



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 11-02320
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

02/29/2012

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by his financial problems. He did not mitigate the concerns raised by his criminal conduct, alcohol consumption, and personal conduct. His request for a security clearance is denied.

**Statement of the Case**

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding<sup>1</sup> that it is clearly consistent with the national interest to continue Applicant's access to classified information. On July 5, 2011, DOHA issued to

---

<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guideline (AG)<sup>2</sup> for financial considerations (Guideline F).

Applicant answered the SOR (Answer) on August 2, 2011, and requested a hearing. On September 9, 2011, DOHA Department Counsel issued to Applicant an *Amendment to the Statement of Reasons* (Amendment). The Amendment added factual allegations under the guidelines for personal conduct (Guideline E), alcohol consumption (Guideline G), and criminal conduct (Guideline J). Applicant answered the Amendment (Second Answer) on October 2, 2011, and the case was assigned to me on October 24, 2011.

Pursuant to a Notice of Hearing issued on November 3, 2011, I convened a hearing in this matter on December 1, 2011. The parties appeared as scheduled. The Government presented 12 exhibits, which were admitted as Government's Exhibits (Gx.) 1 - 12.<sup>3</sup> Applicant testified and presented two witnesses. He also presented two exhibits, which were admitted as Applicant's Exhibits (Ax.) A and B. DOHA received a transcript (Tr.) of the hearing on December 9, 2011. I also left the record open to receive additional relevant information from the Applicant. The record closed on December 16, 2011, when I received Applicant's timely post-hearing submission. It is included in the record, without objection, as Ax. C.

### **Findings of Fact**

In the SOR, as amended, the Government alleged, under Guideline F, that Applicant owed approximately \$15,047 for seven past-due debts (SOR 1.a - 1.g). Applicant admitted, with explanation, all of the SOR 1 allegations.

Under Guideline E, it was alleged that on January 1, 2010, Applicant was arrested and charged with assault and battery of a family member; that he had been drinking before his arrest; that he was convicted and sentenced to 12 months in jail, which was suspended conditioned on good behavior for three years (SOR 2.a). The Government further alleged that on May 3, 2009, Applicant was arrested and charged with assault and battery of a family member; that he had been drinking before his arrest; that he was convicted and sentenced to 12 months in jail, of which 11 months were suspended, and that he was placed on three years probation as of November 2010 (SOR 2.b). Under this guideline, the Government also alleged that on November 1, 2004, Applicant was arrested and charged with assault and battery of a family member, which was later dismissed as nolle prosequi (SOR 2.c); that on April 22, 2002, police questioned Applicant about a physical altercation with his son (SOR 2.d); and that on January 26, 2002, police were called to Applicant's house in response to a domestic

---

<sup>2</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

<sup>3</sup> Department Counsel provided an index of its documents. It is contained in "Government's Proposed Exhibits" and included in the record as Hx. I.

argument (SOR 2.d). Applicant denied the general Guideline E security concern at SOR 2, but admitted with explanation the allegations at SOR 2.a - 2.d.

Under Guideline G, the Government cross-alleged as alcohol-related the conduct listed at SOR 2.a and 2.b (SOR 3.a). Applicant denied the general Guideline G security concern at SOR 3, but admitted with explanation the allegation at SOR 3.a.

Under Guideline J, the Government cross-alleged as criminal the conduct listed at SOR 2.a, 2.b, and 2.c (SOR 4.a). Applicant denied the general Guideline J security concern at SOR 4, but admitted with explanation the allegation at SOR 4.a.

Applicant's admissions are incorporated in my findings of fact. Having reviewed the response to the SOR, the transcript, and exhibits, I make the following additional findings of fact.

Applicant is 48 years old and employed by a defense contractor in a position that requires a security clearance. His work site is a private shipyard engaged in the construction, maintenance and overhaul of nuclear-powered U.S. Navy aircraft carriers and submarines. Applicant has worked for his current employer since November 2008. He also worked there as a temp agency employee from April 2008 until his current employer hired him. (Gx. 1)

Applicant served on active duty in the U.S. Air Force as an airframe mechanic. He enlisted in January 1982 and retired as a Master Sergeant (E-7) in February 2008. His performance during his military career was exemplary. He has been taking college courses since June 2004. (Gx. 1; Ax. B; Ax. C)

Applicant is married, but he and his wife have been separated since January 2010. They married in July 1985 and have two children together, a 21-year-old daughter and a 25-year-old son. (Gx. 1; Gx. 3) Since at least 2002, Applicant's marriage can best be characterized as tumultuous, and has been punctuated by calls to police in response to arguments and physical altercations. Applicant and his wife also experienced financial difficulties starting in about 2000. She had been in charge of their finances, which were generally sound. However, around 2000 Applicant's wife decided to quit her job and return to school. She also stopped paying attention to their finances. Applicant, who was often deployed away from home for long periods, was unaware that they were accruing delinquencies or that his wife had opened new credit accounts. He eventually took over management of their finances and was able to repay their delinquencies. (Answer; Gx. 6)

More recently, after Applicant and his wife separated, their financial problems recurred. His wife agreed to pay the accounts she had opened in both their names, but let the accounts become delinquent anyway. Additionally, Applicant accrued debts for unpaid taxes because his wife, who had resumed working, changed the withholdings from her paychecks but did not inform Applicant. This resulted in taxes owed that Applicant had not expected based on previous joint filings. Applicant is making monthly payments to the Internal Revenue Service (IRS) directly from his bank account. (Answer; Ax. B)

Of the debts listed in the SOR, the debt at SOR 1.a has been resolved. This was a billing error by a medical provider who did not make a claim for services rendered to Applicant's TriCare medical insurer. (Answer; Ax. A) Also resolved are the debts alleged at SOR 1.c, 1.e, and 1.f. Applicant's remaining debts are being repaid through a reliable credit counseling and debt repayment service with whom Applicant enrolled in August 2011. His monthly payment for eight past-due accounts is \$980. (Gx. 2; Ax. B)

Applicant has been living with his mother rent-free since January 2011. He continued paying about \$1,700 each month in rent for the house he and his wife lived in when they separated. The lease expired in December 2011 and Applicant no longer has to pay the rent, but he may have to pay as much as \$1,300 in spousal support depending on the results of a court hearing that was pending at the time of this hearing. (Tr. 62 - 63, 115 - 116) Applicant's most recent personal finance statement shows he has about \$1,900 remaining each month even after making his monthly debt payments. (Gx. 2)

In January 2002, Applicant's daughter called the police because her parents were arguing. Applicant's wife acknowledged to the police that there had been domestic problems before, but no physical contact had occurred on this occasion. No arrests were made or charges filed. (Gx. 11) In April 2002, Applicant's son, then age 16, did not return home from school as expected. Applicant went to look for him and found him at a friend's apartment where he had been drinking. Applicant's son did not want to come home with his father and an argument ensued. Applicant tried to physically remove his son from the apartment and take him home. Police were called, but it was determined that Applicant was asserting proper parental control and took no further action. (Gx. 10)

On November 1, 2004, police were again called to Applicant's residence in response to a call by one of their children. Applicant and his son had been in argument that became physical. Applicant punched his son in the eye, and was arrested and charged with assault and battery on a family member. On November 18, 2004, Applicant appeared in court and the charge was dismissed on motion of the prosecution. (Gx. 9)

On May 3, 2009, Applicant was again arrested and charged with assault and battery of a family member. An argument with his wife had escalated such that he threw clothes and a suitcase around their bedroom when she tried to pack up and leave. He bruised her arms when trying to hold her down. He also threatened to kill his wife and he poured beer on her so he could tell the police she was drunk. Applicant had consumed alcohol prior to this incident, but the record does not indicate how much. Applicant appeared in district court, pleaded not guilty, and was convicted. He was sentenced to 12 months in jail, which was suspended conditioned on his good behavior for three years. He was also ordered to perform 50 hours of community service and to complete an anger and violence assessment. Finally, Applicant was ordered to be evaluated for possible substance abuse counseling or treatment, and to abstain from drugs and alcohol. (Gx. 10)

Applicant appealed his conviction to the circuit court. On November 30, 2010, he was again found guilty of assaulting his son. His sentence was modified so that 11 of the 12 months in jail was suspended. Thereafter, Applicant completed his jail sentence after credit for time served by spending weekends in jail. (Gx. 8)

On the evening of December 31, 2009, Applicant and his family were celebrating New Years Eve. Sometime after midnight, police were called because Applicant and his wife were arguing, and Applicant had assaulted his son when the latter tried to intervene. Specifically, Applicant grabbed his son by the throat and began to choke him. Applicant, as well as his wife and son, had consumed alcohol prior to this incident. When police arrived, Applicant failed to cooperate and became aggressive with the officers, who had to subdue him with a taser. Applicant was taken into custody and charged with assault and battery of a family member. Applicant was convicted and sentenced to 12 months in jail, all of which was suspended. He was also placed on three years probation. (Gx. 7)

Applicant is scheduled to be on probation until at least 2013. He has to call his probation officer every day to determine if he is required to submit to alcohol or drug testing. He completed anger management counseling in February 2010. As of this hearing, Applicant had completed 18 of 28 weekly domestic violence counseling sessions. (Ax. A; Tr. 63 - 66)

Applicant and his wife have had very little personal contact since he moved in with his mother. Part of his financial problems stemmed from the fact that mail from his creditors was not being forwarded to him in a timely manner. He also has little contact with his son, who now lives in a different region of the United States. Personal references view Applicant as a good person who devotes much of his free time to helping youth in his community and to supporting his church.

In response to the Amendment, Applicant denied that he used alcohol to excess, and he stated that he only drinks beer and not hard liquor. He also averred that his wife and son were partly to blame for his behavior on the occasions when he was arrested for domestic violence. Specifically, he stated that “[his] wife and son have done certain things that have set me back and were the result of the situations that I find myself in at the moment...The domestic assaults I was charged with were the results of me not escaping an abusive situation to where I was the recipient, (sic) I stayed because I cared so much and tried to make a bad relationship better.” (Second Answer) He further claimed that his wife “falsely represented herself in court to make [Applicant] look like the wrongdoer in the incidents.” (*Id.*) Applicant also testified that his wife and son deliberately provoked him by “pushing [his] buttons.” (Tr. 106)

### **Policies**

A security clearance decision is intended to resolve whether it is clearly consistent<sup>4</sup> with the national interest for an applicant to either receive or continue to

---

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

have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>5</sup> and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>6</sup>

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her 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>7</sup>

## **Analysis**

### **Financial Considerations.**

The Government presented information that showed Applicant experienced significant financial problems in about 2000 and over the past few years when his marriage was deteriorating. His most recent background investigation showed that he

---

<sup>5</sup> Directive. 6.3.

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

owed about \$15,000 in past-due debt for seven accounts. Applicant admitted all of the allegations in the SOR under this guideline. This information raises a security concern about Applicant's finances addressed, in relevant part, at AG ¶ 18 as follows:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

More specifically, the Government's information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19 (c) (*a history of not meeting financial obligations*).

Of the mitigating conditions listed at AG ¶ 20, I conclude that the following apply:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Appellant's current finances are sound, he has no new delinquent or excessive personal debt, and he has a positive cash flow. In 2000 and more recently, he acted in a reasonable and responsible manner in dealing with his financial problems. The debt at SOR 1.a was erroneously attributed to him rather than his medical insurance company, and Applicant is repaying his remaining debts through a reliable debt management and counseling service. Finally, his expenses are now reduced with the end of the lease on the marital residence, and he has incurred no new debts. All of the foregoing supports a conclusion that Applicant has mitigated the security concerns about his finances.

## Criminal Conduct

The Government presented sufficient information to support the allegations of criminal conduct in SOR 4. Information about Applicant's multiple arrests for assault and battery of a family member raises a security concern addressed at AG ¶ 30 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.

Available information further requires application of the disqualifying conditions at AG ¶ 31(a) (*a single serious crime or multiple lesser offenses*); AG ¶ 31(c) (*allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted*); and AG ¶ 31(d) (*individual is currently on parole or probation*).

The security concerns about Applicant's criminal conduct can be mitigated by establishing one or more of the following conditions listed at 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 or does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) evidence that the person did not commit the offense; and
- (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.

The mitigating condition at AG ¶ 32(a) does not apply because Applicant's conduct is frequent and recent. He was arrested in 2010 for the third time for the same conduct. On that occasion, he had to be subdued through non-lethal force by the police when he remained aggressive, uncooperative, and physically resistant to arrest. Applicant claims that the circumstances that gave rise to his domestic violence, that is, living with his wife and son, are no longer present. Thus, his position is that his conduct is not likely to recur. His argument is not supported by any record of acceptable behavior in any similarly close relationship. Further, Applicant still feels that he is not wholly responsible for his conduct, because his wife and son allegedly were abusive of him and were "pushing buttons." His failure to acknowledge his responsibility in these events precludes applicability of AG ¶ 32(b) and AG ¶ 32(d). AG ¶ 32(c) does not apply because it is not controverted that Applicant assaulted his wife and son as alleged. Applicant has not mitigated the security concerns about his criminal conduct.



## **Alcohol Consumption**

The Government's information also raised a security concern about Applicant's use of alcohol. That security concern is addressed at AG ¶ 21 as follows:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

More specifically, Applicant's arrests in 2009 and 2010 involved alcohol. The police reports introduced at the hearing indicated he had been drinking when he assaulted members of his family, but did not specify how much. Nonetheless, available information supports application of the disqualifying condition at AG ¶ 21(a), which considers as a security concern the following:

alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

In response to the SOR and at his hearing, Applicant asserted that he does not have a drinking problem and does not currently drink. However, Applicant's sobriety is not necessarily self-imposed. He has been ordered to abstain from alcohol and drugs as part of his probation, and he is tested randomly for those substances. On balance, the record does not support application of any of the AG ¶ 22 mitigating conditions.

## **Personal Conduct**

The Government's information also supports a broader security concern about Applicant's judgment, which is made questionable by his unacceptable conduct toward his family. The security concern about his personal conduct is addressed at AG ¶ 15, 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.

More specifically, information about Applicant's adverse personal conduct supports application of the disqualifying condition at AG ¶ 16(c):

credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

In addition to his arrests for domestic violence, Applicant was abusive to his wife and son on at least two other occasions in 2002. Further, Applicant's claims that he was somehow a victim in an abusive relationship with his family, and that he was not responsible for his actions, indicate significant shortcomings in his maturity and judgment. His claims are undermined by the repeated nature of his conduct and his refusal to cooperate with police during his most recent altercation.

Of the mitigating conditions listed under AG ¶ 17, only the following are potentially applicable here:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

These mitigating conditions do not apply for the same reasons, discussed under Guideline J, above, that mitigating conditions AG ¶ 32(a) and AG ¶ 32(d) do not apply. Applicant's conduct was frequent, recent, and anything but minor. Also, he has not accepted responsibility for his actions and seems to have inadequate insight into the poor judgment he demonstrated toward his family. Overall, the information presented in response to the Government's security concerns about Applicant's personal conduct does not support a conclusion that his conduct will not recur or that his judgment is suitable for continued access to classified information.

### **Whole-Person Concept**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines E, G and J. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). I further note that Applicant is a 48-year-old retired Air Force Master Sergeant with 26 years of exemplary service to his credit. Applicant has a good reputation in his community and his church. He also is credited with acting responsibly to correct financial problems that occurred

through a variety of circumstances around 2000 and while his marriage was deteriorating. As to his arrests, volatile behavior sometimes results from tensions and circumstances related to marital and familial discord. However, Applicant went far beyond yelling and threatening. His anger, sometimes exacerbated by alcohol, three times resulted in injury to two people closest to him. He also became violent with law enforcement during his most recent arrest. This is indicative of a more serious problem, which the court recognized when it required him to be under state supervision for three years and to abstain from alcohol during that time. Applicant completed anger management counseling, but is still undergoing domestic violence counseling, as well as random drug and alcohol testing. More important, he has not shown that he understands that he must be accountable for his conduct. All of this information sustains the doubts about his suitability for clearance that have been raised by the Government's information. Because protection of the national interest is of paramount importance in these adjudications, those doubts must be resolved against the individual.

### **Formal Findings**

Formal findings 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 F:	FOR APPLICANT
Subparagraphs 1.a - 1.g:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.e:	Against Applicant
Paragraph 3, Guideline G:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Paragraph 4, Guideline J:	AGAINST APPLICANT
Subparagraph 4.a:	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to continue Applicant's access to classified information. Request for security clearance is denied.

---

MATTHEW E. MALONE  
Administrative Judge