



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 23-02715 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Brittany C. M. White, Esq., Department Counsel
For Applicant: *Pro se*

01/29/2025

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the criminal conduct security concerns. He mitigated the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 12, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J (criminal conduct) and E (personal conduct). Applicant responded to the SOR on February 24, 2024, and requested a hearing before an administrative judge. The case was assigned to me on October 3, 2024.

The hearing was convened as scheduled on December 19, 2024. Government Exhibits (GE) 1 through 12 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted in evidence without objection. DOHA received a transcript (Tr.) of the hearing on December 27, 2024.

Amendment to the SOR

To conform to the evidence, on my own motion, and without objection, I amended SOR ¶ 1.c to change the listed sentencing date from May 2022 to July 2022. I gave Applicant the opportunity to continue the hearing to allow him to respond to the SOR amendment, but he wished to proceed with the hearing without a continuance. He admitted the allegations contained in the amended SOR ¶ 1.c. (Tr. 42-44; GE 4)

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer since about September 2023. He earned a high school diploma in 2011 and has taken some college courses without earning a degree. He married in 2018 and separated in about July 2023. He has two children, ages six and five. He served on active duty with the U.S. Navy from March 2016 until November 2019. He earned a general discharge under honorable conditions because of a pattern of misconduct that I will discuss herein. (Tr. 22-27, 52-65; GE 1, 2, 4)

Applicant has a significant history of criminal offenses. He was charged with crimes seven times between 2012 and March 2023. His criminal charges consist of a total of two assault charges in 2012 and April 2022; three domestic violence charges in March 2023, May 2022, and March 2022; a disturbing the peace, criminal trespass, and public drunkenness charge in March 2019; and a drug possession charge in 2014. His March 2023 and all his 2022 criminal charges involved violence against women. Many of his crimes involved alcohol and property damage. (Tr. 20-21, 27-39, 45-50, 61-62, 65-66; Answer; GE 4-8)

In September 2023 and in mid-2022, a court of competent jurisdiction convicted Applicant of the April 2022 assault charge and the May 2022 and March 2022 domestic violence charges, respectively. For the April 2022 assault charge, the court sentenced him to 90 days of suspended jail time, six-months of supervised probation, 32 hours of community service, and to pay fees and court costs. For the May 2022 domestic violence charge, the court sentenced him to 12 months of supervised probation, 50 hours of community service, and to pay fees and court costs. For the March 2022 domestic violence charge, the court sentenced him to 12 months of supervised probation, 32 hours of community service, and to pay fees and court costs. His periods of probation for the 2022 crimes ended in March 2024. Sometime in July 2024, he was convicted of the domestic violence charges that were filed in March 2023. He was sentenced to three years of probation, but claimed, without documentary corroboration, that period of probation had been reduced, and it will end in January 2025. As of the date of the hearing, he was still on probation for that crime. (Tr. 20-21, 27-39, 45-50; Answer; GE 4-8; AE A)

In April 2020, after a physical confrontation with his father a month earlier, Applicant had a protective order entered against him that required him to have no contact with his father and to not possess a firearm until June 2021. In its order, the

court of relevant jurisdiction found that, by a preponderance of evidence, Applicant punched his father, hit him with a video gaming console, and threatened to kill him. Applicant denied threatening to kill his father and claimed that his father started the physical confrontation. (Tr. 50-52; Answer; GE 4, 9)

During his military service, Applicant received nonjudicial punishment (NJP) for violating the Uniform Code of Military Justice (UCMJ) on multiple occasions. He received NJP four times between December 2016 and October 2019 for the following violations: absence without leave, failure to obey an order or regulation, and indecent language (October 2019); communicating threats and provoking speeches or gestures (June 2019); drunken/reckless operation of vehicle, aircraft or vessel (June 2017); and disorderly conduct and drunkenness (December 2016). He was intoxicated when he engaged in the conduct that resulted in his NJPs. (Tr. 20-21, 52-65; Answer; GE 4, 10)

Applicant has suffered from mental health issues. While he has acknowledged and taken responsibility for his criminal actions, these mental health issues have contributed to his criminality. In 2019, he received inpatient treatment for a week at a mental-health treatment facility. After his March 2023 domestic violence arrest, he again received inpatient mental-health treatment for about a week. After his May 2023 inpatient treatment, he has consistently received mental health counseling from an authorized mental-health counselor. He also takes medications to relieve depression and anxiety and stabilize his mood. His mental-health treatment has helped him to stay in control of his emotions. He has also completed 35 sessions of court-ordered and 25 sessions of voluntary anger management courses. He also attended Alcoholics Anonymous meetings after receiving NJP for alcohol-related offenses. He has abstained from drinking alcohol for about two years. Within the last six months, he has been involved with his church. He also focuses more on his children. (Tr. 20-21, 39-42, 55-57, 68-77, 80-81; GE 4; AE B)

On March 28, 2023, Applicant completed and certified a declaration for federal employment. Despite being required to do so, he failed to list his May 2022 and July 2022 convictions, and his March 2023 and May and March 2022 domestic abuse charges. In March 2023, he completed and certified a security clearance application (2023 SCA). Despite being required to do so, in the "Police Record" section of the 2023 SCA, he failed to list any of his required criminal charges or convictions. In a separate section of the 2023 SCA entitled, "Additional Comments," he referenced a 2014 speeding ticket, and a 2014 possession of marijuana charge along with a failure to appear related to that marijuana charge. In this section of the 2023 SCA, he claimed that these charges were resolved. He listed this 2014 marijuana charge in a security clearance application that he completed and certified in September 2015 (2015 SCA). (Tr. 66-68; Answer; GE 1-9, 12; AE A)

Applicant claimed that he failed to list the required information in the federal declaration and the 2023 SCA because he was rushing to finish the forms. He claimed he did not list these convictions because he thought it would require more effort to do so, especially given how many crimes he would have to list. He did not want to do the extra paperwork or take the necessary effort to accurately complete the forms. He

thought the government would ultimately find out about his criminal activity on its own. He acknowledged that he was wrong and that he should have listed the required information. Several of these excuses show that his omissions were deliberate, regardless of his motivation. During his July 2023 security interview, he volunteered some of the aforementioned criminal activities to the DOD investigator prior to being confronted. (Tr. 66-68; Answer; GE 1-9, 12; AE A)

Applicant's mother and father-in-law testified during his case in chief. They noted a marked improvement in his attitude and behavior within the last year, which they attribute to his mental-health treatment, abstaining from drugs and alcohol, and church involvement. They believe he is headed in the right direction and should be awarded a security clearance. (Tr. 86-101)

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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(c), 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 EO 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* EO 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 an Applicant’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 is potentially applicable:

(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.

For over a decade, Applicant has engaged in a pattern of criminal behavior both as a civilian and as a Sailor with the Navy. Many of these criminal acts involved violence. He has been charged with and convicted for some of these criminal acts. The above disqualifying condition is applicable.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. 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.

There is some evidence that Applicant has changed his behavior. His mental-health treatment and abstaining from alcohol are certainly steps in the right direction. However, given the breadth of time over which he consistently committed criminal acts, juxtaposed against the less than two years since his last arrest, there is insufficient evidence that his criminal behavior is unlikely to recur, or of successful rehabilitation. The fact that he is still on probation for one of his violent crimes bolsters this premise. None of the Guideline J mitigating factors are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable in this case:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(d) credible adverse information that is not explicitly covered under any other 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:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations.

In the SOR, the Government cross-alleged two of Applicant's Guideline J UCMJ violations as Guideline E conduct. This disqualifying behavior is explicitly covered under Guideline J and is sufficient for an adverse determination. AG ¶ 16(d) is not established. Therefore, I find for Applicant with respect to SOR ¶ 2.a.

Applicant deliberately omitted relevant facts from a federal employment application and from the 2023 SCA. AG ¶ 16(a) is established.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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; and

(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.

During his security interview, Applicant volunteered some of his criminal activity prior to being confronted with those facts. AG ¶ 17(a) has some applicability.

Deliberately omitting required information during the security clearance process is not minor. Instead, this action strikes at the heart of the process, which relies on candid and honest reporting. AG ¶ 17(c) is not applicable.

Applicant has acknowledged that he was wrong when he omitted required information from his federal employment application and the 2023 SCA. He has undergone mental-health counseling and other mental-health treatment to alleviate the factors that caused his dishonest behavior. He stopped drinking alcohol and has become involved with his church. During his security interview, Applicant volunteered some of his criminal activity prior to being confronted with those facts. I find that these considerations offer sufficient evidence that his failure to provide such information again is unlikely to recur. AG ¶ 17(d) is applicable.

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 ¶ 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 have incorporated my comments under Guidelines J and E in my whole-person analysis. I have considered his military service, his character references, and the positive steps he has taken to reform his past malign behavior.

Overall, given the length and consistency of Applicant's criminal behavior, the record evidence leaves me with questions and doubts about his eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the criminal conduct security concerns. He mitigated the 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:

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| Paragraph 1, Guideline J: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.o: | Against Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraphs 2.a-2.e: | For Applicant |

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge