



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



In the matter of:

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ISCR Case No. 24-01288

Applicant for Security Clearance)

Appearances

For Government: Jenny Bayer, Esq., Department Counsel

For Applicant: *Pro se*

04/30/2025

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate criminal conduct and personal conduct concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On October 9, 2024, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the criminal and personal conduct guidelines the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on October 14, 2024, and elected to have his case decided on the written record in lieu of a hearing. Applicant received the File of Relevant Material (FORM) on December 18, 2024, and interposed no objections to the materials in the FORM. Applicant did not respond to the FORM. The case was assigned to me on February 18, 2025.

Summary of Pleadings

Under Guideline J, Applicant allegedly was arrested and charged on multiple occasions between October 2017 and May 2024 with criminal violations. Arrests and charges are alleged as follows: (a) in August 2012 for multiple counts of Felony Robber Felony Attempted Robbery, and Felony Grand Theft, for which he was convicted on two of the charges and sentenced to time in jail (served 28 days) and five years of formal probation; (b) in October 2017 for unlicensed driving; (c) in January 2020 for Driving without a License and speeding over 65 MPH, for which he failed to appear and was issued a bench warrant; (d) in March 2020 for unlicensed driving, vehicle lighting issue, and not wearing a seatbelt; and (e) covering five other occasions (i.e., in March 2021, November 2022, January 2024, March 2024, and May 2024), in which he was cited for various traffic violations. The allegations were cross alleged under Guideline E.

In his response to the SOR, Applicant admitted each of the allegations under the cited SOR guidelines. He furnished no explanations or clarifications.

Findings of Fact

Applicant is a 33-year-old employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant never married in a civil marriage but has cohabited with another for over a decade and is the father of two children. (Items 3 and 5) He does not have a high school diploma or general education diploma (GED). He reported no military service. (Item 3)

Since January 2022, Applicant has worked for his current employer as a facilities nightshift security guard. (Item 3) Previously, he was self-employed in the construction industry. (Item 3) Applicant has never held a security clearance. (Item 3)

Applicant's history of criminal offenses

Between July 2004 and March 2018, Applicant was involved in multiple criminal offenses, for which he was arrested, charged, and in one case in August 2012 was convicted of Felony Robbery and Felony Grand Theft and sentenced to 28 days in jail and five years of probation. (items 4-5) Since his 2012 felony conviction, he has been issued multiple vehicular citations (all covered by the criminal code of his state of

residence) for driving without a valid driver's license. (Items 4-5) Based on the evidence produced in the administrative record, Applicant has taken no known remedial actions to correct his judgment lapses associated with his 2012 felony conviction and ensuing driving offenses covering a period of over seven years (i.e., 2017-2024). (items 4-5)

Policies

By virtue of the jurisdictional principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a right to a security clearance." As Commander in Chief, "the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. Eligibility for access to classified information may only be granted "upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Criminal Conduct

The Concern: Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question the person's ability or willingness to comply with laws, rules, and regulations. . . . AG ¶ 30.

Personal Conduct

The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . . AG ¶ 15.

Burdens of Proof

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the

criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant's lengthy history of multiple criminal offenses spanning the years of 2012 through 2024. Applicant's arrest history includes a felon robber offense and conviction and eight traffic offenses (mostly resulting from arrests for driving without a valid driver's license. Considered together, these arrests, charges, and single noted conviction (resulting from his 2012 felony robbery charges) raise security concerns over whether Applicant's actions reflect a pattern of misbehavior incompatible with the judgment, reliability, and trustworthiness requirements for gaining access to classified information.

To be sure, Applicant's two-count 2012 felony robbery conviction would likely not (standing alone) meet the track record requirements for denying clearances under Guideline J (criminal conduct, if cross-alleged separately under that guideline. Historically, the Appeal Board has generally required a track record of criminally related incidents that bear more recency of more recent occurrence than the dated 2012 incident in this record. See ISCR Case No. 95-0731 at 3 (Sept. 1996); ISCR Case No. 94-1081 at 5 (August 1995). Applicant's 2012 felony robbery conviction is cross-alleged under Guideline E, and for good reason.

Applicant's multiple driving incidents without a valid driver's license also entail criminal offenses)punishable by fine up to \$1,000, incarceration up to six months in jail, and suspension of the offender's driver's license under his state's criminal code. § 46.2-300 of his state of residence. Based on the evidence produced at hearing, one criminal conduct guideline is applicable to the developed facts in evidence. DC ¶ 31(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, and trustworthiness," applies to Applicant's situation.

Cross-alleged under Guideline E are the same criminally related incidents involving Applicant. DC ¶ 16(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 individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of . . . (3) a pattern of dishonesty or rule violations . . .," applies to Applicant's situation, as well.

Applicant's series of criminal incidents (mostly driving without a valid driver's license and felony robbery conviction reflect multiple lapses of judgment and maturity on his part. When considered together in this context, the nine SOR-covered incidents support a troubling pattern of questionable judgment, untrustworthiness, and unreliability, properly alleged and pursued under both Guideline J and Guideline E.

In the past, the Appeal Board has addressed multiple criminal offenses stitched together to raise security concerns over an applicant's overall judgment, trustworthiness, and reliability. In ISCR Case No. 03-08475 at 5-8 (App. Bd. Sept. 14, 2007), the applicant accumulated seven traffic-related offenses and one driving under the influence (DUI) offense. Similar to the array of offenses cited in this case, the traffic-related offenses considered in ISCR Case No. 03-08475 were comprised of speeding, license plate offenses, disobeying a road sign, driving with a suspended license, and a DUI. Like the multiple traffic and alcohol-related offenses cited in ISCR Case No. 03-08475, most of the incidents individually could be expected to fall into minor categories if assessed individually.

Considered together in the context of a pattern-display of lapses in judgment, Applicant's covered actions reflected, in the Appeal Board's judgment in ISCR Case No. 03-08475, an unwillingness to comply with rules and regulations. Other Appeal Board cases involving multiple traffic-related offenses also sustained clearance denials for reasons of demonstrated lack of overall judgment sufficient to raise security concerns over the applicant's cited inability to follow rules and regulations over a prolonged period of years. See ISCR Case No. 11-14899 at 1-3 (App. Bd. April 15, 2015; ISCR Case No. 10-0928 at 4 (App. Bd. March 5, 2012)

Without more time and demonstrated lessons learned from his lengthy history of criminally related incidents, none of the potentially available mitigating conditions under Guidelines J and E are available to Applicant at this time. More documented efforts by Applicant to adhere to a demonstrated track record of compliance with rules and regulations are needed to meet established criteria of eligibility to hold a security clearance.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of criminally related offenses over a considerable period of years (2012-2024), when taken together contextually reflect collective judgment lapses incompatible with his holding a security clearance. While Applicant is entitled to credit for his civilian contributions to the defense industry, his contributions are not enough at this time to overcome his pattern history of criminally related traffic charges and felony robbery conviction covered by both the criminal and personal conduct guidelines.

Summarized, more time is needed for Applicant to demonstrate his understanding and commitment to adhering to the rules and regulations placed in force by his state's criminal and civil laws that are covered by Guidelines J and E. Applicant's collective actions to date fall short of what is required to carry his persuasive burden of demonstrating he meets the minimum eligibility criteria for gaining access to classified and sensitive information.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude criminal conduct and personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

Formal Findings

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

GUIDELINE J (CRIMINAL CONDUCT): AGAINST APPLICANT

Subparagraphs 1.a-1.i: Against Applicant

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge