



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



In the matter of:)	
)	
)	ISCR Case No. 11-08464
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

03/15/2013

Decision

MASON, Paul J., Administrative Judge:

Applicant committed several traffic offenses between December 2003 and June 2012. Four of the those offenses were for reckless driving. She completed four driver education courses during the period, but provided no information to show how she altered her driving habits to prevent a future recurrence of the traffic offenses. She has not mitigated the security concerns raised under the personal conduct guideline. Eligibility of access for access to classified information is denied.

Statement of the Case

Applicant certified and signed her Electronic Questionnaire for Investigations Processing (e-QIP) on November 21, 2010. She was interviewed by an investigator from the Office of Personnel Management (OPM) on December 15, 2010. On July 14, 2012, Applicant provided information about several of the traffic offenses listed in the SOR. The

exhibit contains OPM's summary of her interview taken on December 15, 2010. (GE 1, GE 2)

On October 11, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under personal conduct (Guideline E). 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 in DOD on September 1, 2006.

Applicant submitted her answer to the SOR on November 5, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 17, 2013, for a hearing on February 12, 2013. The hearing was held as scheduled. At the hearing, two Government exhibits (GE 1-2) were admitted in evidence without objection. Applicant testified and submitted three exhibits (AE A, AE B, AE C) into evidence without objection. Applicant's post-hearing submission was admitted into evidence as AE D (seven pages in length) without objection by Chief Department Counsel. DOHA received the transcript on February 22, 2013. The record closed on February 25, 2013.

Findings of Fact

The SOR contains traffic offense allegations under the personal conduct guideline. Applicant admitted all allegations. She provided an explanation under SOR 1.b and furnished additional information in AE F to show that she completed the driver's improvement program so that the traffic charges would be dismissed.

Applicant is 31 years old and single. She has a 14-year-old daughter. In December 2007, she received a bachelor's degree in information technology. She has been employed as a financial management analyst by a defense contractor since July 2010. Before her current employment, she held positions as a budget analyst and a client analyst. Applicant has possessed a security clearance since August 2004.

Applicant testified that after she began driving between 19 and 21 years old, she made many mistakes. One of her mistakes was not managing her time correctly after she started school in January 2003. She was employed, attending school, and living in separate locations of State B. (Tr. 21-23) Applicant testified, "I was tired and exhausted. And I wasn't paying attention to the mistakes I was making as far as, you know, maybe going over the speed limit or being too tired to drive." (Tr. 23)

Over a nine-year period from December 2003 to June 23, 2012, Applicant was cited for several traffic offenses. In December 2003, she was charged with reckless driving in

State B. (SOR 1.h) She was driving her car about 10 or 11 p.m. and recalled being tired. She closed her eyes for a second and her car swerved. She had not been drinking. She was found guilty of reckless driving and her license was suspended for six months. (Tr. 41; GE 2 at 4)

In May 2004, Applicant was charged with reckless driving and driving under revocation or suspension in State B. (SOR 1.g) She could not recall the circumstances for the reckless driving charge, but she remembered she was driving a car on a suspended license. Because she knew her license was suspended when she was stopped by police, the presiding judge sentenced her to 30 days in jail. He suspended 28 days of the sentence, but placed her in jail for 12 hours. She told the OPM investigator that she drove on a suspended license because she needed to get to school and work. (Tr. 41-42; GE 2 at 4)

In February 2005, Applicant was charged with driving under revocation or suspension in State B. (SOR 1.f) Initially, she could not remember the details of the offense, but recalled she was driving while her license was suspended. (Tr. 38-39) Later in her testimony she remembered that she had a "minor accident" by bumping into a truck while in traffic. (Tr. 48-50)

In November 2009, Applicant was charged with reckless driving - speeding 20 miles per hour (mph) or more above the speed limit. (SOR 1.e) She was driving through State B on her way home. She was unable to take her usual route home through State A because of a detour requiring her to travel part of the way in State B. On part of the different State B road she was required to take, the speed limit drops to 25 or 35 mph. Applicant testified that, "And while I'm driving, I just, I forgot where I was. And I was - - and I got caught going over, way over the speed limit." (Tr. 37) She hired an attorney. At his recommendation, she completed a driver improvement program in State A on December 9, 2009. She returned to court in State B and pleaded guilty to speeding. (Tr. 38, 61; GE 2 at 215)

In July 2010, Applicant was charged in State B with reckless driving (driving 78 mph in a 55 mph speed zone). (SOR 1.d) Applicant testified that, "And I wasn't paying attention to the speed limit. And in the area - - it's - - the speed limit drops down really low and I wasn't paying attention. And I was speeding." (Tr. 36) Her attorney had the reckless charge reduced to speeding if she successfully completed driver school by November 12, 2010. She recalled paying all fines. (Tr. 36-37; GE 2 at 214)

In January 2011, Applicant was charged in State A with exceeding the maximum speed by driving 59 mph in a 30 mph speed zone, and driving a vehicle without current registration. (SOR 1.c) She was taking her child to school on her way to work. She was stopped for speeding while driving through a neighborhood. She blamed her expired

registration on negligence. She testified that she paid the ticket. She was uncertain whether she was driving the car she used during the week or her second car. (Tr. 35-36, 66-67)

In February 2012, Applicant was stopped by State A police conducting a random check of cars. She was charged with: driving on a suspended license and privilege; driving a vehicle on highway with suspended registration; displaying expired registration plate; failure to return suspended registration card to administrator; failure to return registration within 48 hours of suspension; and possessing suspended license. (SOR 1.b) The above charges were placed on the "stet docket" on condition that Applicant complete a driving while suspended license program. Applicant completed the program. (Tr. 46; AE D)

Applicant explained in her interrogatory answers in July 2012 that the reason why she was charged with the six offenses (SOR 1.b) was that State A's motor vehicle administration (MVA) sent her a notice to complete a driver improvement course in March 2011 to an address where she was no longer living. She completed the driver improvement course in March 2012. (GE 2 at 206, 219)

In her testimony, Applicant presented a slightly different explanation for SOR 1.b. She testified that after she received the citations, she contacted both State A's MVA and State B's division of motor vehicles (DMV). The MVA informed her of an outstanding red light ticket that she immediately paid. Even after she provided MVA with proof of valid insurance, the MVA stated her driver's license could not be released until the DMV released a hold on her license. The hold was placed on her license by the DMV for missing a driver improvement course. Applicant indicated she missed the course because the notice had been delivered to an address where she was no longer living. When she completed the course, the DMV released the hold on her driver's license. She also had to complete a driver while license suspended course that she indicated she completed on July 21, 2012. The MVA reinstated her driver's license. (Tr. 23-32; GE 2 at 206)

In June 2012, Applicant was charged in State A with driving a vehicle on the highway with suspended registration and displaying an expired registration plate (expired license plate stickers) (SOR 1.a) A police officer, who was sitting in his car on the street, began to follow Applicant as she turned the corner of an intersection. After noticing her registration was not current, he stopped her and wrote the citations. She was driving her second car and neglected to obtain current stickers. She indicated she paid the fines and re-registered the second car. Applicant estimated she had driven the second car six times with expired registration and plate stickers between April 2012 and when she was cited in June 2012. (Tr. 33, 43, 58)

Applicant knows she has made mistakes while driving. Though the traffic offenses appear to indicate she is a repeat offender, she has learned from her mistakes. (Tr. 54-55) No additional evidence was provided about what she has learned from her traffic convictions.

Character Evidence

Applicant provided the character statements of two coworkers. Witness C has worked with Applicant for two years and considers her a leader and a friend. In Witness C's opinion, Applicant is active in her daughter's activities. Witness D, a coworker and friend for five years, admires Applicant's honesty and intelligence. Witness D stated, "Throughout the time I've known her[,] she has continued to achieve excellence from working two jobs while attending college and being a single mother." (AE A, AE B) Witness C and D were aware that Applicant was scheduled for hearing related to her security clearance. They were unaware of the allegations in the SOR. (Tr. 52-53)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying and mitigating conditions which are useful in evaluating an applicant's eligibility for access to classified information. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. In reaching this decision, have avoided drawing inferences grounded on speculation or conjecture. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information.

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 as to obtaining a favorable security decision.

Analysis

Personal Conduct

The security concern for personal conduct is set forth in AG ¶ 15:

AG ¶ 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. 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 ¶ 16 contains two disqualifying conditions that are relevant to Applicant's conduct:

(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 indicating that the person may not properly safeguard classified information; and

(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 the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information; (2) disruptive, violent, or other behavior in the workplace; (3) a pattern of dishonesty or rule violations; and (4) evidence of significant misuse of government or other employer's time or resources.

AG ¶ 16(c) does not apply. The adverse information in the SOR does not address several adjudicative areas and could support a negative decision under Guideline J. Judging by the totality of the evidence, the most appropriate disqualifying condition is AG ¶ 16(d)(3), "a pattern of dishonesty or rule violations," because of Applicant's pattern of

traffic violations between December 2003 and June 2012. She admitted the traffic citations for four reckless driving offenses, two driving with a suspended license offenses, and three offenses for driving with expired registration stickers or license plate stickers. In addition, her completion of four driver improvement and driver under suspension courses during the period had little influence on her driving habits. Applicant's pattern of misconduct consistently demonstrates her desire to illegally operate a vehicle ahead of her duty to respect and obey state traffic laws. Her unwillingness to comply with laws implemented by State A and B to protect public safety represents poor judgment under AG ¶ 16(d).

There are two mitigating conditions under AG ¶ 17 that are potentially pertinent to the circumstances in this case. Those conditions are:

(c) the offense was 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; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant's nine traffic violations were not minor. Her most recent traffic offense occurred less than one year ago. While she completed four driver improvement courses, there is no evidence in the record to support a finding that she learned anything from the courses. There is no evidence of any other steps Applicant took to prevent the misconduct from recurring. Her record of traffic offenses continues to cast doubt on her reliability, trustworthiness, and judgment. AG ¶¶ 17(c) and 17(d) do not apply.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions under the personal conduct guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors set forth in 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 the participation was 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 eligibility for a security clearance must be a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is 31 years old and single. She is raising a 14-year-old daughter. In December 2007, she received her bachelor's degree in information technology. She has been employed as a financial analyst by a defense contractor since July 2010. Two coworkers admire her for her leadership qualities as well as her honesty.

The foregoing positive evidence does not overcome Applicant's negative driving record. She consistently defied or neglected state traffic laws to achieve her own objectives. Her testimonial claim of having learned from her errors in judgment is not supported by the record. Her driving record is aggravated by the fact that her daughter was a passenger in the car in January 2009 (SOR 1.c) when Applicant was speeding through a residential neighborhood at approximately 29 mph over the speed limit.

The possession of a security clearance is not simply a nine-to-five job, but a 24-hour-a-day duty requiring a security clearance holder to comply with all rules and regulations, whether they are security rules at work or traffic rules implemented for public safety considerations. Having held a security clearance since 2004, Applicant knew or should have known the importance of complying with traffic laws. After weighing the specific disqualifying conditions in the context of the whole-person factors, Applicant has failed to mitigate the security concerns engendered by her person 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 E):	AGAINST APPLICANT
Subparagraph 1.a-1.h:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge