

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

In the matter of:)
)
 [Name redacted]) ISCR Case No. 16-01087
)
 Applicant for Security Clearance)

Appearances

For Government: Robert Blazewick, Esq., Department Counsel
For Applicant: Leon J. Schachter, Esq.

01/05/2018

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a Questionnaire for National Security Positions (SF 86 Format) on June 16, 2016. On September 29, 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 her eligibility for access to classified information.¹ The SOR detailed the factual reasons for the action under the security guideline known as Guideline E, Personal Conduct. 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 June 8, 2017, apply here.

The case was assigned to another administrative judge on June 5, 2017, and transferred to me on November 1, 2017. The hearing was held as scheduled on December 5, 2017. At the close of the hearing and after a review of the record and the transcript, I proposed to the parties that this case was appropriate for a summary disposition in Applicant's favor. Applicant did not object. Department Counsel had 10 days to consider the matter and provided written notice that Department Counsel did not object.

My basis for the summary disposition is as follows:

SOR ¶ 1.a: Arrest for DUI, Reckless Driving, Failure to Give Immediate Notice of Accident on October 2, 2011. Applicant testified to the circumstances of the evening of October 2, 2011. Her explanation was plausible. A disinterested witness provided a statement supporting her explanation of the events. In court, she pled and was found "Not Guilty." (Tr. 28-34, AE A, Tabs 25-26)

SOR ¶ 1.b: Citation for marijuana possession on June 22, 2012: Applicant testified that she was caught in the wrong place at the wrong time and admits to possessing, but not smoking marijuana. I find her explanation plausible. In addition, more than five years have passed since this incident and Applicant has had no further incidents. (Tr. 36-41)

SOR ¶ 1.c: Applicant did not falsify her e-QIP, dated June 16, 2015. She admits to the one marijuana possession incident, but denies using marijuana. It is alleged she did not list her citation for possession of marijuana in response to section 23. She explained her citation for marijuana possession in response to section 22 on the same e-QIP application. It may not have been under the correct question, but the information was provided. I find Applicant did not deliberately falsify her e-QIP application. (Gov 1, page 48)

SOR ¶ 1.d: Applicant's termination from employment from a restaurant in July 2012 after coming up short on cash: I find no ill intent in this allegation. This was Applicant's first waitressing job. The restaurant was newly opened and management did not want to deal with an inexperienced waitress as verified by her former assistant manager. Applicant disclosed this information on her e-QIP. (AE A, Tab 24; Gov 1, pages 25-26)

SOR ¶ 1.e: Applicant was discharged under General Under Honorable Conditions from the United States Air Force for Misconduct – Minor Disciplinary Infractions in November 2011. Aside from the DUI arrest, Applicant's disciplinary infractions consist of several failure to go offenses and is indicative of an immature airman who did not adapt to military life. Applicant has since matured and is more responsible.

In summation, Applicant no longer drinks alcohol excessively and has never used marijuana. She has not had an incident, arrest or citation in over five years. She is well regarded in her current civilian position as indicated by reference letters. She has a more mature outlook on life. She mitigated the security concerns.

Based on the record evidence as a whole, I conclude that Department Counsel presented sufficient evidence to establish the facts alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e raising security concerns under Guideline E, AG ¶ 16(c). I find SOR ¶ 1.c for Applicant. I also conclude that Applicant presented sufficient evidence to explain, extenuate, or mitigate the facts admitted by Applicant or proven by Department Counsel. In particular, I conclude that the security concerns are resolved under the following mitigating conditions: AG ¶¶ 17(c) and 17(d).

The security concerns raised under Guideline E no longer create doubt about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified information. 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. Accordingly, I conclude that Applicant met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information. This case is decided for Applicant.

Erin C. Hogan
Administrative Judge