



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-09190  
SSN: ---- -- ---- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Nichole L. Noel, Esquire, Department Counsel  
For Applicant: *Pro se*

March 27, 2009  
\_\_\_\_\_

**Decision**  
\_\_\_\_\_

CURRY, Marc E., Administrative Judge:

On April 11, 2008, the Defense Office of Hearings and Appeals (DOHA) 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on May 1, 2008, admitting the allegation and electing a decision on the written record instead of a hearing. Department Counsel mailed the government's file of relevant material (FORM) to Applicant on January 9, 2009. He received it January 21, 2009. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. On March 9, 2009, he submitted a response to the FORM. He did not object to any of the

submissions in the FORM. The case was assigned to me March 12, 2009. Based on a review of the FORM, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is a 53-year-old, single man. He is a veteran of the U.S. Navy, serving from 1973 to 1975. He was honorably discharged. In 1989, he earned a bachelor of science degree. The FORM does not indicate his major. Since 1990, he has worked for a defense contractor as a test engineer. He has held a security clearance continuously during this time.

On or about July 12, 1995, Applicant drove his automobile in the wrong direction down a one-way street, and collided with another vehicle. The police, upon arriving, administered a blood alcohol test to Applicant, which he failed, registering a .14 (Item 8 at 2). He was then arrested and charged with Driving While Intoxicated (DUI).

The court issued a notice of arraignment to Applicant on September 5, 1995 scheduling the arraignment for November 22, 1995 (Item 9). Applicant failed to appear, as scheduled, and a bench warrant was issued for his arrest (Items 10, 11). The warrant remains open (Item 2).

The government propounded interrogatories to Applicant on August 29, 2007 (Item 5). Applicant stated he attempted to contact the court in 1996 concerning the open warrant, and received no response. He stated he would retain an attorney, surrender to the authorities, and resolve the matter (Item 5 at 2).

In response to the FORM, Applicant attributed his failure to respond to the bench warrant to mental stress, and his preoccupation with various family crises.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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.

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 national security. 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 as to obtaining a favorable security decision.

## **Analysis**

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

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness” (AG ¶ 30). Also, “by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations” (*Id.*). Applicant’s failure to appear at a 1995 criminal arraignment, and his continued failure to respond to an outstanding arrest warrant trigger AG ¶ 31(a), “a single serious crime.”

I have considered the mitigating conditions and conclude none apply. Applicant’s behavior demonstrates a disrespect for the law and a refusal to accept responsibility for his actions. His lack of contrition is particularly troubling. The Criminal Conduct security concern remains unmitigated.

### **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) 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.”

Appellant’s failure to appear at a pre-trial criminal hearing, his continued failure to resolve the matter, and his nonchalant attitude about the legal ramification of his actions, as reflected in his Response to the FORM, render him an unacceptable security risk. I considered the whole person factors in my analysis of the Criminal Conduct guideline, and my analysis does not support a favorable outcome. Clearance is denied.

### **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
---------------------------	-------------------

Subparagraph 1.a:	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