



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



In the matter of:)
)
) ISCR Case: 15-08794
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esquire, Department Counsel
For Applicant: *Pro se*

September 7, 2017

Decision

LOKEY ANDERSON, DARLENE D., Administrative Judge

Statement of Case

On September 2014, Applicant submitted a security clearance application (e-QIP). On June 9, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline J (Criminal Conduct). (Item 1.) 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 for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant responded to the SOR (Answer) on June 15, 2016. (Item 2.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government's written case on September 7, 2016. A complete copy of the File of Relevant Material (FORM), containing 5 Items, was received by Applicant on September 22, 2016. He was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted a 4 page document in response to the FORM within the 30-day period that ended November 18, 2016. DOHA assigned the case to me on August 9, 2017.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Findings of Fact

Applicant is 36 years old and has never been married. He is certified as an Aviation Maintenance Technician. He is employed as an Aviation Mechanic with a defense contractor. A security clearance is required in connection with his employment.

Applicant served in the United States Marine Corps from October 1998 to December 2001. He served on active duty as an Infantry Squad Leader. During his military career, he was awarded several awards and commendations include the Good Conduct Medal. He was honorably discharged after sustaining a serious combat related injury during training. He is now a disabled veteran. Applicant states that he used his Post 9-11 bill benefits to attend school, and is now using his education he received to train members of the military. Applicant began working for his current employer in February 2013.

On August 9, 2013, Applicant was arrested for Driving Under the Influence of Alcohol. On or about January 3, 2014, he entered a plea of guilty and was sentenced to two days jail (credit for time served), 36 month probation, and was required to attend alcohol courses. His probation was scheduled to end until January 2, 2017. Applicant explained that this incident was a difficult lesson that cost him over \$10,000 in fines and court fees. He believes that he received a firm and fair punishment for the offense. A letter from the County Probation Agency indicates that as of August 6, 2015, Applicant has complied with the formal terms of his probation period, and is now to serve the balance of his probation under conditional, and revocable release with the formal probation terms deleted.

Applicant is extremely remorseful for his past DUI, and states that he will not repeat the behavior. He has learned a great lesson from his humbling experience. He further states that he believes it to be a great privilege to work with a company that allows him to continue serving his country by training the military. In the three years since the DUI, Applicant has spent close to two years deployed. He has provided service in various countries including South Korea, Japan, the Philippines, Guam and at military institutions and civilian locations all over the world.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and

Applicant was arrested for Driving Under the Influence in 2013. This offense gives rise to concerns about Applicant's judgment and reliability, because of the nature of the offense. The record also indicates that Applicant was ordered to complete prescribed alcohol awareness classes and pay fines related to the crime. He was also placed on supervised probation until January 2017. The aforementioned disqualifying conditions have been established.

Four Criminal Conduct mitigating conditions under AG ¶ 32 are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant is remorseful about his first and only DUI in 2013. Since the arrest, he has satisfied all of the sentencing conditions imposed by the court and shows successful rehabilitation. He has completed all of the prescribed classes and paid the fines associated with this crime. He has also completed his supervised probation, and has provided a letter from the court that verifies this. His regular probation ended on January 2017. His arrest for DUI was a one-time isolated incident that he states will never recur, as there is no evidence in the record to show otherwise. There is no pattern of misconduct here, and under these particular facts, it does not cast doubt on his trustworthiness and judgment. This was a terrible mistake that he states will not be repeated. Applicant clearly understands the serious ramifications it will have on his security clearance if it happens again. AG ¶ 32(a) provides mitigation.

Applicant did not present evidence to show that he was pressured into criminal acts. He admitted each of the allegations. Neither AG ¶¶ 32(b) nor 32(c) provide mitigation.

Applicant introduced sufficient evidence of successful rehabilitation. He expressed remorse for his past conduct. He has satisfied all of the court's sentencing requirements, and he has not committed any criminal offenses over the past four years. AG ¶ 32(d) does provides mitigation.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The 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 eligibility for 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 have incorporated my comments under Guideline J in my whole-person analysis. Applicant's DUI occurred in 2013 more than four years ago. Since then he has completed all of the court-ordered alcohol classes, satisfied the required court fines, and successfully completed the probationary period. He has not had any problems since 2013, and he has demonstrated sufficient mitigation. He has provided sufficient evidence of rehabilitation to overcome his heavy burden to mitigate his criminal conduct. Overall, the record evidence does not raise doubts about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guidelines.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J: FOR APPLICANT

Subparagraph 1.a: For Applicant

Conclusion

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

Darlene Lokey Anderson
Administrative Judge