

KEYWORD: Criminal Conduct

DIGEST: Applicant's six arrests between 1979 and 2004 raise a security concern. He has only been arrested once in the past 18 years. Given the positive changes in his life that have occurred during that time, the isolation of the most recent arrest, and its surrounding circumstances, I conclude it represents an anomaly rather than a continuing pattern of criminal conduct. Clearance is granted.

CASENO: 05-16819.h1

DATE: 03/30/2007

DATE: March 30, 2007

In re:	)	
	)	
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SSN: -----	)	ISCR Case No. 05-16819
	)	
Applicant for Security Clearance	)	
	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Jr., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_ Applicant's six arrests between 1979 and 2004 raise a security concern. He has only been arrested once in the past 18 years. Given the positive changes in his life that have occurred during

that time, the isolation of the most recent arrest, and its surrounding circumstances, I conclude it represents an anomaly rather than a continuing pattern of criminal conduct. Clearance is granted.

### **STATEMENT OF THE CASE**

On August 30, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find it clearly consistent with the national interest to grant or continue a security clearance.<sup>1</sup> Applicant answered it on October 25, 2006, and requested a hearing.

The case was assigned to me on February 6, 2007. DOHA issued a notice of hearing on February 27, 2007, scheduling it for March 13, 2007. The hearing was held as scheduled. During the hearing, I received eight government exhibits, five Applicant exhibits, and the testimony of two Applicant witnesses. At the conclusion of the hearing, I left the record open through March 27, 2007 for Applicant to submit additional exhibits. That day, he submitted 12 additional exhibits. Department Counsel did not object to their admissibility. I then marked them as Applicant's Exhibits F through Q, and incorporated them into the record. DOHA received the transcript on March 23, 2007.

### **FINDINGS OF FACT**

\_\_\_\_\_ Applicant's admissions are incorporated as findings of fact. In addition, I make the following findings of fact.

Applicant is a 48-year-old married man. He has been married twice in the past, and has one child from a prior marriage, age 26. He earned a GED in 2001. For the past three years, he has worked as a maintenance supervisor tasked with troubleshooting equipment for his employer.<sup>2</sup> He is well-respected in his community.<sup>3</sup>

In 1979, Applicant's then wife caught him with his paramour at a New Year's Eve party.<sup>4</sup> She confronted the paramour, and a fight ensued. As Applicant attempted to separate them, they both fell to the ground. That night, the paramour contacted the police and filed assault charges against

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<sup>1</sup>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 and modified (Directive).

<sup>2</sup>Tr. 47.

<sup>3</sup>See generally, Exhibits F through Q.

<sup>4</sup>Tr. 63.

Applicant, alleging that he shoved her to the ground.<sup>5</sup> Two weeks later, Applicant's wife filed assault charges against him arising from the same incident.<sup>6</sup>

The paramour's charge was dismissed after she later told the police that Applicant was attempting to protect her during the fracas.<sup>7</sup> Later, the wife's assault charge was dismissed after she told the police that her parents pressured her to file it.<sup>8</sup>

In 1982, Applicant was arrested and charged with driving while intoxicated (DUI). He pleaded no contest, and was sentenced to six months incarceration (suspended), one year probation, and fined \$500. Also, his driver's license was suspended for six months.<sup>9</sup>

In 1985, after pulling a knife on an assailant during a barroom brawl, Applicant was arrested and charged with felonious assault and carrying a concealed weapon.<sup>10</sup> In exchange for his guilty plea on the felonious assault charge, the prosecution dropped the concealed weapon charge. He was sentenced to five to ten years imprisonment (suspended), ordered to serve 90 days in the local jail on a work release program, and placed on three years probation. He was released from jail after serving approximately 45 days of the sentence.<sup>11</sup>

Applicant attributes his legal problems in his youth to a problem with alcohol consumption. After serving the 1985 sentence, he voluntarily entered Alcoholic's Anonymous (AA). Currently, he continues to attend AA periodically.<sup>12</sup> He has not drunk any alcoholic beverages in 23 years.<sup>13</sup>

In 1988, Applicant was arrested and charged with domestic violence after throwing a wrench at his girlfriend's car window during a heated argument.<sup>14</sup> Later, the charge was dismissed after his girlfriend filed a statement acknowledging that she "was as much at fault" as Applicant.<sup>15</sup>

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<sup>5</sup>Exhibit 3, Complaint and Summons, dated December 31, 1979.

<sup>6</sup>Exhibit 4, Complaint and Summons, dated January 12, 1980.

<sup>7</sup>See Note 5.

<sup>8</sup>See Note 6.

<sup>9</sup>Answer, dated October 25, 2006, at 6.

<sup>10</sup>Tr. 52.

<sup>11</sup>Tr. 52.

<sup>12</sup>Tr. 80.

<sup>13</sup>Tr. 53.

<sup>14</sup>By then, Applicant had divorced his first wife.

<sup>15</sup>Exhibit C, State v. Applicant, Journal Entry dated June 21, 1988.

In 1999, Applicant began dating his current wife.<sup>16</sup> They married in 2002. Although they sometimes “agree to disagree” like most married couples, they are generally happy.<sup>17</sup> He has always treated her respectfully, and has never “laid his hands on [her] in anger.”<sup>18</sup>

In October 2004, Applicant’s wife grew seriously ill, and underwent gall bladder surgery. After her discharge from the hospital, her sister moved into their home to help her convalesce.

One evening, a few days after the surgery, while Applicant was at work, his wife began experiencing post-surgery complications that required emergency hospitalization. By the time Applicant returned from work the next morning, she had been discharged from the hospital. Because neither she nor her sister contacted him at work to tell him of the hospitalization, he grew “a little aggravated.”<sup>19</sup> His wife then apologized, and they “moved on to other topics” of discussion.<sup>20</sup>

Applicant’s sister-in-law then interjected herself into their conversation, steering it back to the issue of the hospitalization.<sup>21</sup> Although his wife admonished her to calm down, she grew loud and overbearing.<sup>22</sup> In response, Applicant and his wife told her to leave their home. He then set her luggage on the front porch. When he re-entered the house, she slapped him, whereupon he physically escorted her to the front door. In the course of removing her from the home, she fell to the ground.<sup>23</sup>

After Applicant’s sister-in-law reported the incident to the police, he was arrested and charged on October 11, 2004, with misdemeanor assault and battery.<sup>24</sup> Two months later, he pleaded no contest and was sentenced to six months in jail (suspended), and twelve months of unsupervised probation.<sup>25</sup> Also, he was ordered not to have any contact with his sister-in-law during the probation.

Applicant complied with the terms of probation. He has not been arrested or charged with any crimes since that time, and continues not to have any contact with his sister-in-law. On March 26, 2007, he voluntarily enrolled in an eight-hour anger management class.<sup>26</sup>

### POLICIES

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<sup>16</sup>Exhibit M, Statement of Wife, dated March 26, 2007.

<sup>17</sup>*Id.* at 1.

<sup>18</sup>*Id.*

<sup>19</sup>Tr. 33-Wife’s testimony.

<sup>20</sup>Exhibit A, Statement of Wife, dated October 25, 2006, at 2.

<sup>21</sup>*Id.*; Tr. 37-Wife’s Testimony.

<sup>22</sup>*Id.*

<sup>23</sup>Tr. 35 - Wife’s testimony.

<sup>24</sup>Exhibit 8, Warrant of Arrest and Disposition, dated December 15, 2004, at 1.

<sup>25</sup>*Id.* at 2.

<sup>26</sup>Exhibit Q, Anger Management Class Online Receipt, dated March 26, 2007.

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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.

The following adjudicative guideline is raised:

**Guideline J - Criminal Conduct:** A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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."<sup>27</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**

### **Criminal Conduct**

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<sup>27</sup>See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

Applicant was arrested and charged six times with criminal conduct between 1979 and 2004. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*) apply.

Five of the incidents occurred 18 or more years ago, and were reflective of immaturity, alcoholism, and troubled relationships with girlfriends/spouses. Applicant is now a mature, happily married man who has been alcohol-free for 23 years. Given that he no longer drinks alcohol, and is not in a volatile relationship, it is highly unlikely that he will be involved in the type of incidents that precipitated the arrests in the 1980s.

Nevertheless, the 2004 incident involving Applicant's sister-in-law revives security-worthiness issues related to his judgment and ability to control his temper. Both Applicant and his sister-in-law were apprehensive and emotionally distraught over the health concerns of his wife at the time of the incident. These emotions impaired their ability to rationally resolve their disagreement. Instead, it escalated, culminating in Applicant being charged with assault and battery for physically removing her from the home.

Applicant has not violated the law since 2004. Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*The criminal behavior was not recent*) applies. Also, given Applicant's commitment to marital fidelity and sobriety, in addition to the fact that he no longer has any contact with his sister-in-law, I conclude CC MC E2.A10.1.3.4 (*The factors leading to the violation are not likely to recur*) applies.

### **Whole Person Concept**

All of Applicant's criminal conduct with the exception of one incident in 2004 occurred eighteen or more years ago. Also, the majority of it stemmed from immaturity, alcohol abuse, and troubled relationships with spouses or girlfriends. Applicant has overcome all of these problems. The 2004 incident, though unfortunate, is not indicative of a problem with criminality that may recur in the future, given its surrounding circumstances, and the fact that he has committed no additional criminal violations since that time.

Applying the whole person concept to the evaluation of Applicant's case, I conclude he is an industrious individual who is dedicated to his wife, contrite about his past transgressions, and committed to staying out of trouble in the future. He has mitigated the criminal conduct security concern.

### **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

Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	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