



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



In the matter of:)	
)	
)	ISCR Case No. 17-00191
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

04/02/2019

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant pled guilty to a misdemeanor offense of pointing a weapon at others and received a three year deferred sentence. He has mitigated the criminal conduct and personal conduct security concerns. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

On May 9, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline J, criminal conduct, and Guideline E, personal conduct, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him.¹

¹ The DoD CAF took the action under Executive Order 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*

On May 30, 2017, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On February 7, 2018, DOHA issued a Notice of Hearing scheduling a hearing that was conducted on February 28, 2018.

Five Government exhibits (Ex. 1-5) and five Applicant exhibits (Ex. A-E) were admitted into evidence without objection. Records submitted by Applicant as attachments to his answer were considered. Applicant testified, as reflected in a transcript (Tr.) received on March 9, 2018. I held the record open after the hearing for Applicant to submit additional documents. Following the hearing, the Order of Dismissal was admitted as Ex. F.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective “for all covered individuals” on or after June 8, 2017. Accordingly, I have evaluated Applicant’s security clearance eligibility under the new AGs.²

Findings of Fact

In Applicant’s answer to the SOR, he admitted a felony arrest for Pointing of a Firearm (SOR 1.a), which was also alleged under the personal conduct guideline. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 56-year-old flight engineer and project manager who has worked for a defense contractor since August 2000 and seeks to retain his security clearance. (Ex. 1, Ex. E, Tr. 20) From September 1981 through September 1985, he honorably served in the U.S. Air Force. (Ex. 1, Tr. 22) He had no overseas deployments when on active duty, but spent three and a half years in Saudi Arabia with his contractor job. (Tr. 24) He has been married 26 years and has no children. (Ex.1, Tr. 24)

On January 29, 2015, Applicant was arrested for felony pointing of a firearm. (Ex. 5, Ex. A) That evening, his sleep was interrupted by his neighbor’s four barking dogs. (Ex. B) Applicant lives in a gated community of 100 homes all on one-and-a-half acre lots. (Tr. 27) There was a history of complaints about the barking dogs. The dogs’ barking was loud enough to disturb one neighbor, not the Applicant, who lived six hundred feet away and the noise was separated from his residence by a heavily wooded yard. (Ex. B) The complaint dogs’ owner put threatening notes on people’s

for Determining Eligibility for Access to Classified Information (AG) effective within the DoD on September 1, 2006.

² Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

doors when a different neighbor complained about the barking. (Tr. 28) When Applicant's next-door neighbors complained to the dogs' owner about the noise, the dogs' owner dropped off a box fan at the complaining neighbor's home and said he heard "white noise" helps to reduce the sound of barking dogs. (Tr. 28)

Since 2012, the police had responded four times from complaints from the neighbors about the barking dogs. (Ex. 6) The barking dogs had resulted in Applicant's neighbor being ticketed for disturbing the peace. (Ex. B) The Applicant's neighbor had gone to court to respond to a complaint over his barking dogs and was fined by the city. (Tr. 28) As a result the owner frequently placed two of the dogs in a heated warehouse near the house. (Ex. 6, Ex. B) The move failed to end the barking. (Ex. 6, Ex. B)

The back of Applicant's property fronts onto the dog owner's property. (Tr. 29) On a previous occasion when Applicant's neighbor's dogs were constantly barking, Applicant called the police and was told the police would respond to loud party noise but do not respond to animal disturbances. (Tr. 28) He was told that he would have to wait until the next morning to call animal control. (Tr. 28) Applicant stated the dogs would bark every two seconds for as long as eight hours straight. (Tr. 28)

On January 29, 2015, at 8:20 pm, the dogs started barking. (Tr. 29) Applicant went to the dog owner's home initially to leave a note complaining about the barking dogs. At that time, he did not know if anyone was home at the dog owner's home³. When the owner answered the door, Applicant angrily complained that the neighbor's dogs had kept Applicant awake the previous night. (Ex. 5) The owner initially said this was the first time the dogs were barking, but later acknowledged he had failed to put the dogs in the barn the previous night. (Ex. B, Tr. 31) When Applicant challenged the owner about being fined after being taken to court over the dogs' barking, the owner became upset. (Tr. 31)

After Applicant stated his complaint, he returned to his car. At that time the dogs' owner followed him to his car. Both individuals were swearing. Applicant got into his car when the dogs' owner struck the hood of Applicant's car three times and dented the hood of Applicant's car. (Ex. 6, Tr. 17, Tr. 33)

The individual's front house light was not working and the only light came from Applicant's car head lights. (Ex. 5, Ex. A, Tr. 16) At that time the neighbor had something metallic in his hand, which turned out to be a cell phone. But in the dark, Applicant could only identify it as metallic. (Tr. 16) Applicant got out of his car as his neighbor continued to approach him. Thinking the neighbor to be armed, as his neighbor approached, Applicant drew a handgun and pointed it at his neighbor yelling for him to stop. Applicant has a concealed carry permit and says he drew his firearm out of self-defense. (Ex. 6) After exchanging additional words, Applicant got back in his car,

³ Applicant stated that in his neighborhood individuals work nights or are sometime gone for multiple days due to their jobs so he did not know if the dog owner was home. (Tr. 30)

drove home, and called the police. (Ex. 6) Three hours prior to the incident, Applicant had a glass of wine with dinner. (Tr. 19)

The dogs' owner said he followed Applicant to his car to make sure Applicant left. (Ex. 6) The dog owner says he messed up when he struck Applicant's vehicle, at which time Applicant got out of his car. (Ex. 6) The dog owner told police he would have put his dogs in the barn had Applicant asked. (Ex. 6) As Applicant was leaving, he said he was going to call 911 and the dogs' owner said it would be a race to see who called first. The neighbor asked his wife to call 9-1-1 when he entered his home and to get his weapon. (Ex. B) Applicant called 911 when he got home, told the police about the incident, said he had drawn his weapon, and gave the police his address. (Tr. 33) He was arrested that night and the gun confiscated. The gun was never returned to Applicant. (Tr. 39) His concealed carry permit was returned to the issuing authority. (Tr. 50)

After the incident, the barking stopped. (Tr. 41) The dogs were rescue dogs and after the newspaper article and television news about the incident, the dog rescue came and took the dogs from the home. (Tr. 41) Since the incident, Applicant has had no interaction with the dogs' owner. (Tr. 41)

The district attorney (DA) assigned to the case said he would drop the charges if Applicant wrote a letter of apology to the dogs' owner. (Tr. 36) Applicant refused to do so. The DA also suggested Applicant consider anger management or counseling. Applicant said he would go only if the dog owner also went. (Tr. 40) Two years later, a different district attorney was handling the matter. Applicant initially paid his attorney \$4,000 and was informed that an additional \$8,000 would be required to take the matter to a jury trial, for a total of \$12,000. (Tr. 9, SOR Response) The potential cost was a factor in deciding to accept the district attorney's offer of a guilty plea to a misdemeanor. Also a weighing factor was the stress the matter had caused Applicant and his wife. (Tr. 36) When the plea was made, it had already cost him \$7,000⁴. (Tr. 14, Tr. 36)

On November 23, 2016, Applicant, after pleading guilty to the misdemeanor of pointing a weapon at others, he was order to pay a \$50 fine, a \$50 Victim's Compensation Assessment (VCT), and \$83 in court costs. His finding of guilty was deferred for three years. (Ex. 4) He was required to complete one year of supervised probation⁵ and two additional years of unsupervised probation. (Tr. 37) None of the court documents present in the record indicate a community service requirement. After

⁴ In addition to the \$4,000 attorney's fees, Applicant paid \$50 for warrant of arrest, \$25 for court information system revolving fund, \$75 bond fee to the court (the bondsman's fee for the \$4,000 bond is not part of the record), and \$200 in additional court fees and assessments. (Ex. 4) The bond was decreased at arraignment. (Ex. 4) Applicant's cost between these fees, assessments, and costs and the \$7,000 claimed by Applicant is not part of the record.

⁵ Even though there was one year of supervised probation, Applicant never saw the probation officer. Within a week of his plea, he called the probation officer and was told he did not have to come in to the probation office and that he should keep the probation officer informed if he moved, changed employment, or if his telephone number changed.

completing the deferred sentence, Applicant's record would be expunged. (Tr. 14) When Applicant made the decision to plead guilty to the misdemeanor, he had no idea that doing so would have affected his security clearance. (Tr. 14)

As of February 2018, Applicant had completed 130 hours of community service at a non-profit organization that helped neglected, abused, and homeless dogs. (Ex. D) The president and founder of the organization stated Applicant was very hard working and a dedicated volunteer who always put in the best possible effort. (Ex. D) In May 2018, Applicant had met all the conditions regarding the supervised probation and community service, and having served more than half of the probationary period, formally requested early termination of his unsupervised probation.

In January 2019, Applicant dismissed his original attorney and hired a new attorney, at a cost of an additional \$4,000, in an attempt to terminate the unsupervised probation early. On March 22, 2019, the Motion to Accelerate Deferred Sentence and Dismiss Case was sustained. (Ex. V) On March 22, 2019, an Order of Dismissal was signed, which ordered, adjudged, and decreed that the case against him be dismissed. Now that the deferred sentence has been successfully completed, his record will be expunged.

Applicant realizes he acted inappropriately and wishes he had never gone to the dogs' owner's home. The frustration due to lack of sleep and the police not responding to barking dogs contributed to his inappropriate actions. (Tr. 42) He makes no excuses for his actions. His intent was to leave a note and when he saw the dogs' owner was home, it was his intent to tell him to quiet his dogs, and then he intended to leave. (Tr. 42) Obviously, it did not work out as planned.

The senior logistics manager for the DoD contractor was Applicant's supervisor for two and a half years, and he described Applicant as a very dedicated, detailed, and passionate about the work he performs on aircraft upgrades. (Ex. E) He stated Applicant has strong morals that drive his decisions and highly recommends Applicant. (Ex. E) The project manager stated Applicant was one of the better project management specialists in the company. (Ex. E)

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 must be considered 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 adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny 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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel. . . .” The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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

Analysis

Guideline J: Criminal Conduct

The security concern about criminal conduct is articulated 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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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.

In January 2015, Applicant was charged with carrying a firearm while under the influence and felony pointing a firearm. He pled no contest to a reduced misdemeanor charge and received a deferred disposition. He was placed on probation for three years until November 2019. The disqualifying conditions in AG ¶ 31 (a) applies. AG ¶ 31(b) does not apply because there is no "pattern" of offenses—he committed one offense.

AG ¶ 31(c), "individual is currently on parole or probation," was applicable as of the issuance of the SOR in May 2017 because Applicant was then on unsupervised probation. It no longer applies because he successfully petitioned for an Order of Dismissal. He made a motion to accelerate the deferred sentence and dismiss his case. On March 22, 2019, it was ordered, adjudged, and decreed that the case against him be dismissed.

Applicant has the burden of establishing the applicability of one or more of the mitigating conditions under AG ¶ 32, which provide:

(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 has not been arrested since January 2015. He has demonstrated reform under AG ¶ 32(d) by successfully completing his probation with no evidence of any violation over the four years. His conduct was the result of unusual circumstances.

Applicant's neighbor had a problem with his barking dogs. The dogs barked continuously for long periods of time. The police had responded four times to complaints from various neighbors, the owner was ticketed for disturbing the peace, and went to court responding to a complaint over his barking dogs. He was fined by the city. The dogs were rescue dogs and after the newspaper article and television news report about this incident, the dog rescue came and removed the dogs from the home.

Applicant had previously called the police about the barking, only to be told the police would respond to loud party noise, but not to animal noise. When a different neighbor complained about the barking, the dogs' owner dropped off a fan to that neighbor suggesting that "white noise" would cover up the barking. When another neighbor complained, the dogs' owner put threatening notes on people's doors throughout the neighborhood.

Applicant was kept awake by the barking. When the dogs started barking the following night, Applicant went to the dog owner's home to leave a note complaining about the barking. Applicant was unsure if anyone would be at the home. When the owner answered the door, Applicant confronted him about the barking. The dogs' owner lied saying this was the first time he had received a complaint about the barking. The dogs' owner became very upset when Applicant challenged the owner about his lie that he had never received complaints about the dogs' barking. When Applicant stated he knew the owner had already been fined by the court for the barking, this further angered the owner.

After Applicant stated his complaint, he returned to his car to leave. Both individuals were very upset and swearing. Applicant got into his car when the dogs' owner struck the hood of Applicant's car numerous times denting the hood of Applicant's car. At that time, Applicant saw something in the owner's hand, but because there was no porch light, Applicant could not tell what it was, only that it was metallic. It turned out to be a cell phone, but it is not uncommon that a homeowner in the state to leave their home with a handgun.

Applicant showed poor judgment when he got out of his car as his neighbor continued to approach him. Thinking the neighbor to be armed, Applicant drew his handgun and pointed it at his neighbor yelling for his neighbor to stop. After exchanging additional words, Applicant got back in his car, drove home, called the police, gave the police his address, and said he had drawn his weapon. Since the incident, Applicant has had no interaction with the dogs' owner.

The district attorney offered to dismiss the charges if Applicant wrote a letter of apology to the dogs' owner. When Applicant refused to send the letter of apology, it cost him \$4,000 in attorney's fees plus additional expenses. Applicant decided to accept the district attorney's offer of a misdemeanor when he was told it would cost an additional \$8,000 to take the matter to court.

On November 23, 2016, Applicant plead guilty to the misdemeanor of pointing a weapon at others, and he was ordered to pay small amounts: a \$50 fine, a \$50 VCA, and \$83 in court costs. He successfully completed one year of supervised probation, and more than one year of his two year requirement of unsupervised probation. Adjudication of the finding of guilty was deferred for three years, which ended in March 2019 with the Order of Dismissal. Now that the deferred sentence has been successfully completed, his record will be expunged. When he made the decision to plead to the misdemeanor, he had no idea that doing so would affect his security clearance.

Applicant realizes he acted inappropriately and wishes he had never gone to the dogs' owner's home. The dogs' owner's previous actions in no way excuse Applicant's actions, but did give Applicant insight in what to expect from the dogs' owner. The frustration due to lack of sleep and the police not responding to barking dogs contributed to his inappropriate actions, but he makes no excuses for his actions.

The mitigating conditions under AG ¶ 32(a) apply as so much time has elapsed since the criminal behavior happened and it happened under such unusual circumstances, that it is unlikely to recur. The incident occurred in January 2015, more than four years ago. The events of the evening are both unusual and unlikely to recur.

The mitigating conditions under AG ¶ 32(b) apply. Applicant's lack of sleep from the previous night and all the previous times of barking dogs was a pressure that is no longer present in Applicant's life, now that the dogs have been removed from his neighbor's home. AG ¶ 32(d) applies since it has been more than four years without recurrence of criminal activity and Applicant complied with all court orders including his 130 hours of community service at the dog shelter. His probation has ended and his deferred sentence has been successfully completed. Applicant's has a good employment record as evidenced by his senior logistics manager's opinion that Applicant is very dedicated, detailed, and passionate about the work he performs and is one of the company's better project management specialists.

Guideline E: Personal Conduct

The concerns about personal conduct are set forth in AG ¶ 15:

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.

SOR ¶ 2.a is a cross-allegation of the criminal conduct allegations in SOR ¶ 1. The security concerns associated with that conduct are largely addressed under Guideline J above. Nevertheless, AG ¶ 16(d)(2) also applies. Applicant's arrests might affect his personal, professional, or community standing. AG ¶ 16(e)(1) applies.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(d) credible adverse information that is not explicitly covered under any other single 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: . . . (2) any disruptive, violent, or other inappropriate behavior.

AG ¶ 16(e)⁶ does not apply because following the incident there was a newspaper article and television coverage of the incident. The incident does not cause Applicant to be vulnerable to exploitation, manipulation, or duress because it is known to the public.

AG ¶ 17 sets forth potentially applicable mitigating conditions under Guideline E:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

As previously stated, it has been more than four years since the incident and it happened under unusual circumstances that are unlikely to recur. AG ¶ 17(c) applies. Although Applicant has not received counseling, he acknowledged his behavior showed poor judgment, and in light of his neighbor's history of inappropriate and threatening conduct, he should never have gone to his neighbor's home. Now that the dogs have been removed from his neighbor's home the stressors and circumstances that contributed to the inappropriate behavior is unlikely to recur.

⁶ AG ¶ 16(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

As previously stated, following the incident, a newspaper article and television news report informed the public, which included his employer's security office, about his arrest. This reduces or eliminates any ongoing vulnerability to exploitation, manipulation or duress stemming from his circumstances. AG ¶ 17(e) applies. Applicant realizes he acted inappropriately and wishes he had never gone to the dogs' owner's home. The frustration due to lack of sleep and the police not responding to barking dogs contributed to his inappropriate actions, but he makes no excuses for his actions.

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 common sense 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. My comments under Guidelines J and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is 56 years old, and he has been employed by a DoD contractor as a flight engineer and project manager from August 2000 to present. He honorably served in the U.S. Air Force from 1981 through 1985. He had no overseas deployments while on active duty, but spent three and a half years in Saudi Arabia with his contractor job.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. Applicant realizes he acted inappropriately and wishes he had never gone to the dogs' owner's home. The frustration due to lack of sleep and the police not responding to barking dogs contributed to his inappropriate actions, but he makes no excuses for his actions. Applicant made a number of mistakes related to the incident, but the three biggest were: first, going to his neighbor's home to leave a note about the barking dogs; second, pointing his gun at his neighbor; and, third, not writing the letter of apology. Had he written the letter of apology, the DA would have dismissed the case. Applicant's decision not to write the letter cost him \$4,000 for his

initial attorney, \$4,000 for his second attorney, additional costs, stress, and a matter that started in January 2015 and came to a conclusion with the March 2019, Motion to Dismiss. Applicant was reluctant to apologize for pointing a firearm at his neighbor because he believed that based on his knowledge of the facts and circumstances pointing a firearm at his neighbor was warranted as self-defense. He should have apologized because from his neighbor's perspective, his neighbor was threatened with a firearm on his own property when he was unarmed.

I considered Applicant's service to the U.S. military, his current position, and that this was a single, although serious, incident. His senior logistics manager, who was Applicant's supervisor for two and a half years, believes Applicant is very dedicated, detailed, and passionate about the work he performs on aircraft upgrades. He believes Applicant has strong morals that drive his decisions and highly recommends Applicant. His project manager believes Applicant is one of the better project management specialists in the company. Applicant had completed 130 hours of community service at a dog shelter and the president and founder of the shelter organization believes Applicant was very hard working and a dedicated volunteer who always put in the best possible effort.

Supervisors have many tasks, but two of the most important of their many tasks are: first, to accomplish the mission, and second, to evaluate those individuals assigned to them. A portion of their duties is to make sure the right people receive proper training, are assigned the right positions, and determine who should be promoted or remain with the company. Their character evaluations are important and often more accurate because they have observed applicants over longer periods of time and under a variety of events and stresses. These supervisors are required to evaluate individuals and describe their performance, trustworthiness, reliability, and dedication. I place a great deal of weight on the evaluations given by Applicant's senior logistics manager, project manager, and the president and founder of the organization running the dog shelter, and rightly so.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, DOD Manual 5200.02, and the AGs, to the facts and circumstances in the context of the whole person. The issue is whether this serious single incident raises concerns about his fitness to hold a security clearance. (See AG ¶ 2(c)) Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the criminal conduct and personal conduct security concerns.

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, Criminal Conduct: FOR APPLICANT

Subparagraph 1.a:	For Applicant
Paragraph 2, Personal Conduct:	FOR APPLICANT
Subparagraph 2.a:	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 Applicant a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge