



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



In the matter of:)
)
) ISCR Case No. 14-00601
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

10/20/2014

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant's 2010 conviction on a child endangerment charge is mitigated by the passage of time. Furthermore, the isolated nature of the event does not reflect negatively on the Applicant's current security worthiness. Clearance is granted.

Statement of the Case

On March 12, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the criminal conduct guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing. At the hearing convened on August 19, 2014, I admitted Government's Exhibits (GE) 1 and 2, over Applicant's objection. Applicant's Exhibit (AE) A was also admitted without objection. After the hearing, Applicant timely submitted AE B and C, which were also admitted without objection. I received the transcript (Tr.) on August 27, 2014.

Findings of Fact

Applicant, 40, works as an electromechanical assembly specialist for a federal contractor. Although he previously worked for a different federal contractor from 2001 to 2009, this is his first security clearance application. In response to questions about his criminal history, Applicant revealed that, in 2010, he pleaded no contest to child endangerment charges.²

Applicant began dating his fiancée in 2009. A year later, Applicant and his fiancée began living together as a blended family, consisting of two of Applicant's three children and his fiancée's two children. At the time, the children ranged in ages from 10 to 20 years old. Although the two families blended well with the children accepting Applicant and his fiancée in their roles as co-parents, the couple experienced ongoing issues with her son, the youngest child in the family. The boy often lied to his parents and began stealing electronics from the other children in the house.³

In June 2010, the boy took his sister's iPod from her room. When confronted by his mother and Applicant, the boy told them that he took the iPod to the after-school program he attended, where it was stolen by another child. They reported the theft to the director of the after-school program, who in turn confronted the accused child. The following day, Applicant learned from the program director that his step-son admitted to falsely accusing the other child of theft. Applicant and his fiancée were shocked, embarrassed, and frustrated by their son's behavior.⁴

Applicant and his step-son discussed the incident on their way home. They continued to discuss the incident as Applicant completed chores in the garage while they waited for his fiancée to come home from work. The conversation in the garage turned into an argument. Angered by the lack of affect or remorse shown by the boy, Applicant pulled the boy from where he was seated on the garage floor by the collar of his shirt. When the boy was on his feet, Applicant gave him an open-handed smack on the back of his head. Applicant testified that this incident was the only time he hit his step-son. Holding on to the boy, Applicant started to march him into the house. As they

² Tr. 21-23; GE 1.

³ Tr. 27-33.

⁴ Tr. 34-37.

were climbing the stairs to enter the home, the boy tripped over a damaged stair and fell. Applicant fell on top of him.⁵

The police arrived at Applicant's home in response to an anonymous phone call. The caller reported seeing Applicant twist the boy's arm behind his back and the boy falling to the ground. The officers attempted multiple times to reach the reporting witness, but the witness did not respond. The officers separated Applicant and his 10-year-old step-son and interviewed them, taking statements from each. Applicant reported that he had an incident with his step-son and admitted that he smacked the boy on the back of the head. In his interview, the boy told the police officer that he and Applicant had gotten into verbal altercations in the past because of the boy's past lying and stealing. The boy also told the police officer that Applicant wrenched the boy's arm behind his back, punched him in his stomach, and slammed his head against the garage floor, " three, four, or six times." The interviewing officer noted that he did not see any bruising or bleeding on the boy's head or any bruising on the boy's abdomen. After confronting the boy about his history of lying, the boy explained that he knew the difference between the truth and a lie and insisted that he was telling the truth. Based on their interview with the boy, the police arrested Applicant for inflicting corporal punishment on a child.⁶

When she arrived home, the police asked Applicant's fiancée, a medical assistant who works in emergency triage, to examine her son. She did not see any signs of injury on him. After the police left, the boy told his mother about the incident with Applicant, saying that Applicant smacked him on the back of the head and that the two tripped up the stairs coming into the house. He also told his mother that he might not have been completely honest with the police officers. Child Protective Services (CPS) also responded to the incident. CPS did an evaluation, interviewing the boy and Applicant's fiancée. The agency did not take any steps to remove Applicant or his step-son from the home.⁷

Applicant decided to plead no contest to the child endangerment charge to avoid the cost of a trial and to avoid incarceration. Accepting Applicant's plea, the court sentenced Applicant to 80 hours weekend work detail and a 52-week parenting class. According to his FBI identification report, Applicant was also sentenced to 4 years formal probation. Applicant completed the terms of his sentence and the court terminated his probation in October 2012.⁸

Applicant and his fiancée believe that some good has come out of this incident. Their son received additional counseling, which resulted in his diagnosis with a disorder on the autism spectrum. The diagnosis helped Applicant and his fiancée understand

⁵ Tr. 34, 37-45.

⁶ Tr. 45-48; AE A.

⁷ Tr. 56-57, 77, 84, 87; AE C.

⁸ Tr. 58-62; GE 2; AE B.

their son's lack of affect and emotional response to the events around him as well as his habitual lying. As a result, they have learned better techniques for dealing with their son. Despite this incident, Applicant's fiancée believes that Applicant has been a wonderful father to her children, who do not have relationships with their biological fathers. She also believes that since the incident Applicant has become a more thoughtful parent.⁹

Through the court-mandated parenting classes, Applicant realized that he had to make significant changes to his parenting style. Before the class, Applicant believed in his absolute authority as a parent, which required his children to do as he said and to respect him. Applicant completed the parenting course in July 2011. According to the final assessment report he received from the program, the evaluating therapist concluded that Applicant benefitted from the program. She found that Applicant showed above average progress and demonstrated the application of the new skills he learned during the program. In her final assessment, the therapist concluded,

[Applicant has] made several positive changes to his beliefs. He has learned to effectively use several non-controlling tools and behaviors. He is less controlling and more open to hear new information. . . . [He] will likely handle his children in a more effective and non-violent manner.¹⁰

Applicant and his fiancée remain committed to raising their children together and have expanded their household to include Applicant's youngest son, who is 13 years old. Applicant has no other history of criminal conduct, anger management issues, or child abuse issues.¹¹

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.

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

⁹ Tr. 80, 86-87; Answer.

¹⁰ Answer.

¹¹ Tr. 33.

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.

Analysis

Criminal activity calls into question a person's ability or willingness to comply with law, rules, and regulations, as well as a doubts about a person's judgment, reliability, and trustworthiness.¹² In 2010, Applicant pleaded no contest to a child endangerment charge, which is disqualifying as a single serious crime.¹³ The SOR also alleges that Applicant is on probation until 2015. While the Government had a good faith basis for this allegation, Applicant has provided documentation that he was released from probation in October 2012.¹⁴

Applicant's conduct is mitigated by the passage of time. The incident occurred four years ago. Furthermore, this incident is a single act of misconduct that was out of character for Applicant. He has no history of criminal behavior or anger management issues. Applicant, a parent at his wit's end, made a mistake. However, he has since demonstrated remorse and rehabilitation. Applicant has learned more about his step-son, helping him understand the child's actions and motivations. Because of the skills and strategies Applicant learned during his parenting class, it is unlikely that he will engage in similar conduct in the future. As such, the June 2010 incident does not reflect negatively on Applicant's current security worthiness.¹⁵

Whole-Person Concept

I have no doubts about Applicant's ability to protect or handle classified information. In reaching this conclusion, I have also considered the whole-person concept as described in AG ¶ 2(a). While those granted access to classified information are held to a high standard of conduct, they are not held to a standard of perfection. Nor is the purpose of a security clearance adjudication to punish applicants for past misconduct. All that is required is that an applicant's past is not indicative of a current inability to properly handle and protect classified information. Here, it is not. Applicant has taken responsibility for his conduct. In doing so, he has successfully rehabilitated himself from an instance of poor judgment. Clearance is granted.

¹² AG ¶ 30.

¹³ AG ¶ 31(a).

¹⁴ AE B.

¹⁵ AG ¶¶ 32(a) and (d).

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

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge