

KEYWORD: Criminal Conduct

DIGEST: Between 1995 and 2004, Applicant was arrested and charged with criminal conduct on three separate occasions. She is currently on probation for her most recent arrest, and it does not expire until October 2007. Clearance is denied.

CASENO: 07-01065.h1

DATE: 09/27/2007

DATE: September 26, 2007

_____)
 In re:)
)
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 SSN: -----)
)
 Applicant for Security Clearance)
 _____)

ISCR Case No. 07-01065

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

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____ Between 1995 and 2004, Applicant was arrested and charged with criminal conduct on three separate occasions. She is currently on probation for her most recent arrest, and it does not expire until October 2007. Clearance is denied.

STATEMENT OF THE CASE

On May 31, 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. She answered the SOR on June 25, 2007, denying two of the three allegations and electing to have the case decided on the written record.

Department Counsel mailed the government's file of relevant material (FORM) to Applicant on July 19, 2007. She received it on July 24, 2007. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. She neither objected to any of the FORM submissions, nor filed any additional evidence to be considered. The case was assigned to me on September 18, 2007 requesting an administrative determination.

FINDINGS OF FACT

_____ The SOR admission is incorporated into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 53-year-old single woman with two adult children. She has a high school education. For the past 25 years she has worked for a defense contractor as an electronics fabricator (Exhibit 4 at 1-3).

One night in December 1995, Applicant and her boyfriend got into a heated argument in her apartment. The confrontation escalated after he slapped her, pushed her into a wall, and began punching her. She then grabbed a paring knife and stabbed him in the arm leaving a superficial wound (Exhibit 5, Crime Report, dated December 24, 1995 at 3). The police responded to an anonymous call, took statements from both individuals and charged Applicant with assault with a deadly weapon (*Id.*). Her boyfriend was then arrested for several outstanding warrants unrelated to the domestic incident. The charge against Applicant was later dismissed after her boyfriend failed to appear for two successive pre-trial hearings.

In July 1999, Applicant was arrested and charged with battery and exhibiting a deadly weapon other than a firearm after her adult daughter alleged she slapped her and threatened her with a knife during an argument (Exhibit 6, Police Report, dated July 24, 1999 at 3). Applicant admitted slapping her, but denies brandishing a knife. The charges were later dismissed because of insufficient evidence.

In August 2004, Applicant took her five-year-old granddaughter to a local wine festival. She grew irritated with her after the child expressed a desire to leave. She then grabbed her, squeezing her neck and pulling her hair, as she led her from the festival. Several people witnessed this behavior,

and one of them called the police. When the officer arrived, he took a statement from the granddaughter, and observed “red linear bruising on each side of the rear portion of her neck” (Exhibit 7, Police Report, dated August 1, 2004).

Applicant was then arrested and charged with abusing or endangering the health of a child. She was found guilty and sentenced to three years in jail, with all but two days suspended, and three years of probation (Answer). Also, she was ordered to complete community service and parenting classes, ordered to have no contact with her granddaughter, and ordered she not come within 100 yards of her while the probation is pending. The order expires in October 2007.

Applicant completed both the parenting classes and the community service, as ordered (Answer at 5, 8).

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; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the age of the applicant; (5) the extent to which the 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.

The following adjudicative guideline is raised:

Guideline J - Criminal Conduct: 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.

Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

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.”¹ 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

Guideline J

Between 1995 and 2004, Applicant was arrested and charged with criminal conduct on three separate occasions. She is currently on probation for her most recent arrest, and it does not expire until October 2007. Criminal Conduct Disqualifying Condition (CC DC) 31 (a): *a single serious crime or multiple lesser offenses*, and CC DC 31 (d): *individual is currently on parole or probation*, apply.

Criminal activity does not have to result in a conviction in order to have negative security implications. Nonetheless, I conclude the 1995 incident has little probative value. Applicant’s accuser instigated the incident, did not appear for any pre-trial hearings, and had a prior criminal record.

The 1999 charge has similarly limited probative value. It was based on her daughter’s allegations, which Applicant denied, and was dismissed because of insufficient evidence.

The 2004 charge, however, resulted in a conviction and a sentence to probation which she is still serving. Although her completion of community service and parenting classes triggers the application of Criminal Conduct Mitigating Condition (CC MC) 32 (d): *there is evidence of successful rehabilitation*, it is insufficient to overcome the security concern.

Whole Person Concept

When viewed in its totality, Applicant has a history of volatile relationships with family members and loved ones. I was particularly troubled by the immaturity and bad judgment displayed in 2004 when she physically abused her granddaughter after getting irritated with her for wanting to leave a festival. Consequently, although Applicant has demonstrated rehabilitation by completing community service and parenting classes, it is too soon to conclude that she can be entrusted with classified information. Clearance is denied.

FORMAL FINDINGS

Paragraph 1 – Guideline J:

AGAINST APPLICANT

¹See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Marc E. Curry
Administrative Judge