



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



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| In the matter of: |) | |
| |) | |
| ----- |) | ISCR Case No. 07-16170 |
| SSN: ----- |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro se*

September 12, 2008

Decision

CURRY, Marc E., Administrative Judge:

On April 21, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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.

DOHA received Applicant's SOR answer on May 22, 2008. In the answer, Applicant admitted all of the SOR allegations and requested a hearing. I received the case assignment on July 10, 2008. DOHA issued a notice of hearing on July 23, 2008, and I convened the hearing as scheduled on August 18, 2008. During the hearing, I received five government exhibits, eight Applicant exhibits and Applicant's testimony. DOHA received the hearing transcript (Tr.) on August 25, 2008. Based upon a review of the record, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 46-year-old, married man with one daughter, age 16, and one stepdaughter, age 24. He and his wife have been married for nine years, and in a relationship for 22 years (Tr. 43). After graduating from high school in 1979, Applicant joined the U.S. Marines, where he served until his honorable discharge in 1984. While enlisted, he served abroad as part of an international peacekeeping force, and was awarded the combat action ribbon (Tr. 9).

For the past 20 years, Applicant has worked as a U.S. military aircraft mechanic. Specifically, he is an instrumentation and electronics technician (Tr. 9). He has worked for the same company for the past 18 months. Before then, he worked for another employer for 15 years. His supervisor characterizes him as “a good and loyal employee, who could be trusted in every facet of [their] maintenance and operational commitment to [their] customer” (Exhibit A).

Applicant decided to join the Marines shortly after graduating from high school. His father disapproved of his decision. As Applicant was preparing to depart for boot camp, his father, in a drunken rage, began taunting and physically assaulting him. After years of physical abuse, Applicant had “had enough” (Tr. 37). He shoved his father to the floor, and left the home. The next day, the police arrested and charged him with assault and battery. His father later dropped the charges, and the case was dismissed (*Id.*).

In 1986, Applicant was arrested and charged with driving while intoxicated (DUI). Later, the court fined him, and ordered him to attend Alcoholic’s Anonymous (AA) classes, and report to an alcohol monitor for a year (Tr. 53). He complied with the court order.

In January 1989, Applicant’s friend stole a video from a video store while they were leaving the store. The police stopped both of them, and charged them with misdemeanor theft (Answer; Tr. 54). Later, Applicant received one year of probation before judgment and was fined \$100.

One evening in May 1995, Applicant and his girlfriend got into an argument. He then went for a walk to “avoid any further confrontation” (Tr. 32). When he returned, his girlfriend had the hood of his car up, and was “dislodging everything that she could possibly dislodge from under the motor compartment” (*Id.*). He shoved her to the ground, and his stepdaughter called the police, who arrived, arrested him, and charged him with assault and battery. The charge was later nolle prossed (Tr. 34; Answer).

In February 2003, Applicant’s wife shoved him during a heated argument. He responded by shoving her, and she fell to the floor. Before hitting the floor, she hit her jaw on the dining room table (Tr. 30). Applicant then drove her to the emergency room. While en route to the hospital, their argument resumed (Tr. 30). Applicant then stopped the car, got out, and walked home. Before arriving home, the police stopped him, and

charged him with assault and battery. He was later acquitted after his wife refused to testify against him (Answer; Tr. 31).

In August 2006, Applicant was assigned to the night shift at his job (Tr. 23). When he would call home for his wife, she would not be at home, and their daughter would not know her whereabouts. Suspecting that she was frequenting bars, he confronted her one evening. An argument ensued, and he went to bed. When he awoke in the middle of the night, his wife was not at home. He then left the home, and confronted her at a neighborhood bar demanding that she leave (*Id.*). He grew “loud and aggressive” when she refused (Tr. 24). A few of the patrons and an off-duty bartender then asked him to leave.

The bar environment grew hostile. Applicant, realizing he was outnumbered, left the bar, and waited in the parking lot for his wife to leave. Approximately 10 to 15 minutes later, a few of the men who had confronted Applicant in the bar, approached his car “looking for trouble” (Tr. 25). One of the men tried to open the back door, and another reached through the driver’s side window, which was partially down, and began trying to punch Applicant. Applicant then pulled the keys out of the ignition, and cut his assailant’s arm with a bottle opener that was attached to the key chain.

Applicant was arrested and charged with assault in the second degree, disorderly conduct, and trespassing. As part of a plea bargain, Applicant pleaded guilty to the latter two charges, and the assault charge was stayed pending the service of 18 month probation (Answer; Tr. 29). Also, Applicant was fined \$255, and sentenced to 60 days in jail (59 days suspended, and one day credited for time served). Applicant served probation without incident, and the assault charge was dismissed.

In July 2008, Applicant voluntarily enrolled in anger management therapy (Exhibit D). Since enrolling, he has attended three sessions. According to his therapist, he “demonstrates insight, takes personal responsibility for his behavior, and recognizes the need to make changes” (Exhibit D). In August 2008, he switched clinics to one that was closer to his home and more affordable (Tr. 51).

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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a conscientious 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 and] by its very nature, . . . calls into question a person’s ability to abide by laws, rules, and regulations” (AG ¶ 30). Applicant’s history of criminal conduct triggers the application of AG ¶ 31(a), “a single serious crime or multiple lesser offenses.” After considering the circumstances surrounding the 1979 incident, as alleged in SOR subparagraph 1.f, and the length of time since it happened, I have decided to resolve it in Applicant’s favor.

Nevertheless, Applicant’s remaining episodes of criminal conduct generate a pattern of criminal conduct that raises questions about his security clearance-worthiness. Applicant’s criminal offenses throughout the past 18 years have all stemmed from his periodically troubled relationship with his wife, and his inability to control his anger. Applicant has begun to address the latter by attending anger management classes; however, he did not enroll until nearly three months after the SOR’s issuance. Moreover, Applicant and his wife have never attended marital counseling, and he provided scant evidence as to the current status of their relationship.

Applicant deserves credit for his service in the armed forces, his solid work performance, and the initiative he demonstrated in enrolling in anger management classes. Also, although his anger management therapy has just begun, he is actively involved and committed to its success. These favorable factors trigger the application of AG ¶ 31(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.”

These favorable factors, however, are not enough to outweigh the security concern given the recency of the latest offense, the span of his criminal behavior, and the minimal evidence about his current marital harmony. Consequently, Applicant has not mitigated the criminal conduct security concern.

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) 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." Under 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.

Upon considering this case in the context of the whole person concept, I conclude Applicant's clearance must be denied. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on current disqualifying and mitigating conditions. Although Applicant's current circumstances do not warrant the granting of a security clearance, he may well establish the requisite track record of rehabilitation to warrant the granting of a security clearance in the future. Such a judgment at this point would be premature. 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:

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| Paragraph 1, Guideline J: | AGAINST APPLICANT |
| Subparagraphs 1.a - 1.e: | Against Applicant |
| Subparagraph 1.f: | 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.

MARC E. CURRY
Administrative Judge

