



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



In the matter of:)
)
) ISCR Case No. 23-02904
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

02/06/2025

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the criminal conduct security concern. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On January 22, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing a security concern under Guideline J (criminal conduct). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant submitted an undated response to the SOR (Answer) and elected to have his case decided on the written record in lieu of a hearing. The Government's written case was submitted on April 3, 2024. The Government's supplemental written case was submitted on August 12, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant on August 14, 2024, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on September 5, 2024. He did not submit a response. The case was assigned to me on December 6, 2024. The

Government's documents identified as Items 1 through 6 in its FORM are admitted in evidence without objection.

Findings of Fact

Applicant admitted the sole SOR allegation his Answer. He is 30 years old. As of his January 2019 security clearance application (SCA), he was unmarried and he did not have any children. (Items 1-3)

Applicant graduated from high school in 2013. As of the date of his SCA, he has worked as a warehouse identification production specialist for his employer, a DOD contractor, since November 2017. He has never held a security clearance. As of the date of his SCA, he has lived with his parents since 1995. (Item 3)

The SOR alleged that Applicant was charged in October 2021 with driving under the influence (DUI) of liquor with a blood alcohol content of .08 or more, 1st offense, and that the charge was still pending as of the date of the SOR. In his Answer and August 2023 response to interrogatories, Applicant stated he was pulled over for an improper U-turn that turned into a DUI stop and he was awaiting a court trial scheduled for April 2024. (Items 2, 4)

State court records reflect Applicant was cited in state municipal court with two counts of offenses categorized under "Traffic," with count 1 for "Traffic-Improper U-Turn," and count 2 for "DUI Liquor/Drugs/Vapors 1st." (Item 5) In April 2024, the first count was dismissed and Applicant pled guilty to an amended count 2 of reckless driving. (Item 6) He was placed on unsupervised probation, ordered to attend traffic survival school and a Mothers Against Drunk Driving (MADD) victim impact panel, and fined approximately \$714. As of May 2024, Applicant was compliant with the court's mandate for traffic survival school and MADD victim impact panel, and he had paid at least \$550 in fines as of July 2024. The record does not contain any information about the length of his unsupervised probation and whether he has completed it and paid all necessary fines. (Items 5-6) Applicant did not respond to the FORM, so no more recent information is available.

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 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶

2(a), the entire process is a conscientious scrutiny 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion to obtain a favorable security 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 access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to 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.

Section 7 of Exec. Or. 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J, Criminal Conduct

The security concern 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 notes conditions that could raise security concerns under AG ¶ 31. The disqualifying conditions potentially applicable in this case include:

(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 pled guilty to reckless driving in April 2024. He was placed on unsupervised probation, ordered to attend traffic survival school and a MADD victim impact panel, and fined approximately \$714. AG ¶ 31(b) is applicable.

AG ¶ 32 provides conditions that could mitigate security concerns. The following 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; 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.

In May 2024, Applicant was compliant with the court's mandate that he attend traffic survival school and a MADD victim impact panel, and he had paid at least \$550 in fines as of July 2024. However, the record does not contain any information about the length of his unsupervised probation and whether he has completed it and paid all necessary fines. Since he did not respond to the FORM, no more recent information is available. While it is unclear if he is or remains on probation now, the offense, while isolated, is also recent and therefore not mitigated. Applicant did not meet his burden and AG ¶¶ 32(a) and 32(d) are not established.

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 the 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 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. Since Applicant elected to have his case decided on the written record in lieu of a hearing and then did not respond to the Government's FORM, I could not assess his credibility and demeanor, and I did not have the opportunity to ask him questions and develop a full record as to his rehabilitation and reform. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not mitigated the criminal conduct security concern.

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:

Paragraph 1, Guideline J: AGAINST APPLICANT

Subparagraph 1.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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia Administrative Judge