



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



In the matter of:)	
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)	ISCR Case No. 11-03397
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.,

02/24/2012

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. The evidence shows that Applicant was cited or charged with multiple traffic offenses (speeding, equipment violations, etc.) during 2005–2011, the first six years he possessed a driver’s license, and one domestic violence in 2009. Five of the traffic offenses were concluded by a finding of not guilty or a dismissal, two concluded with dismissals in part, and eight concluded with findings of guilty and fines. The domestic violence offense was dismissed at the prosecution’s request. He has a valid driver’s license, which has never been suspended or revoked. He is well regarded at his place of employment, and has the support of several mature adults who vouch for his trustworthiness. For the reasons discussed below, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on or about August 23, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) explaining it was unable to find that it was clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the reasons for the action under the security guideline known as Guideline E for personal conduct.

Applicant timely answered the SOR and requested a hearing. The case was assigned to me December 12, 2011. The hearing took place January 30, 2012. The hearing transcript (Tr.) was received February 6, 2012.

Findings of Fact

The SOR alleged multiple traffic offenses (speeding, equipment violations, etc.) during 2005–2011 and a single domestic violence offense in 2009. In his Answer, Applicant denied the SOR allegations based on lack of information and records. But in his hearing testimony he admitted the SOR allegations. His admissions are accepted and adopted and incorporated herein as findings of fact. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 22-year-old employee of a federal contractor. He works as an electronics technician on a system that is being tested by the U.S. Army. He has been employed by the same company since 2009. Initially, he was hired as an information technology (IT) analyst, and he was advanced to his current position of an electronics technician after a few months. He has a good employment record, as verified by written performance assessments as well as the hearing testimony of his supervisor.² His current annual salary is about \$53,000. He is seeking to obtain a security clearance for the first time.³

Applicant is not married, has no children, and lives with his mother and stepfather. He is an avid fan of motor vehicles, as shown by his ownership of six autos and four motorcycles since becoming a licensed driver in 2005. He currently owns two autos and two motorcycles.

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² Exhibits A and E.

³ Exhibit 1.

His enthusiasm for motor vehicles has resulted in a well-established history of multiple traffic offenses, which he does not dispute.⁴ During 2005–2011, the first six years he possessed a driver’s license, he was cited or charged with 15 traffic offenses, such as speeding, equipment violations, failure to maintain financial responsibility (no proof of insurance), no operator’s license in his possession, etc. None of the citations or charges involved drugs, alcohol, driving under the influence, or driving while intoxicated. Of the 15 traffic offenses, 5 were concluded by a finding of not guilty or a dismissal (SOR ¶¶ 1.b, 1.f, 1.k, 1.l, and 1.o), 2 were concluded with dismissals in part (SOR ¶¶ 1.h and 1.n), and 8 concluded with findings of guilty and fines (SOR ¶¶ 1.a, 1.c, 1.d, 1.g, 1.i, 1.j, 1.m, and 1.p). The most serious offenses appear to be six speeding offenses where he was cited and found guilty; some involved quite high speeds.

In addition, in 2009, Applicant was charged with a domestic violence offense based on the report of his then teenage girlfriend (SOR ¶ 1.e). According to Applicant, his girlfriend’s allegation is completely false, and it resulted from fallout after an argument between them. The case was dismissed at the prosecution’s request in 2010.⁵

His last offense was a February 2011 speeding ticket. He has a valid driver’s license,⁶ and it has never been suspended or revoked. He completed a court-ordered driving-safely course.⁷ He now realizes that his driving habits were unwise, describing his recent high-speed traffic offenses as “ridiculous” and “foolish,”⁸ and he realizes that:

[T]his has to stop. If I continue this path, it’s just going to lead me downhill. It’s just going to bury me in troubles. With the law, with the government and things of that nature. So after that ticket, that was my tipping point. That’s when I realized, no more. No more tickets. That’s it. This is enough.⁹

I found this bit of testimony, as well as the rest of his hearing testimony, to be credible and worthy of belief.

Applicant presented highly favorable letters of recommendation from five persons.¹⁰ In addition, he presented the testimony of three of the five authors of those letters. The witnesses included his supervisor, his stepfather, and a former teacher. In

⁴ Exhibit 2.

⁵ Exhibit J.

⁶ Exhibit M.

⁷ Exhibit I.

⁸ Tr. 86.

⁹ Tr. 86.

¹⁰ Exhibits A–D, and O.

general, Applicant is described as trustworthy, responsible, dependable, hard working, respectful of others, and as someone who is serious about his work.

Law and Policies

It is well-established law that no one has a right to a security clearance.¹¹ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹² Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹³ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁴

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁵ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹⁶ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁷ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁸ In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.¹⁹ The DOHA Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁰

¹¹ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹² 484 U.S. at 531.

¹³ Directive, ¶ 3.2.

¹⁴ Directive, ¶ 3.2.

¹⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹⁶ Directive, Enclosure 3, ¶ E3.1.14.

¹⁷ Directive, Enclosure 3, ¶ E3.1.15.

¹⁸ Directive, Enclosure 3, ¶ E3.1.15.

¹⁹ *Egan*, 484 U.S. at 531.

²⁰ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.²¹ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

The central issue here is whether Applicant's well-established history of multiple traffic offenses should disqualify him from access to classified information.²² Under Guideline E for personal conduct,²³ the suitability of an applicant may be questioned or put into doubt due to false statements and credible adverse information that may not be enough to support action under any other guideline. The overall security concern under Guideline E is:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations [that may] 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.²⁴

Applicant's multiple traffic offenses are sufficient to raise a concern under the following disqualifying condition:

AG ¶ 16(c) credible adverse information in several adjudicative 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 including that the person may not properly safeguard protected information.

²¹ Executive Order 10865, § 7.

²² Given it was dismissed at the prosecution's request, I have given very little weight to the 2009 domestic violence offense involving his then teenage girlfriend.

²³ AG ¶¶ 15–17 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁴ AG ¶ 15.

His multiple traffic offenses, to include the citations for high-speed driving, are examples of reckless, high-risk, antisocial conduct that raise a security concern. His pattern of multiple traffic offenses during 2005–2011 raises concerns about his attitude toward authority and willingness to follow the law. A person who believes they are above the law in this regard may also believe that some security rules or practices are unnecessary and do not merit compliance.

There are seven mitigating conditions to consider under Guideline E.²⁵ I have considered each, and the most pertinent here is:

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.

This mitigating condition applies because the evidence shows that Applicant has received the message, loud-and-clear, and this conduct is now behind him. Most important, he acknowledges that his driving practices were ridiculous and foolish, and that such behavior can only hurt his future. Although he has not obtained counseling, he did complete a driving-safely course. He has also taken other positive steps to prevent recurrence of his inappropriate behavior. The best evidence on that point is that he has gone nearly a year without a citation for a traffic offense. That is significant considering that he was cited for a traffic offense at least once per year during the period 2005 to February 2011. Moreover, he possesses a valid driver's license, showing that the state authorities have not determined him to be such an unsafe or reckless driver that suspension or revocation of driving privileges was appropriate. Finally, he has the support of several adults who are important in his life, to include his supervisor, his stepfather, and a former teacher. They are exerting a positive influence on Applicant to mature and change his attitude toward his driving practices.

Following *Egan* and the clearly-consistent standard, I have no doubts or concerns about Applicant's fitness or suitability for a security clearance. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.²⁶ Having done so, I conclude that Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for Applicant.

²⁵ AG ¶ 17(a)–(g).

²⁶ AG ¶ 2(a)(1)–(9).

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline E: For Applicant

Subparagraphs 1.a–1.p: For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge