



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-09644

Appearances

For Government: Nichole Noel, Esquire, Department Counsel

For Applicant: *Pro se*

July 10, 2008

Decision

CURRY, Marc E., Administrative Judge:

On December 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J, criminal conduct. This 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 January 17, 2008, admitted both allegations, and requested a hearing. On April 9, 2008, I was assigned the case. DOHA issued a notice of hearing on May 13, 2008 scheduling the case for June 5, 2008. At the hearing, I received three government exhibits and the testimony of two Applicant witnesses. I received the transcript on June 16, 2008. After thoroughly reviewing the record, I conclude that eligibility for access to classified information is granted.

Procedural Ruling

SOR subparagraph 1.b alleges that 10 U.S.C. § 986 disqualifies Applicant, by virtue of having served more than one year resulting from a criminal conviction, from having a security clearance granted or renewed. On January 1, 2008, the day after the SOR's issuance, Public Law 110-81, § 3002 repealed 10 U.S.C. § 986. At the hearing, the government moved to withdraw SOR subparagraph 1.b. I granted the motion.

Findings of Fact

Applicant is a 29-year-old married man with two toddler-age children. For the past two and a half years, he has worked for a defense contractor as an instructor in the submersible fiber optics field. According to his company's security officer, he is an excellent employee who performs arduous tasks "without complaint," and has recently been recommended for a promotion (Tr. 39). He is currently pursuing an associate's degree in business administration (Tr. 33).

Applicant was a troubled teenager who abused alcohol and marijuana, and he committed a number of crimes with a group of friends (Tr. 21). In September 1996, Applicant and three friends robbed a convenience store (Tr. 22). One of the friends brandished a fake handgun during the robbery. They were later arrested and charged.

Applicant pleaded guilty to second degree robbery and displaying a firearm (Answer). He was sentenced to seven years incarceration and ordered to pay restitution. He appealed the length of the sentence, and it was reduced to three and a half years of incarceration. While in prison, Applicant attended six months of drug and alcohol counseling, and a victims' awareness class (Tr. 26). Also, he actively participated in Bible study. He paid restitution through a garnishment of wages earned in prison. The record contains no evidence of the type of work he performed while in prison.

Since Applicant's release, he has "engrossed himself with keeping busy" (Tr. 28). From 2000 to 2006, he worked for two non-profit organizations dedicated to assisting disabled people with life-skills management. His work particularly focused on helping autistic people. During this time, his duties also included coordinating the donation of cribs to needy families. Since leaving prison, Applicant also volunteered with Americorps, building housing for the underprivileged, and raking leaves at the homes of the elderly.

Applicant has been married since 2003. He owns his home and rents another. Also, he operates a weekend business with his wife selling organic dog biscuits. He has had no contact with his old troublemaking friends since his incarceration.

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). Moreover, "by its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations" (*Id.*). Here, Applicant's 1996 arrest, conviction, and incarceration triggers the application of AG ¶ 31(a), "a single serious crime . . .".

Applicant committed the crime 12 years ago when he was 17 years old. He fulfilled the requirements of his sentence, and has not committed any more criminal offenses since then. He no longer associates with the people with whom he associated before the conviction, and does not use marijuana or abuse alcohol, as he did when he was a teenager. Since leaving prison, he has developed a solid employment record, enrolled in college, began raising a family, and participated in constructive volunteer activities. AG ¶¶ 32(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 32(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,” both apply in Applicant’s favor.

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.”

The nature and seriousness of Applicant’s crime is outweighed by his immaturity at the time, and the reform and rehabilitation he has demonstrated since then. Applicant’s commitment to his family, his job, and his community render the possibility of recurrence minimal. I conclude his 1996 arrest and conviction no longer pose a security concern. Clearance is granted.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	WITHDRAWN

Conclusion

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

MARC E. CURRY
Administrative Judge