



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 17-02747

**Appearances**

For Government: Tara Karoian, Esquire, Department Counsel

For Applicant: *Pro se*

October 11, 2018

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**Decision**  
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ROSS, Wilford H., Administrative Judge:

Applicant had several arrests between 2007 and 2015. She has changed her lifestyle and convincingly showed she will not engage in such conduct in the future. Based on a review of the pleadings, testimony, and exhibits, national security eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 3, 2015. (Government Exhibit 1.) On October 3, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline J (Criminal Conduct). 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 effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on November 8, 2017, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 8, 2017. The case was assigned to me on December 11, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on January 25, 2018. I convened the hearing as scheduled on March 13, 2018. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on her own behalf and submitted Applicant Exhibits A through E, which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 21, 2018.

### **Findings of Fact**

Applicant is 32, single, and has one child. She is seeking to obtain a security clearance in connection with her work with the DoD.

#### **Paragraph 1 (Guideline J: Criminal Conduct)**

The Government alleged in this paragraph that Applicant is ineligible for national security eligibility because she has engaged in conduct of a criminal nature. Applicant admitted subparagraphs 1.a, 1.b, 1.c, 1.d, and 1.f. She denied subparagraph 1.e.

1.a. Applicant admitted that in March 2007 she was charged with Aggravated Unlicensed Operation of a Motor Vehicle, and Criminal Possession of Marijuana. She had just turned 21 years old, "And I started hanging out with the wrong people." Applicant freely admitted the arrest was her fault. She pled guilty and was fined \$250. (Government Exhibits 2 at pages 7-8, and 3 at pages 4-5; Tr. 17, 20-22.)

1.b. Applicant admitted that in November 2010 she was arrested and charged with Driving While Intoxicated. Before this offense was adjudicated Applicant committed the offense set forth in allegation 1.c, below. (Government Exhibit 2 at page 6, and 3 at pages 5-6; Tr. 22-24.)

1.c. Applicant admitted that in August 2011 she was arrested and charged with Driving While Intoxicated. She was convicted of Operate Motor Vehicle with .08 or 1% or More in Blood. The sentence for this offense was combined with that for allegation 1.b, above, and consisted of a fine, probation for three years, attendance at an alcohol program, and her license was revoked. Her probation ended early, after eighteen months, in August 2013. This was Applicant's last alcohol-related incident. (Government Exhibit 1 at pages 37-40, Exhibit 2 at page 6, and Exhibit 3 at pages 5-7; Tr. 24-27.)

1.d. Applicant admitted that she was charged in April 2012 with Unlicensed Operator and No Interlock Device. Applicant admitted this was a very foolish decision on her part. She drove a friend's car when her license was revoked, and was seen by a police officer who knew Applicant did not have a license. No alcohol was involved in this incident. Applicant paid a \$300 fine for this offense. (Government Exhibit 1 at pages 4-41, and Exhibit 3 at 6; Tr. 27-32.)

1.e. Applicant denied that she had been charged in August 2013 with Unlicensed Operator and No Interlock Device. As further discussed below, Applicant had moved to another state as her probation was ending. Once her probation ended she legally obtained a driver's license in her new state of residence, which she had on the date of the offense. Applicant submitted documentation from the court showing that the case was dismissed in October 2013 after she went to court and showed them the proper documentation. This allegation has been mitigated. (Government Exhibit 2 at pages 6-7; Applicant Exhibit A.)

1.f. Applicant admitted being arrested in June 2015 for Assaulting a Law Enforcement Officer, and Obstructing or Resisting an Officer Without Violence. A friend was driving Applicant's car when they were stopped by police. Alcohol was not involved, but Applicant became belligerent with the police and was arrested. She pled guilty *In Absentia* to Disorderly Conduct and paid a \$525 fine. Applicant has not been involved with the police since that time. (Government Exhibit 4; Tr. 18, 33-43.)

Applicant decided to change her life as her probation was ending in August 2013. She moved to another state and began taking classes to receive her associate's degree, which she received *cum laude* in 2015. During her time in school, Applicant received scholarships. She has successfully worked for her present employer since 2015, being deployed several times. Applicant is in training to obtain a private pilot's license. Applicant realizes that she has made poor decisions in the past, and stated that she has matured and wants to be a good mother to her teenage child. (Applicant Exhibits B and C; Tr. 19, 44-49.)

## **Policies**

When evaluating an applicant's national security eligibility for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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. 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, “Any doubt concerning personnel being considered for national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who seeks access to classified information enters 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Paragraph 1 (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.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Two conditions apply:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant had five criminal incidents between 2007 and 2015. The 2007 incident involved marijuana. Two of them, in 2010 and 2011, were alcohol-related. The evidence is sufficient to apply the above disqualifying conditions, thereby requiring Applicant to provide evidence to mitigate them.

The guideline in AG ¶ 32 contains four conditions that could mitigate criminal conduct security concerns:

- (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 individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant admitted that she made poor decisions in the period between 2007 and 2012, during which time she had four criminal incidents. In 2013 Applicant's probation ended and she moved to another state. During the next few years she obtained an associate's degree with honors, and began working for her current employer. The 2015 incident was an aberration, and it was not viewed seriously by the court since Applicant only received a fine. When the record closed, Applicant had not had any police involvement in almost three years. Applicant evinced a credible intent not to engage in

such conduct in the future. AG ¶¶ 32(a), (c), and (d) apply. Guideline J is found for Applicant.

### **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(d):

(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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has mitigated the security significance of her past criminal conduct. Overall, the record evidence does not create substantial doubt as to Applicant's present eligibility and suitability for national security eligibility and a security clearance.

### **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

Subparagraphs 1.a through 1.f:

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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge