



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



In the matter of:)
)
) ISCR Case No. 15-07902
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro se*

February 14, 2017

Decision

JUDGE, Martin H. Mogul, Administrative Judge:

Applicant submitted a Questionnaire for National Security Positions (SF 86 Format) on May 18, 2015. On March 5, 2016, after reviewing the application and information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.¹ The SOR detailed the factual reasons for the action under the Security Guideline J for Criminal Conduct and Guideline E for Personal Conduct considerations. Applicant timely answered the SOR and requested a hearing.

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 Department of Defense 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 replaced the guidelines found in Enclosure 2 to the Directive prior to September 1, 2006, and a copy of these guidelines was provided directly to the Applicant in this case.

The case was assigned to me on June 13, 2016. The hearing was held as scheduled on July 20, 2016. On November 23, 2016, I proposed to the parties by email that this case was appropriate for a summary disposition in Applicant's favor. Department Counsel had 10 days to consider the matter and no notice was received to indicate that Department Counsel objected.

Applicant is a 27 year old high school graduate, who is unmarried and has no children. Applicant has done maintenance for the United States Navy since September 2014. The allegation concerning Guideline J was that in April 2014, Applicant knowingly traveled from Mexico to the United States, with a Mexican citizen, and it was his intent to assist the Mexican citizen to enter the United States illegally. The allegation concerning Guideline E was that the information alleged under Guideline J also exhibits conduct that involves questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Based on the record evidence as a whole, I conclude that Department Counsel presented sufficient evidence to establish the facts alleged in the SOR under Guidelines J and E.

I also conclude that Applicant presented sufficient evidence to explain, extenuate, or mitigate the facts admitted by Applicant or proven by Department Counsel. I considered that Applicant testified that he was in Tijuana, Mexico, visiting his parents, and his friend in Tijuana asked him to help her transport her uncle to the United States; he had not planned it ahead of time. Applicant admitted he made a mistake to transport the uncle from Tijuana to the United States. On the approach to the border, Applicant decided he should not have done this, but he could not turn around before he reached the border. Applicant was stopped at the border and held for a few hours before being released. Applicant revealed this conduct on his security clearance application. At the hearing, he expressed credible, sincere remorse for this past one-time conduct, and his intent to never engage in such conduct in the future. I conclude that the security concerns are resolved under the following mitigating conditions under Guideline J: AG ¶ 32(a) and (d); and under Guideline E: AG ¶ 17(c) and (g).

The concerns over Applicant's history of criminal conduct do not create doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered whether or not the favorable evidence outweighed the unfavorable evidence. I also gave due consideration to the whole-person concept. Accordingly, I conclude that Applicant has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information. This case is decided for Applicant.

Martin H. Mogul
Administrative Judge