

DATE: November 13, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 07-01415
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

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

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____ Applicant's 2004 and 2005 assault charges led to a criminal conduct security concern. Both incidents stemmed from domestic issues involving either his wife or his wife's ex-husband. For the past two years, Applicant has attended marital and anger management counseling. Also, he has resolved the issues that caused the confrontation with his wife's ex-husband. He has mitigated the security concern. Clearance is granted.

STATEMENT OF THE CASE

On May 7, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. 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. He answered the SOR on May 16, 2007, and requested a hearing.

The case was assigned to me on August 22, 2007. On October 1, 2007, DOHA issued a notice of hearing scheduling it for October 24, 2007. During the hearing, I received three government exhibits, 14 Applicant exhibits, and the testimony of two Applicant witnesses. DOHA received the transcript on November 2, 2007.

FINDINGS OF FACT

_____Applicant admitted the SOR allegations, and I have incorporated them into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 39-year-old married man with two teenage children from a prior marriage and three stepchildren. Two of the stepchildren are 14-year-old twins and the youngest is nine. His children live with his first wife, and his stepchildren live with him. He is active in the community, coaching youth sports and attending practices for each of his five children. He is currently attending college, and anticipates earning a bachelor's degree in business administration in December 2008.¹

For the past 11 years, Applicant has worked as a security administrator. Coworkers describe him as "ambitious and hardworking,"² a "man of dignity,"³ and "extremely competent."⁴ He has received several awards over the years for outstanding performance.⁵

Applicant has an anger management problem.⁶ On September 17, 2004, he was arrested and charged with assault on a family member after he head-butted his wife, and dragged her across the floor by her hair during an argument.⁷ In May 2005, he pleaded guilty and was sentenced to 12 months deferred probation. The court imposed no requirements on him other than to report monthly.⁸ He completed probation without incident.

¹Tr. 22.

²Exhibit B.

³Exhibit C.

⁴Exhibit E.

⁵*See generally*, Exhibits H through L.

⁶Tr. 23.

⁷Tr. 41, Exhibit 2, Police Report, dated September 17, 2004.

⁸Tr. 42.

On March 12, 2005, while the first charge was pending, Applicant was arrested and charged with assault after an altercation with his wife's ex-husband. Before the altercation, they had engaged in "several run-ins and disagreements over the phone."⁹ The disagreements related to the ex-husband's lack of steady child support payments and inconsistent visitations with his children.¹⁰ Also, the ex-husband had earlier challenged him to a fight at a neighborhood gym.¹¹ Because of their animosity, Applicant's wife arranged for pick-up and visitation with the ex-husband's children to occur at places other than Applicant's home. On this particular occasion, however, the ex-husband came to Applicant's house to pick up the children. They exchanged words, and Applicant punched him in the mouth.¹² The ex-husband filed a criminal complaint, leading to Applicant's arrest. The offense was not prosecuted.

After these incidents, Applicant voluntarily began marital and anger management counseling with a licensed, professional counselor.¹³ Initially, he attended approximately once per week.¹⁴ For the past year, he has attended approximately once every two to three weeks. Approximately 20 sessions have been joint.¹⁵ According to his counselor, he "has made a great deal of progress in working on these issues which is evidenced by improvement in both his behaviors and interpersonal relationships."¹⁶ Specifically, he has learned techniques for preventing disagreements with his wife from escalating into heated confrontations.¹⁷ Also, he and the ex-husband's relationship has improved.¹⁸ The ex-husband is "more than welcome" to visit his children in Applicant's home, and has done so four or five times over the past two years without incident.¹⁹

According to Applicant's wife, he is less argumentative, and "thinks before he speaks" when they have disagreements.²⁰ Arguments no longer "drag out."²¹

⁹Tr. 32.

¹⁰Tr. 61 - Wife's Testimony.

¹¹Tr. 33.

¹²Tr. 33-34.

¹³*Id.* He had attended counseling approximately a year earlier for assistance with unrelated issues involving his ex-wife and visitation with his children.

¹⁴Tr. 45.

¹⁵Tr. 56 - Wife's Testimony.

¹⁶Exhibit A.

¹⁷Tr. 47.

¹⁸Tr. 50.

¹⁹Tr. 51.

²⁰Tr. 58-59.

²¹Tr. 59.

Applicant is “ashamed of” his past problems with controlling his anger.²² He attributes it in part to being raised in a household with a violent, physically abusive father. “More than anything, [he] want[s] to break this cycle” and does not want it to be passed on to his children.²³

POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they 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; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the age of the applicant; (5) the extent to which the 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.

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.”²⁴ 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

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability and trustworthiness, [and] by its very nature, it calls into question a person’s ability or willingness

²²Tr. .24.

²³*Id.*

²⁴*See generally*, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

to comply with laws, rules, and regulations.”²⁵ Here, Applicant’s two arrests trigger the application of Criminal Conduct Disqualifying Condition 31(a).²⁶

Applicant has voluntarily attended counseling for two years. The counselor noted that he is making significant progress. He has resolved his dispute with his wife’s ex-husband, and has improved his spousal relationship by being more willing to compromise and less confrontational. His testimony projected remorse at his past transgressions, and he appeared sincerely committed to preventing any future episodes from occurring. Also, he is a good employee and is active in the community. I conclude there is ample evidence of successful rehabilitation. Criminal Conduct Mitigating Condition 32(d)²⁷ applies.

Whole Person Concept

Applicant’s 2004 assault of his wife was brutal. The assault of his wife’s ex-husband less than nine months later clearly established a pattern of his anger management problems. The 2005 incident was mitigated somewhat by the ex-husband’s mutual hostility toward Applicant, and the ex-husband’s callous attitude displayed toward his children’s well-being. Moreover, these two episodes represent the only times Applicant has ever been charged criminally.

At the hearing, Applicant expressed contrition and provided introspective testimony regarding the origins of his anger management issues. Also, he testified persuasively about the lessons he has learned through the counseling. His testimony was supported by his wife’s testimony. Evaluating this case in the context of the whole person concept, I conclude Applicant has mitigated the security concern. Clearance is granted.

FORMAL FINDINGS

Paragraph 1 – Guideline J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	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.

²⁵Adjudicative Guideline (AG) ¶30.

²⁶A single serious crime or multiple lesser offenses.

²⁷There 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.

Marc E. Curry
Administrative Judge