



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



In the matter of: )  
 )  
XXXXXXXXXXXXXXXXXXXXXXX ) ISCR Case No.15-05026  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Rhett E. Petcher, Esquire, Department Counsel  
For Applicant: *Pro se*

01/13/2017  
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**Decision**  
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METZ, John Grattan, Jr., Administrative Judge:

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

On 8 March 2016, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines 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 19 October 2016, and I convened a hearing 2 December 2016. DOHA received the transcript (Tr.) 13 December 2016, and the record closed.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-3 and hearing exhibit (HE) I.

<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 the SOR allegations. She is a 28-year-old assembler employed by a defense contractor since February 2012. She was previously employed in a similar position from August 2010 to February 2012. She has not previously held a clearance.

Applicant has an extensive history of motor vehicle infractions, having been cited for multiple violations seven times between September 2011 and November 2015. Each of the violations involves the status of her driver's licence: driving with her learner's permit without the required licensed driver (twice), driving on a suspended licence (thrice), and driving without a license (twice). All of the infractions included ancillary charges which were nolle prossed, placed on the stet docket, or dismissed. Most of the dispositions involved fines, suspensions, and probations, although she spent four days in jail for driving without a license in November 2012.

In September 2011, Applicant was charged with a learner's permit violation and failing to secure a minor child in a car seat, and paid a fine. In June 2012, July 2012, and October 2012, she was charged with driving on a suspended license, she paid fines in each instance, but received probation before judgment for the October 2012 infraction. In November 2012, she was charged with driving without a license. At her January 2013 trial, she was sentenced to 60 days in jail, with 56 days suspended, and placed on probation until January 2014.

In September 2015, she was again charged with driving without a license. She paid a fine and was given 18 months probation at her February 2016 court date (Tr 37). In November 2015, she was charged with another learner's violation, as well as violating her rental car agreement, when she was involved in an accident.

Applicant attributes her conduct to being "young and dumb and listening to the wrong person (Tr. 31)," but acknowledges that she made the decisions to drive without a valid license. Her explanations for these violations do not excuse her conduct. None of them involved emergency situations which might have justified her behavior. All of them involved her knowing decisions to violate the terms of her license or her court dispositions. She has been unable to obtain a new driver's license, the result of a speeding ticket she received in August 2016 (Tr. 44). She has continued to drive without a valid license since November 2015 (Tr. 43).

Applicant submitted no work or character references, or any evidence of civic or community involvement. She provided no evidence to corroborate her claimed commitment to a more responsible lifestyle.

## **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 Applicant did not mitigate the security concerns. Between September 2011 and November 2015, Applicant was stopped and cited for a variety of motor vehicle violations—principally driving on a suspended license or on a learner's permit without the required licensed driver in the car—seven times. Yet, she has continued to drive in violation of her learner's permit since November 2015, and has been unable to get a regular license because of a speeding violation in August 2016.

Distilled to its essence, Applicant's misconduct demonstrates a consistent pattern of poor judgment over many years.<sup>4</sup> By her own assessment, she has exhibited poor judgment. She has not provided any evidence to support her claim that she is trying to

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<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. . . ;

move toward a more responsible lifestyle. Accordingly, I resolve Guideline E against Applicant.

### **Formal Findings**

Paragraph 1. Guideline E:                   AGAINST APPLICANT

Subparagraphs a-g:                   Against Applicant

### **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.

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JOHN GRATTAN METZ, JR  
Administrative Judge