



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



In the matter of: )  
)  
) ISCR Case No. 18-00493  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: Leon J. Schacter, Esq.

07/05/2019

**Decision**

LYNCH, Noreen A., Administrative Judge:

Applicant mitigated the security concerns under criminal conduct and personal conduct. Continued eligibility for access to classified information is granted.

**Statement of the Case**

On March 30, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under J (criminal conduct), and E (personal 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 responded to the SOR on May 21, 2018, and requested a hearing. The case was assigned to me on February 14, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 1, 2019, scheduling the hearing for April 10, 2018. I convened the hearing as scheduled.

I marked the Government's discovery letter, its exhibit list, and Applicant's exhibit list as Hearing Exhibits (HE) I, II, and III. Government Exhibits (GE) 1 through 9 were admitted into evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through K, which were admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on June 17, 2019.

### **Findings of Fact**

In response to the SOR, Applicant admitted all of the allegations raised under both guidelines. He is 42 years old. As of the date of the hearing, he had never been married and he has three children. (Tr.20)

Applicant earned a bachelor's degree in computer information systems in 2015, and a graduate degree in business administration in 2017. He served on active duty in the U.S. Army from 2004 until 2015. Since 2015, he has served in the Reserve. Applicant has worked with his current employer since 2018. He has held a DOD security clearance for many years. (GE 1)

In about November 2002, Applicant was charged with assault on a female. He and his girlfriend at the time were in a car and had a heated argument. As he was exiting the car, his girlfriend hit him in the back of his head, and he turned back and struck her in the face. (Tr.33, GE 3) She called the police and Applicant was charged. However, the girlfriend admitted that she struck Applicant first and the case was dismissed. At that time, a restraining order was put in place. The couple reunited and were driving when stopped by the police a year late in 2003. Applicant was arrested for violating a restraining order. He and his girlfriend had been back in their relationship for some time and the issue of the restraining order did not occur to them. They were both at fault, but Applicant was sent to jail for 48 hours. (Tr. 35) Applicant's girlfriend became the mother of his child. They now have an amicable relationship, although they are not together. Applicant reports that she is a great mother. (Tr. 36) His former girlfriend wrote a letter of recommendation for him. (AE F-2) She recounted the details of the domestic incident in 2002, but stated that Applicant has been a great father to their son and is a trustworthy person. She recommends him for the security clearance. (SOR 1.a-1.b)

After these incidents, Applicant entered the military, earned a security clearance and served abroad. He obtained many medals and achievement awards. His record reflects his excellent career in the military. (AE 1-12) On his initial security clearance application, he disclosed the above two domestic incidents.

In July 2014, Applicant was dating another woman. They were driving home from a vacation with his son and her child in a rental car. He had been driving while his girlfriend was sleeping. At some point, they engaged in a heated argument. (GE 2) Applicant returned the rental car and he and his girlfriend proceeded to drive to her home in her car. His car was parked in her garage. When they arrived, she prevented him from entering the garage to get his car and keys. Applicant went in to her garage to get his car and keys. (Tr. 63 ) According to the security report (GE 5) she repeatedly grabbed him and once he was in the home and obtained his keys to leave, she blocked

the door and repeatedly grabbed him around the legs. (Tr. 38) Applicant pushed her off and she fell. The girlfriend called the police and Applicant was arrested and charged with 2<sup>nd</sup> degree assault, reckless endangerment and burglary. (GE 7) When Applicant went to court, the burglary charge was dismissed and the domestic violence charge was changed to reckless endangerment. (GE 6) Applicant was given eighteen months of probation that ended in 2016. (GE 2) This charge has been expunged from his record. He was ordered to attend anger management classes from September 2014 to March 2016. This incident was reported to his commander. (GE 2) He ended the relationship with this woman after this incident. (Tr. 39)

In January 2016, Applicant had an encounter with a woman who was renting a room from him. She started renting in 2015. He stated that they were not in a relationship but had sex. (Tr. 40) He was charged with assault on a family member because she called the police and reported that Applicant had straddled her, grabbed her, and shook her. (GE 9) Applicant was dating another woman and the woman who was renting a room from him was jealous. On February 22, 2016, the woman withdrew her statements about the incident and the case was dismissed. (GE 9)

Applicant's fiancée testified at the hearing. She has known him for about two years. They do not live with each other. She has met his family and Applicant has met her daughter. They plan to marry. She has never seen any violent behavior in their relationship. (Tr. 100) She is aware of the SOR allegations and they have discussed the various incidents.

Applicant submitted about 16 character references and affidavits from military personnel, colleagues and friends who have known him a long time. Each letter attests to his honesty, reliability and overall integrity. (AE F 1-10)

Applicant testified credibly at the hearing that he was quite young when the incidents occurred in 2002 and 2003. The woman from those incidents is the mother of his child and believes him to be a good family man. She wrote a letter of reference for him. They maintain a good relationship for the sake of their child.

There were no incidents of any kind for almost 11 years. Applicant dated many people and was not always using good judgment in the relationship at times. He has taken more anger management classes and has learned to walk away from certain situations. He explained that he knows how to avoid conflict. He is in a stable relationship with a mature woman who he hopes to marry.

### **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 to be 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, administrative judges apply the guidelines 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 national security eligibility will be resolved in favor of the national security."

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 the 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 Exec. Or. 10865 provides that adverse 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**

AG ¶ 30 expresses the security concern pertaining to 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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(a) a pattern of minor offenses, any one of which on its own would be unlikely

To affect a national security eligibility decision, but when 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.

Applicant was charged in 2002 involving an incident with his girlfriend and in 2003 with violation of a protective order. He was charged in 2014 with assault, reckless endangerment and burglary. In 2016, he was charged with assault on a family member. AG ¶ 31(a,b) is established.

I have considered all of the mitigating conditions under AG ¶ 32 and considered the following relevant:

(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.

Applicant's criminal conduct occurred in 2002, 2003, 2014, and 2016. The incidents all involved women he was dating at the time. The early charges were dismissed and the woman has written a reference for him. As to the 2014 and 2016 unique incidents, the charges were either dismissed completely or a lesser offense was admitted. Applicant completed probation and anger management classes on two separate occasions and has learned from mistakes he made in certain relationships. He is in a stable mature relationship. He is cognizant of some of his poor choices in relationships. I find that the incidents happened under unusual circumstances, they are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. He had a military career and good employment. He is a family man. He is mature and aware that he must deal with any conflict in an appropriate manner. AG ¶¶ 32(a) and 32(d) apply.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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 ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Personal conduct allegations are cross-alleged in 2.a-2-2.d. As discussed above, Applicant has mitigated the SOR allegations under criminal conduct and thus since the same incidents are referenced under personal conduct, he has mitigated those as well.

### **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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ (2a):

(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. I have incorporated my comments under Guidelines H, J, and E in my whole-person analysis.

Applicant credibly testified at the hearing. He has taken responsibility by taking anger management classes on two occasions. He served in the military and has many certificates of achievement and awards. He submitted many character references, including one from the mother of his first child who was involved in the incident in 2002

and 2003. He was candid, sincere, and remorseful. He disputed the last incident in 2016, and the charge was dismissed.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns under criminal conduct and personal conduct.

### **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:	FOR APPLICANT
Subparagraphs 1.a - 1.d:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.d:	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 continue Applicant's eligibility for a security clearance. Continued eligibility for access to classified information is granted.

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Noreen A. Lynch  
Administrative Judge