



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



In the matter of:

-----

SSN: -----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)

ISCR Case No. 07-09697

**Appearances**

For Government: Daniel F. Crowley, Department Counsel  
For Applicant: *Pro Se*

July 2, 2008

---

**Decision**

---

TESTAN, Joseph, Administrative Judge:

On January 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines E and J. 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 in writing on February 11, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on March 20, 2008. Applicant did not file a response to the FORM. The case was assigned to me on May 27, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

## **Findings of Fact**

Applicant is a 40 year old employee of a defense contractor.

In 1994, applicant was charged with Assault and Battery. She was convicted of the charge.

In January 2005, applicant was charged with Assault and Battery. When the alleged victim did not appear in court, the charge was dismissed.

In May 2005, applicant was charged with Assault and Battery. In July 2005, she was charged with Failure to Appear. Both charges were dismissed in September 2005.

In January 2006, applicant was charged with (1) Assault and Battery and (2) Profane Swearing or Intoxicated. In April 2006, she was found guilty of both charges, given a six month suspended sentence, and fined about \$400.00.

On January 12, 2007, applicant was charged with Assault and Battery on a Family Member. In April 2007, the charge was dismissed.

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on January 31, 2007. In response to Question 23.c., which asked: "Are there currently any charges pending against you for any criminal offense?" applicant responded "no." This response was false because, as noted above, she had been charged with a crime on January 12, 2007, and the charge was not dismissed until April 2007. In her response to the SOR, applicant admitted the SOR allegation that she falsified material facts on the e-QIP, but stated she "was not aware of charges at that time." Given the fact she told an OPM investigator that, on the day of the alleged crime, she had been (1) brought to the police station, (2) "charged and processed for Assault and Battery," (3) given a court date, and (4) "bonded out by her friend," it is clear she knew a charge was pending against her when she completed the e-QIP (Exhibits 2 and 6).

## **Policies**

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel

security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## **Analysis**

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

The security concern for criminal conduct is set forth in Paragraph 30 of the AG, and is as follows:

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.

Paragraph 31 describes conditions that could raise a security concern and may be disqualifying: Under Paragraph 31.a., “a single serious crime or multiple lesser offenses” may be disqualifying. And, under Paragraph 31.c., an “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,” may be disqualifying. Applicant’s multiple arrests and two convictions for Assault and Battery raise these two disqualifying conditions.

Paragraph 32 of the AG sets forth conditions that could mitigate security concerns. I have considered each of them and conclude none apply.

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

The security concern relating to the guideline for Personal Conduct is set forth in Paragraph 15 of the AG, and is as follows:

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Paragraph 16 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 16.a., the "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities," may be disqualifying. This disqualifying condition is applicable because applicant intentionally provided false material information on the e-QIP.

Paragraph 17 sets forth conditions that could mitigate security concerns. I considered each of them and conclude none apply.

### **"Whole Person" Analysis**

Under the whole person concept, the AJ must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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." Under AG Paragraph 2c, the ultimate determination of whether to grant a security clearance must be an overall common sense 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 the facts and circumstances surrounding this case. Applicant is a mature woman who, since 1994, has been arrested five times and convicted twice of Assault and Battery. She offered little to no evidence that would suggest this type of behavior is unlikely to continue. Based on these facts, and the fact she intentionally concealed from the Government her most recent Assault and Battery charge when she completed the e-QIP in 2007, I conclude applicant failed to mitigate the security concerns arising from Guidelines E and J.

### **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 E: AGAINST APPLICANT

Paragraph 2, Guideline J: AGAINST APPLICANT

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

---

JOSEPH TESTAN  
Administrative Judge