arrest, willfully disobeying a police

order, and eight other traffic or motor vehicle infractions fairly characterized as anything and everything he might have reasonably been charged with.

At trial in June 2010, represented by counsel, Applicant pleaded not guilty to resisting arrest, disobeying a police order, and failure to properly display license plates. He was found guilty of resisting arrest and disobeying a police order, and received probation before judgment on the third charge. The remaining charges were nolle prossed. He was sentenced to three years in jail, suspended, placed on a year's probation, and fined about \$850.

Applicant's response to his extensive history of traffic offenses was to take a driver improvement course in July 2012, and move to where he could take public transportation to work (Tr. 37). He has not had any more traffic offenses since February 2010.

Applicant has a good employment record (AE B), favorable character and work references (AE C), and has received required security and other training and has no security violations at work (AE A). He has signed a statement of intent regarding future drug use (AE D), has a valid drivers license and vehicle registration (AE F), and has completed a driver improvement course (AE G).

### **Policies**

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own.

The “clearly consistent with the national interest” standard compels deciding any reasonable doubt about an Applicant’s suitability for access in favor of the Government.<sup>3</sup>

### **Analysis**

The Government established a case for disqualification under Guideline E and the whole-person concept, and Applicant did not mitigate the security concerns. Since July 2002, when he was 20 years old, Applicant has demonstrated an inability or unwillingness to comply with the law. His most recent arrest epitomizes his “I know best” attitude. His refusal to sign for two relatively minor traffic citations, and his escalating aggressive behavior, resulted in an arrest on more serious and more numerous charges, as well as a more serious punishment. The fact that most of the less serious charges were nolle prossed does not vindicate Applicant’s behavior in any fashion.

Distilled to its essence, Applicant’s misconduct—whether relatively minor (not wearing his seatbelt) or more serious (speeding, drug possession, and resisting arrest)—demonstrates a consistent pattern of poor judgment over many years. Compounding these examples of poor judgment is his inability or unwillingness to see that these incidents demonstrate poor judgment—in itself a demonstration of poor judgment or poor perception.<sup>4</sup> His decision to move to a place where he could take public transportation to work and to take a driver improvement course reveals that he sees his conduct as purely traffic related, and does not recognize the confrontational attitude that underlies his behavior.

Although this case is alleged under Guideline E, it is equally about a whole-person analysis. Despite the recommendation of his employer, the fact that Applicant has not had any other incidents since February 2010, and has demonstrated his adherence to security protocols, his long history of poor judgment augurs against a whole-person analysis in his favor.

### **Formal Findings**

Paragraph 1. Guideline E:	AGAINST APPLICANT
---------------------------	-------------------

Subparagraphs a-i:	Against Applicant
--------------------	-------------------

---

<sup>3</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>4</sup>¶ 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; (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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. . . ;

### **Conclusion**

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

---

JOHN GRATTAN METZ, JR  
Administrative Judge