

DATE: December 11, 2007

In re:	)	
	)	
-----	)	ISCR Case No. 07-00926
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**DECISION OF ADMINISTRATIVE JUDGE  
MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_\_ In 2004, Applicant shot a pellet gun at a neighbor during a heated dispute, and was later arrested and charged with deadly conduct. He received a five-year deferred adjudication with supervised probation to run concurrently. Upon evaluating the isolated nature of the conduct, its surrounding circumstances, Applicant's remorse, and his probation officer's strong, unequivocal character reference, I conclude he has mitigated the criminal conduct security concern. Clearance is granted.

**STATEMENT OF THE CASE**

On June 7, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. DOHA received his answer and request for a hearing on August 23, 2007.

The case was assigned to me on September 20, 2007. DOHA issued a notice of hearing on October 1, 2007, scheduling it for October 23, 2007. During the hearing, I received three government exhibits, 16 Applicant exhibits and Applicant's testimony. I left the record open at Applicant's request to allow him an opportunity to submit an exhibit that he had been unable to obtain in advance of the hearing. Within the time allotted, he submitted it and I incorporated into the record. DOHA received the transcript on October 31, 2007.

### **FINDINGS OF FACT**

\_\_\_\_\_ Applicant admitted the lone SOR allegation and I have incorporated it into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 46-year-old married man with one daughter, age six. He is a U.S. Air Force veteran who served from 1982 through 1986 when he was honorably discharged.<sup>1</sup> He has worked his entire career, including his stint in the Air Force, in the aircraft mechanics field.

From 1991 to 1993, Applicant attended a junior college earning an associate's degree, and an air framing and power plant license.<sup>2</sup> An honor student, he was elected to *Who's Who Among Students in American Junior Colleges*, in addition to the Phi Theta Kappa Society, an organization honoring outstanding two-year college students, in 1993.<sup>3</sup> Throughout college, he worked three jobs.

Currently, Applicant is a field and service mechanic who tests aircraft weapons systems and works on flight test service.<sup>4</sup> He is an extremely organized, conscientious worker with a commendable work ethic.<sup>5</sup> Also, he is a union foreman representing 24 employees.<sup>6</sup>

Approximately six years ago, Applicant purchased an undeveloped tract of land in a rural area, and built a home. At or about the same time, his neighbor purchased an adjacent tract and began building a home. For three years, they coexisted peacefully.<sup>7</sup> Then, in approximately 2003, a property

---

<sup>1</sup>Exhibit B.

<sup>2</sup>Tr. 26.

<sup>3</sup>Exhibit O.

<sup>4</sup>Tr. 29.

<sup>5</sup>Exhibits J and L.

<sup>6</sup>Tr. 55.

<sup>7</sup>Tr. 33.

dispute ensued over the proper location of a fence the neighbor sought to build. Subsequently, the neighbor grew hostile, cursing at Applicant for the slightest trespass, such as any time grass clippings from Applicant's yard accidentally blew onto his yard. On multiple occasions, he threatened to kill Applicant and his family if they walked onto the disputed property area.<sup>8</sup> Applicant contacted the local sheriff several times about the threats. The sheriff told him he could not take any action against the neighbor unless he drove by their homes and observed him physically assaulting the Applicant.<sup>9</sup>

In an attempt to minimize conflict, Applicant enclosed his property with a wooden fence.<sup>10</sup> Late one evening, someone on the neighbor's property threw trash over the fence into his yard. The next morning, while mowing the yard, Applicant threw the trash back over the fence into his neighbor's yard. The neighbor then confronted him, and they began arguing.<sup>11</sup> Subsequently, the neighbor climbed the fence, "hanging over [Applicant's] fence into [Applicant's] yard."<sup>12</sup>

Fearing for his life, Applicant "discharged a pellet gun in the direction" of the neighbor, hitting the fence.<sup>13</sup> He typically carried a pellet gun with him when he mowed the lawn because he would occasionally encounter snakes. The neighbor contacted the sheriff, who then arrested Applicant. Later, he was indicted, and, after appearing before a grand jury, charged with deadly conduct.<sup>14</sup>

Approximately five months later, as the result of a plea bargain, Applicant was granted deferred adjudication for five years, placed concurrently on supervised probation, sentenced to one month of work release, and ordered to perform 120 hours of community service.<sup>15</sup> The probation will expire in 2010.

Shortly after being sentenced, Applicant voluntarily enrolled in counseling that addressed, in part, anger management issues.<sup>16</sup> Currently, he has completed 70 hours of community service. His tasks have included helping out at the local community civic center, working at a senior citizen's home, and working with the Salvation Army.<sup>17</sup>

---

<sup>8</sup>Tr.33.

<sup>9</sup>Tr. 46.

<sup>10</sup>Tr. 34.

<sup>11</sup>Tr. 32.

<sup>12</sup>*Id.*

<sup>13</sup>Exhibit 3, Indictment, dated April 1, 2004; *Id.*

<sup>14</sup>*Id.*, Tr. 39.

<sup>15</sup>Answer.

<sup>16</sup>Exhibit K.

<sup>17</sup>Tr. 49.

Applicant initially met with a probation officer once per month after the sentence. Now, he meets with him once every other month.<sup>18</sup> The probation officer characterized him as a “model probationer” and a “good candidate for early dismissal.”<sup>19</sup> He intends to recommend early dismissal once Applicant completes the remainder of the community service.<sup>20</sup> Moreover, he stated that he “understands [Applicant’s] job requires a security clearance and feels he would be no threat to your company or any other company he may visit.”<sup>21</sup>

## POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual’s eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual’s eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the “whole person concept,” all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is “clearly consistent with the national interest.”<sup>22</sup> In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the Government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

## CONCLUSIONS

---

<sup>18</sup>Tr. 42.

<sup>19</sup>Exhibit Q.

<sup>20</sup>*Id.*

<sup>21</sup>Exhibit Q.

<sup>22</sup>*See generally*, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

## **Criminal Conduct**

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Also, “[b]y its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.”

Here, Applicant was arrested and charged with deadly conduct charge after he fired a pellet gun in the direction of his neighbor during the course of an argument. He is still serving probation as a result of this offense. Criminal Conduct Disqualifying Condition (CC DC) 31(a), “a single serious crime . . . ,” and CC DC 31(d), “individual is currently on parole or probation,” apply.

This is the only time Applicant has ever been charged with a crime. He is deeply remorseful, has been performing community service, as ordered, and has a good employment record. Also, he voluntarily enrolled in anger management counseling. Criminal Conduct Mitigating Condition (CC MC) 32(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,” apply.

The mitigating conditions outweigh the disqualifying conditions. Although Applicant’s conduct resulted in a criminal charge, he was never convicted. Also, in light of the probation officer’s positive reference, the fact that he is still serving probation is not an indication that he cannot be trusted with access to classified information. Applicant has mitigated the criminal conduct security concern.

## **Whole Person Concept**

Applicant’s conduct represents a serious lapse in judgment. It is mitigated by its isolated nature. Other than this incident, Applicant has led a stable, productive life, serving in the Air Force, finishing junior college with honors while holding three jobs, and currently serving as a union foreman at his job. Also, the conduct is mitigated by its surrounding circumstances and Applicant’s motivation for the conduct. Specifically, Applicant was fearing for his life when he fired his pellet gun toward his neighbor. Given the neighbor’s history of death threats, and the fact that he was climbing over Applicant’s fence when Applicant discharged the pellet gun, his fear was reasonable.

In addition to performing community service as ordered by the court, Applicant voluntarily enrolled in counseling. His parole officer characterized him as a model probationer. Applicant’s efforts at rehabilitation also weigh in his favor.

Upon evaluating this case in light of the whole person concept, I conclude that this conduct, though serious, represents an anomaly, and poses neither the risk of recurring nor any potential for coercion. Applicant has mitigated the criminal conduct security concern.

### **FORMAL FINDINGS**

\_\_\_\_ Paragraph 1 - Guideline J: FOR APPLICANT

Subparagraph 1.a: For Applicant

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Marc E. Curry  
Administrative Judge