



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



In the matter of: )  
 )  
 ) ISCR Case No. 08-08831  
 )  
 SSN: )  
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 Applicant for Security Clearance )

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel  
For Applicant: *Pro se*

August 30, 2010

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 8 January 2010 the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating security concerns under Guidelines J (Criminal Conduct) and E (Personal Conduct).<sup>1</sup> Applicant timely answered and requested a decision without hearing. DOHA assigned the case to me 28 April 2010. The case record closed 22 April 2010, when Department Counsel gave no objection to Applicant’s response to the Government’s File of Relevant Material (FORM, Items 1-9).

**Findings of Fact**

Applicant admitted a June 1993 arrest for malicious mischief and reckless endangerment (SOR 1.c) and a February 1994 arrest for theft and burglary (SOR 1.a

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<sup>1</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

and 1.b). He denied the remainder of the SOR allegations. Accordingly, I incorporate his admissions as findings of fact. He is a 32-year-old technical coordinator employed by a defense contractor since September 2007. He has not previously held a security clearance.

Applicant grew up on the west coast, but has lived on the east coast since at least September 1999. He has been married for 10 years. He and his wife have two children together, and she has two teenagers from an earlier relationship. Applicant got his college degree in February 2008.

As a teenager, Applicant hung out with the wrong crowd. In June 1993, he was arrested (along with two other friends and several combatants) for malicious mischief and reckless endangerment for violating the city curfew for minors and getting into a fight. He went to court and paid a fine without appearing before a judge.

In February 1994, Applicant and two friends got the admittedly-ludicrous idea to break into an office building and steal something. The owner of the building was still there, and he caught Applicant; the two friends got away. Applicant was charged with burglary and theft.<sup>2</sup> He was tried in juvenile court, pled guilty, and was sentenced to 24 months community supervision, 50 days detention, and fined. Applicant completed his sentence without incident, and the case files were closed in May 1998.

After his February 1994 arrest, Applicant started taking additional classes at an on-line high school, while still attending his regular school, so he could accelerate his graduation date to graduate before he had to serve his detention. He graduated from high school in June 1994, and served his detention the remainder of that summer.

In February 1996, a warrant was issued for Applicant's arrest on charges that he stole tools from a hardware store by trick in June 1995 (Item 8). The probable cause affidavit was signed by the county prosecutor based on a 1995 police report that is not in evidence.<sup>3</sup> Applicant contends, and the Government's documents tend to confirm, the warrant was never served on him, despite the fact that he lived in the same town for at least a year after the alleged theft and his mother was a deputy sheriff in the county where he lived.

In September 1996, a warrant was issued for Applicant's arrest for failure to appear (Item 9) on charges alleged to be forgery. However, the only evidence that the charge was forgery is a hand-written notation on the face of the warrant. There is no

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<sup>2</sup>Although the Government alleged the theft and burglary as separate charges (SOR 1.a and 1.b), the two allegations arose out of the same incident and were tried together. Applicant reported the charges on his clearance application by the disposition date, August 1995 (Item 4), but mistakenly reported the arrest as occurring in 1993 during his subject interview (Item 5). The FBI rap sheet (Item 7) reports the correct February 1994 date.

<sup>3</sup>The affidavit references the police report, but beyond being able to identify it as a 1995 report, it is not possible to state how long after the alleged theft the police report was written.

documentation that Applicant was ever served a notice to appear on the underlying charge. The warrant itself was not served on Applicant, and Applicant further denies having been served the underlying notice to appear and warrant.

Applicant's response to the FORM documents that he paid the fees associated with the February 1994 arrest, and received several certificates recognizing his community service and volunteer work—including certificates issued by the county sheriff in the county where the warrants were issued commending him for his work in the department's emergency management division. He also provided two work references praising the quality of his work and his trustworthiness.

Applicant began researching the outstanding warrants when he became aware of them in July 2008. He contacted several lawyers in his hometown, and received minimum quotes of \$15,000 to retain counsel on the charges because of their age. Applicant began saving money to pay the lawyer's fees, but had unexpected surgery that consumed the money he had saved. He understands that he must eventually resolve the warrants.

### **Policies**

The adjudicative guidelines (AG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in AG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline J (Criminal Conduct) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, it establishes a valid case against access to classified information. Applicant must then refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own.

The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant’s suitability for access in favor of the government.<sup>4</sup>

### Analysis

The Government established a case for disqualification under Guideline J, by showing Applicant’s criminal conduct in 1993 and 1994, and two arrest warrants in 1996.<sup>5</sup> However, Applicant mitigated the criminal conduct security concerns. When Applicant moved to the east coast by September 1999, he left behind the environment and the people surrounding his criminal conduct. The most recent criminal conduct—the alleged-but-not-proven crimes underlying his two warrants—occurred over 13 years ago. The most recent of the proven criminal conduct occurred over 14 years ago. All the crimes occurred when Applicant was 16-18 years old. There has been no further criminal conduct, not even a traffic stop that could reveal the outstanding warrants, even though Applicant was unaware of the warrants from 1996 to July 2008. He has been steadily employed since April 2000, and currently has a good employment record. He married (March 2000), started a family (November 2000 and 2004), and obtained his college degree (February 2008). He paid the fees associated with his 1990s crimes, and has been constructively involved in his community.<sup>6</sup> Thus, the evidence of successful rehabilitation is very strong. I resolve Guideline J for Applicant.

The Government did not establish a case for disqualification under Guideline E. The criminal conduct allegations cross-referenced in SOR 2.a raise no security concerns not fully addressed by Guideline J. The allegations of SOR 1.a-e do not constitute deliberate falsification of a clearance application [16. (a)], deliberately false information to an investigator [16 (b)], adverse information in several adjudicative areas [16 (c)] adverse information not explicitly covered elsewhere [16 (d)], personal conduct creating vulnerability to exploitation [16 (e)], a violation of an acknowledged condition of employment [16 (f)], or association with criminals [16 (g)]. SOR 2.b alleges giving false information to a government investigator by failing to disclose the arrest warrants of SOR 1.d and 1.e, but record evidence establishes that Applicant was unaware of the warrants when he was first interviewed. I resolve Guideline E for Applicant.

The most important consideration under the whole person factors of AG ¶ 2(a) is the fact that Applicant still has two outstanding arrest warrants in his home state. However, he understands that he has to resolve the warrants, and was taking steps to

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<sup>4</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup>¶31.(a) a single serious crime or multiple lesser offenses; (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

<sup>6</sup>¶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 judgment; (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, . . . higher education, good employment record, or constructive community involvement.

do so when unexpected surgery dealt him a financial setback. He has contacted several lawyers about representing him in these two matters. Although Applicant has known about the warrants for two years, his decision to postpone surrendering on the warrants until he has counsel and is able to coordinate his surrender with state law enforcement officials is reasonable and demonstrates good judgment. In the meantime, I consider the risk that he can be pressured because of the warrants is low.

### **Formal Findings**

Paragraph 1. Guideline J: FOR APPLICANT

Subparagraphs a-e: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraphs a-b: For Applicant

### **Conclusion**

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 granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge