



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



In the matter of: )  
)  
) ISCR Case No. 14-02664  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

05/13/2015

**Decision**

DAM, Shari, Administrative Judge:

In September 2013 Applicant was convicted of two felonies, which occurred when he shot his son during a physical altercation. He pled guilty to the charges. He remains on supervised probation until 2017. His family and community are aware of his personal conduct, reducing his vulnerability to exploitation. Criminal conduct security concerns are not mitigated. Personal conduct security concerns are mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

In September 2013 Applicant submitted a security clearance application (SCA). On July 24, 2014, Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline J, (Criminal Conduct) and Guideline E (Personal 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On August 14, 2014, Applicant answered the SOR (Answer), and requested a hearing. On November 24, 2014, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On March 10, 2015, DOHA issued a hearing notice, setting the case for March 31, 2015. The hearing was held as scheduled. At the hearing, Department Counsel offered two exhibits (GE), and Applicant offered five exhibits (AE) into evidence. (GE 1-2; AE A-E.) All were admitted. Three witnesses testified for Applicant. DOHA received the hearing transcript (Tr.) on April 8, 2015. The record remained open until April 20, 2015, to give Applicant an opportunity to submit additional information. Applicant timely submitted three documents that I marked as AE F through H and admitted into the record without objection from Department Counsel.

### **Findings of Fact**

Applicant admitted the allegations contained in Paragraph 1.a of the SOR, and denied the allegations contained in Paragraph 2.a of the SOR. His admissions are accepted as factual findings.

Applicant is 47 years old. He and his wife have been married for 10 years. They have a seven-year-old child. He has four children from a previous relationship, ages 14, 20, 25, and 26. He attended three years of college. He has worked for his current employer for 12 years, with a two-year gap from approximately 2011 to 2013. He has a minister's license and participates in church ministries. He has also worked as a chaplain with a local police department. (Tr. 16-22; AE A, B, C.) He is active in many community volunteer organizations. (Answer.)

On May 21, 2013, Applicant became embroiled in a confrontation with his then 19-year-old son at Applicant's mother's house. Applicant was concerned about his son's girlfriend, who was living at the house without permission from Applicant's mother. The son and girlfriend had stolen his mother's van and engaged in other criminal activity. At one point, the son started wrestling with Applicant on the floor. As the fight ensued, Applicant said he told his son to stop attacking him. When that did not occur, Applicant pulled his gun and warned his son that he would shoot if he continued to attack him.<sup>1</sup> The fight did not stop and Applicant shot his son in the leg. The son went to the hospital where he had surgery to remove a bullet. (Tr. 26-29.) Applicant was later arrested. (GE 2.)

Applicant was charged with (1) assault with intent to do bodily harm less than murder, a felony; (2) assault with a dangerous weapon, a felony; (3) discharging a firearm in a building, a felony, and; (4) felony firearms possession. In September 2013 he pled guilty to assault with a dangerous weapon and discharge of a firearm in a

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<sup>1</sup> Applicant had a concealed carry permit for the gun. (Tr. 27.) He wore it because he worked with the police department and received death threats. (Tr. 26.)

building, both felonies. He was sentenced to six months jail on work release, beginning in January 2014, and three years of supervised probation. He was ordered to complete a 13-week course on anger management, which he successfully completed in July 2014, as documented by his probation officer.<sup>2</sup> (Answer; AE G.) As a result of the felony conviction, he can no longer carry a gun. (Tr. 32.) His probation will terminate in January 2017. (Tr. 33.)

Applicant's son no longer lives with his grandmother, but instead attends college in another state where he permanently resides. (Tr. 41.) Applicant provides some financial support for him. (Tr. 33.) After pleading guilty to the charges, he and his son began to reconcile. (Tr. 37.) In March 2015 his son wrote a letter in support of his father. The son admitted that on May 21, 2013, he was "under the influence of illegal drugs, which contributed to [his] saying and doing things [he] wouldn't say or do." (AE E.) He apologized for his immature behavior. He loves and fully supports his father. (AE E.)

Three witnesses testified on behalf of Applicant. His supervisor of five years stated that Applicant's performance evaluations are very good. He said that Applicant is a shop supervisor, responsible for overseeing other employees. The employer became aware of Applicant's arrest soon after it occurred, and continued to employ him. He has never witnessed Applicant lose his temper or deal with subordinates inappropriately. He supports Applicant's request for a security clearance. (Tr. 45-48.) Applicant submitted performance evaluations for 2013 and 2014, both of which were favorable. (AE H.) The president of the company for which he works stated that Applicant is a reliable and dependable employee. (AE D.)

Applicant's pastor testified. He has known him for 13 or 14 years, and mentored him over the past ten years. He sees him every week at a church ministry. Applicant told him of the incident on the same day it happened. He has had conversations with Applicant's son subsequently about the incident. Since the occurrence, he believes Applicant has become calmer. He was unaware of any previous physical altercations between Applicant and his son, or anyone else. He has confidence in Applicant and appointed him to the position of president of a board of their church. (Tr. 48-59.)

Applicant's wife testified. She has observed a change in the tone of Applicant's relationship with his son since the incident. The son has been apologetic for the role he played in his father's conviction. Applicant displays more wisdom in dealing with his son and others. (Tr. 59-65.)

Applicant exhibited visible remorse over his misconduct, and understood he could have handled the situation more appropriately. (Tr. 30-31.) He admitted that he should have been a better father to his son, less stern, and listened more often. (Tr. 39.) He has learned the importance of his family and life in general as a consequence of this

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<sup>2</sup> Applicant said that the probation office does not provide letters of good standing for people. However, his probation officer would be willing to verbally address any questions about the status of his probation. He supplied her name and phone number. (AE F and AE G at 2.)

situation. (Tr. 32.) From the time of his arrest to the date of his plea, Applicant was not permitted to have contact with his son. That period of separation caused him deep pain and reflection. (Tr. 37.) In his Answer, he said that he “took the plea because as a responsible man, I chose to be accountable for my actions.” (Answer.) He stated that his “actions were the results [sic] of being prideful more than my life being in danger.” (Answer.) During his testimony, he added that he did not want to pursue a trial in which his mother or son would be called to testify, adding further injury to the family. (Tr. 40-41.)

## **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 (AG) 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 access to classified information will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concerns 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 two conditions that could raise a security concern and may be disqualifying in this case:

- (a) a single serious crime or multiple lesser offenses; and
- (d) individual is currently on parole or probation.

In September 2013 Applicant pled guilty to two felonies. He remains on probation until January 2017. The evidence raises both disqualifying conditions.

AG ¶ 32 provides two conditions that could mitigate security concerns raised under this guideline:

- (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, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Two years have elapsed since Applicant's arrest. The circumstances surrounding the incident were sufficiently unusual, in that they involved his son with whom he had not previously engaged in any physical altercations. At this time a similar situation is less likely to occur because his son lives out of state, and Applicant no longer possesses a gun. However, that incident was sufficiently serious that the court placed him on three years of probation. While issues about his trustworthiness or judgment are

diminishing, based on the testimony of his wife, supervisor and pastor, who have regularly observed him since then, there is insufficient evidence to establish full mitigation under AG ¶ 32(a).

Applicant presented evidence of rehabilitation. He consistently expressed remorse over his conduct and admitted that he failed to handle the situation with his son appropriately as a father. He and his son reconciled soon after Applicant pled guilty. They both acknowledged individual responsibility for the situation. Their relationship has improved over the last two years. Applicant's supervisor attested to Applicant's work performance and strongly supports his request for a clearance. Applicant continues to work in church ministries and community organizations, and was appointed president of the church's board. He successfully completed a lengthy anger management program. AG ¶ 32(b) has partial application, and not full application, because he remains on criminal probation and his recent good behavior occurred under court supervision.

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

AG ¶ 15 expresses the security concerns pertaining to 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 information.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying in this case:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

This case involves a situation in which Applicant shot his son. That incident creates a vulnerability to exploitation because it is the type of personal conduct which, if known, may affect Applicant's personal, professional, and community standing. The evidence is sufficient to raise the above disqualification.

AG ¶ 17 includes a condition that could mitigate the security concerns arising under this guideline:

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant provided sufficient evidence to mitigate the personal conduct allegation under AG ¶ 17(e). Applicant's employer, pastor, and wife are thoroughly aware of the conduct and subsequent criminal conviction. Their knowledge of the situation and observation of Applicant's behavior since the occurrence significantly reduces or eliminates Applicant's vulnerability to exploitation, manipulation, or duress.

### **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(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.

According to 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 pertinent facts and circumstances surrounding this case. This case involves a family tragedy that occurred two years ago, when Applicant lost control of himself during an altercation with his son, who later admitted he had taken illegal drugs at the time. As a consequence, Applicant was convicted of two felonies. Several factors weigh in favor of granting Applicant a security clearance. He completed a 13-week course on anger management, reconciled with his son who now lives in another state, and has the strong support of his employer, pastor, wife, and son. He forthrightly admits that his failure as a parent contributed to the situation and assumes responsibility for his actions. The likelihood that a similar event would recur is becoming unlikely. However, one fact weighs heavily against granting him eligibility to hold a clearance at this time. He remains on supervised probation for another two years, having in January 2015 completed the first year of a three-year term.

Overall, the record evidence leaves me with concerns as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate

the security concerns arising from criminal conduct, but did mitigate the security concerns arising from personal conduct.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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.

SHARI DAM  
Administrative Judge