



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



In the matter of:)	
)	
)	ISCR Case No. 14-00278
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *pro se*

01/20/2015

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concern generated by his criminal conduct. Clearance is denied.

Statement of the Case

On March 18, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J, criminal conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) as promulgated by the President on September 1, 2006.

In an undated answer, Applicant admitted the allegations and requested a decision on the record rather than a hearing. On September 27, 2014, Department Counsel prepared a File of Relevant Material (FORM). DOHA provided Applicant with a copy of the FORM on October 6, 2014. Applicant did not submit a response, and on December 4, 2014, I was assigned the case. On December 22, 2014, I re-opened the record *sua sponte* to allow Applicant an opportunity to provide additional evidence. (Judge Exhibit I, dated December 22, 2014) Applicant did not provide any additional documentation.

Findings of Fact

Applicant is a 23-year-old single man with one child, a toddler. He has a high school education and has been working for a defense contractor as a fitter at a shipyard since 2012. (Item 4 at 10-11)

In approximately August 2008, Applicant, then 17 years old, was arrested for carrying a concealed weapon, a misdemeanor charge. (Item 4 at 24-26) In November 2008, he pleaded guilty in juvenile court, and was sentenced to one year of probation, one month of house arrest, and 100 hours of community service. (Item 4 at 26)

In July 2013, Applicant was arrested and charged with assault and battery. (Item 4 at 27) There is no additional information on file about the circumstances surrounding this charge other than that it was domestic-related. (Item 4 at 27) Applicant pleaded guilty and was placed on probation for two years. He was also ordered to attend an anger management course. (Item 3 at 2) Applicant contends that he completed the anger management course and that the court has ended his probation early for good behavior. (Item 3 at 2) He provided no evidence supporting this contention.

Policies

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.

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 security clearance.

Analysis

Guideline J, Criminal Conduct

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness” (AG ¶ 30). Moreover, “by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations” (*Id.*).

Applicant was arrested twice between 2008 and 2013. He is currently on probation. AG ¶¶ 31(a), “a single serious crime or multiple lesser offenses;” and 31(d) “individual is currently on parole or probation,” apply.

Applicant’s 2013 conviction was recent. He offered no evidence of “job training, higher education, good employment record, or constructive community involvement” to rebut the negative inference generated by the recency of his crime. (AG ¶ 32(d)) Under these circumstances, Applicant has failed to meet his burden of proof, and I conclude his criminal conduct remains a security concern.

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(a):

- (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.

Applicant was a minor when he committed his first crime. It is therefore mitigated partially by his immaturity. His criminal behavior recurred, however, when he was arrested in 2013 for a domestic violence-related crime. Because he remains on probation for his latest crime and failed to submit any evidence of rehabilitation, not enough time has elapsed to conclude that he has mitigated the 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:

AGAINST APPLICANT

Subparagraphs 1.a-1.b:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

MARC E. CURRY
Administrative Judge