



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-10361
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel  
For Applicant: *Pro se*

05/08/2012

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**Decision**

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CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

**Statement of the Case**

On June 21, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued to Applicant an interrogatory to clarify or augment potentially disqualifying information. After reviewing the results of the background investigation and Applicant's response to the interrogatory, DOHA could not make the preliminary affirmative findings required to issue a security clearance. On October 24, 2010, DOHA issued a Statement of Reasons (SOR) to Applicant detailing security concerns for personal conduct under Guideline E. These actions were 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). Applicant acknowledged receipt of the SOR on November 11, 2010.

Applicant answered the SOR in an undated response. He admitted the nine allegations under Guideline E concerning misconduct, and denied the one allegation (SOR 1.j) of falsification of the security clearance application. He requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 16, 2011. The case was assigned to me on February 24, 2012. DOHA issued a Notice of Hearing on February 27, 2012, for a hearing on March 20, 2012. I convened the hearing as scheduled. The Government offered two exhibits, which I marked and admitted into the record without objections as Government exhibits (Gov. Ex.) 1 and 2. Applicant testified and offered five exhibits which I marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through E. DOHA received the transcript of the hearing (Tr.) on March 28, 2012.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted the nine allegations of misconduct under personal conduct. His admissions are included in my findings of fact.

Applicant is a 42-year-old aircraft mechanic who has been employed by a defense contractor since May 2010. Before that, he worked as an aircraft mechanic for other defense contractors. He served six years on active duty in the Army from June 1989 until April 1995. He received a general discharge under honorable conditions. He married in 1994 and divorced in 1999. He has no children. (Tr. 12; Gov. Ex. 1, e-QIP, dated June 23, 2010)

Applicant admits that in December 1988, he was arrested for petty theft. The charges were dismissed (SOR 1.a). Applicant admits that he was arrested in January 1994, for carrying an unlawful weapon. He pled guilty and was sentenced to three days in jail, fined \$250, and paid \$165 in court cost (SOR 1.b). Applicant admits that when he was on active duty, there was an investigation in May 1994 for reckless driving of a motorcycle involving alcohol consumption. His blood alcohol level was .06. He never was contacted by the military police or received any adverse action from his command (SOR 1.c). Applicant admits he was arrested and convicted in February 1995 for family violence-assault causing bodily injury. The conviction was reversed and dismissed. He was administratively discharged from the Army with a general discharge (SOR 1.d). Applicant admits he was arrested and charged in October 2003 with driving while his license was suspended. He pled guilty to a lesser charge, was fined \$100, and paid \$170 in court cost (SOR 1.e). Applicant admits that he was arrested and charged in May 2005 with driving while his license was invalid. He pled guilty to a lesser charge and was fined \$195 and paid \$173 in court cost (SOR 1.f). Applicant admits he was arrested and charged with driving while intoxicated in February 2009. He pled no contest, and was sentenced to three days in jail, fined \$800, and paid \$395 in court costs (SOR 1.g).

Applicant admits he was cited for speeding and failure to maintain financial responsibility in August 2010. He paid a \$197 fine (SOR 1.h). Applicant admits he was cited for speeding in October 2010. He paid a fine and court cost totaling \$165 (SOR 1.i). Applicant denies that he falsified material facts in his interview with an OPM agent on September 9, 2010 (SOR 1.j).

Applicant was 18 years old when the theft charge in SOR 1.a happened. He was young and stupid at the time. He spent two weeks in jail and decided that he never wanted to spend time in jail again. (Tr. 20, 31)

As to the carrying of an unlawful weapon at SOR 1.b, Applicant had taken a knife to a friend's house to sharpen. He knew the knife was in his truck when he was stopped by police. However, he did not know the knife's length was not legal. (Tr. 20, 31)

Applicant was not aware of any action taken against him as a result of a motorcycle accident in May 1994 as listed at SOR 1.c. His blood alcohol level at the time of the accident was below the legal limit. After the accident, he returned to his barracks. He was never contacted by the military police or his command about the incident. (Tr. 20, 31-32).

The assault causing bodily harm was an incident with his wife after an argument concerning her infidelity (SOR 1.d). His conviction for assault was reversed and the charges dismissed. As a result of all of these offenses, his commander started administrative separation action resulting in a general discharge under honorable conditions. (Tr. 20, 32-33)

Applicant did not pay a fine for a traffic incident. He did not know his license was suspended for failure to pay the fine when he was stopped by police in October 2003. He was charged with driving on a suspended license and paid the fine (SOR 1.e). He believed his license was clear and he had a clean driving record when he was stopped again in May 2005 (SOR 1.f). However, the records did not reflect the payment and Applicant's license had been suspended. He paid the fine again and his records were correctly annotated. (Tr. 20, 33-34)

Applicant was to meet a woman in a bar in February 2009. She did not come to the bar, and Applicant started to drink alcohol. Instead of calling a friend or a taxi after drinking, Applicant decided to drive his car home himself. He was stopped by police for driving while intoxicated. (Tr. 20-21, 34)

When Applicant was stopped by police for speeding in August 2010, he could not find his car insurance papers. He was cited for speeding and failure to maintain financial responsibility. He provided the required insurance documents and paid the fine for speeding. (Tr. 21, 34-35) Applicant was also stopped for speeding on his way home from work in October 2010. He admitted he was not paying attention to his speed. He paid the fine. Shortly after, the speed limit on the road has been raised. (Tr. 22, 35)

Applicant admitted that these incidents show a pattern of minor criminal infractions. Two incidents involved alcohol consumption (SOR 1.c, and 1.g). He was not required to attend any alcohol abuse classes. (Tr. 21-22, 29-30, 34-35)

Applicant does not understand the allegation of providing false information to the OPM investigator. He contends that the investigator never asked him about a February 1995 charge of causing bodily injury to his wife. She asked about a felony injury to a child charge that required him to appear in court three times. Applicant claims there is nothing in the OPM investigators notes about questions concerning an assault on his former wife. There appears to have been confusion in the questions asked and answered during the interview. (Tr.22-28)

Applicant presented letters of recommendation. A coworker wrote that he has worked with Applicant for almost two years as an aviation mechanic. Applicant is a superb mechanic who is knowledgeable and skilled, with unquestioned integrity. (App. Ex. A, Letter, dated January 20, 2012) The chief pilot for Applicant's company wrote that he has worked with Applicant since he joined the company in May 2010. His job performance has been stellar. Applicant is truthful and honest, and has given him no reason to question his judgment or integrity (App. Ex. B, letter, dated January 11, 2012) Applicant's supervisor wrote that he has known Applicant since he joined the company in May 2010. Applicant's work is excellent and the company relies on his expertise and commitment to excellence. He strongly recommends that Applicant be granted a security clearance. (App. Ex. C, letter, dated March 16, 2011) Another supervisor wrote that he has no reason to doubt Applicant's integrity and honesty. He is extremely trustworthy. (App. Ex. D, Letter, undated) Another coworker wrote that Applicant is trustworthy and accomplishes all tasks assigned him. He is organized, efficient, competent, and has excellent rapport with all workers. He is a valuable asset to the organizations and should be granted access to classified information. (App. Ex. E, letter, undated)

## **Policies**

When evaluating an applicant's suitability for a security clearance, 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 must 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 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 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 ¶ 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 for 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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Personal Conduct**

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question does the person’s past conduct justify confidence the person can be entrusted to properly safeguard classified information. The security clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the U. S. Government.

Applicant is alleged to have provided incomplete or inaccurate information to a security investigator during an interview. If the allegation is correct, it would raise a security concern under Personal Conduct Disqualifying Condition AG ¶ 16(b) (deliberately providing false or misleading information concerning relevant facts to an

employer, investigator, security official, competent medical authority, or other official government representative). Appellant denies that he intentionally provide false information to the investigator. There were two incidents that may have led to assault charges against Applicant, one involving his wife and the other involving a child. The investigator asked if he had to go to court concerning an assault. Applicant believed that the incident in question involved his wife. He did not go to court for any incident involving his former wife. He had three court appearances for the incident involving a child and no charges were filed. The investigator's notes attached to Applicant's answers to the interrogator (Gov. Ex. 2, dated September 19, 2011) are not clear as to the incident being discussed. There is sufficient confusion concerning which incident was at issue that Applicant's response to the investigator's questions was not a deliberate falsification with intent to deceive. I find to Applicant as to SOR 1.j.

Applicant was involved in minor criminal and traffic offenses from 1988 until 2010. These include theft, carrying an unlawful weapon, a traffic accident involving alcohol consumption, driving while intoxicated, an assault, driving without a license or while his license was suspended, and speeding. These incidents raise Personal Conduct Disqualifying Condition AG ¶ 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); AG ¶ 16(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 indicting that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (3) a pattern of dishonesty or rule violations); and AG ¶ 16(e) (personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing).

The alleged security concern incidents run the range from a petty theft charge in 1988 when Applicant was 18 years old to a citation for speeding in 2010. This history of improper conduct shows questionable judgment, untrustworthiness, lack of candor, and an unwillingness to comply with rules and regulations. His personal, professional, and community standing would be affected if his conduct was known. Applicant admitted, and the Government's evidence established, SOR allegations 1.a through 1.i. The Government produced sufficient evidence to establish the disqualifying conditions as required in AG ¶¶ 16(c), 16(d), and 16(e). The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under financial considerations. An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden to prove or disprove it never shifts to the Government. Applicant raised conditions that may mitigate the security concern

I have considered Personal Conduct Mitigating Condition 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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment); and AG ¶17(d) (the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur). These mitigating conditions apply.

The allegations of misconduct are minor. Four of the incidents happened between 16 and 22 years ago. Four of the incidents, and the one in 2003, were explained by Applicant as misunderstandings on his part as to the underlying circumstances. The two recent incidents were traffic citations for speeding. Of concern is a driving while intoxicated offense in 2009. Applicant explained how this incident arose. Applicant paid his fines and court cost, and spent a few nights in jail. There has been no alcohol related incidents in over six years. All of the incidents are minor, even the driving while intoxicated. They happened over a 22-year period, happened infrequently, and do not cast doubt on his reliability, trustworthiness, and good judgment. Applicant has acknowledged each and every incident and has taken positive steps to avoid and eliminate the circumstances that have led to inappropriate behavior. Applicant has mitigated the security concerns for personal conduct.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant 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 considered the information provided by his supervisors, friends, and fellow employees concerning his work ethic

and performance as well as his reputation for honesty, reliability, and trustworthiness. The incident are minor and not of a security concern, I considered the cumulative effect of the nine instances of inappropriate behavior. Applicant's behavior over the years has not shown he is not a choir boy or an altar boy. His actions at times were reckless, irresponsible, and showed poor judgment. He keeps getting involved in minor incidents. He admits the incidents and resolved them with the proper authorities. He acknowledged his conduct, pled guilty or no contest, and served and paid his sentence. His actions in resolving his inappropriate behavior indicates that he will properly handle, manage, and safeguard classified information. The record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the personal conduct security concerns.

### **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:	FOR APPLICANT
Subparagraphs 1.a - 1.j:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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THOMAS M. CREAN  
Administrative Judge