



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)

ISCR Case No. 12-03055

**Appearances**

For Government: Jeff Nagel, Department Counsel

For Applicant: *Pro se*

February 20, 2014

---

**Decision**

---

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (E-QIP) on November 7, 2011. (Government Exhibit 1.) On October 9, 2013, the Department of Defense (DoD) pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as amended), issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines J and E for Applicant. The SOR set forth the reasons why DoD adjudicators could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR on October 28, 2013, and he requested a hearing before an administrative judge. This case was assigned to the undersigned on December 30, 2013. A notice of hearing was issued on January 6, 2014, and the hearing was scheduled for January 24, 2014. At the hearing the Government presented three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. Applicant presented no exhibits, but did testify on his own behalf. The record remained open until close of business on February 3, 2014, to allow

Applicant to submit additional documentation. He submitted six Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 6, which were admitted without objection. The official transcript (Tr.) was received on February 3, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

Applicant is 41 years old, in the process of divorce, and has three children. He has a General Education Diploma (GED). He is employed by a defense contractor as an Electronics Technician and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline J - Criminal Conduct). The Government alleges that Applicant is ineligible for clearance because he engaged in Criminal Conduct.

Applicant has a twenty-five year history of criminal activity and police involvement including Domestic Violence, Driving Under the Influence (DUI), Reckless Driving, Vandalism and Drugs. Applicant explained that he grew up in a small town community. As a juvenile and a young adult he got into trouble frequently. Then about fourteen years ago, he married a woman who enjoyed drinking, fighting and bickering. Although their relationship was toxic, Applicant tried to hold the marriage together for the sake of their three children. She made it clear to Applicant that she would do everything she could to jeopardize his employment because she does not like his job. Applicant is currently in the process of divorce.

Applicant has been working with the Government since December 2002, and with his current employer since January 2007. He currently holds a Top Secret security clearance that he received in 2003.

In December 1986, Applicant was charged with felony Possession of a Controlled Substance. Applicant stated that at the young age of 15, he and his twin sister were regular users of methamphetamine. His parents were going through a divorce, and he and his sister lived with their father who was never around. Applicant had in his possession about \$20 worth of methamphetamine. Applicant pled guilty and was sentenced to six months in juvenile detention and three years probation. Applicant was given additional time for violating his probation.

In July 1990, at the young age of 18, Applicant was charged with Petty Theft. He explained that due to peer pressure from his friends who wanted to party, he stole a 12-pack of beer from the store. Applicant pled guilty and was sentenced to five days in jail and three years probation. (Tr. pp. 27-29.)

In August 1992, at the age of 20, Applicant was charged with Vandalism. He explained that he caught his girlfriend with another man in their apartment. Applicant

was so mad he broke the windshield of her truck. (Tr.p. 29.) Applicant pled guilty and was sentenced to six days in jail and three years probation.

Two years later, in November 1994, Applicant was charged with Obtaining a Utility Service Without Paying. He testified that since he had no utilities in his apartment, he plugged in an extension cord to the laundry room in his apartment building that ran to his apartment. The landlord found the extension cord and reported him to the police. Applicant pled guilty and was sentenced to 20 days in jail and three years probation.

In May 2001, Applicant was arrested for DUI. Applicant stated that he had been drinking alcohol at a friend's house. His friends had taken his car keys to prevent him from driving. His pregnant wife wanted him home so he started his car with a spoon. He got three or four blocks away, and crashed the car into a block wall. (Tr. p. 36.) He totaled the car. He was taken to the hospital with cuts, scrapes, and bruises, and a blood alcohol level of .23%. He pled nolo contendere and was sentenced to two days in jail, a \$1,500 fine, and five years probation. He was also required to attend an alcohol awareness class once a week for six months. (Tr.p . 38.)

In October 2001, Applicant was arrested for (1) Obstructing a Police Officer, and (2) Domestic Dispute. Applicant's wife woke him up in the middle of the night and started a fight with the Applicant. She then left the house. A neighbor called the police. When the police arrived, Applicant refused to let them in the house. Applicant was arrested and spent the night in jail, but no charges were filed by the District Attorney. (Tr.p. 40.)

In 2002, Applicant was arrested for Domestic Disturbance. Applicant has no recollection of the arrest. (Tr. pp. 42-43.) No charges were filed by the District Attorney.

In December 2006, Applicant was charged with (1) Domestic Dispute, and (2) Reckless Driving. Applicant explained that his wife had quit her job at a bar and had gone there to pick up her last paycheck. After about four hours, Applicant decided to drive down to the bar to see what was going on, as she would not answer his telephone calls. As he was pulling in, Applicant's wife was leaving with another man. Applicant followed them in his car and crashed into them. (Tr. p. 44.) The charge was reduced to Reckless Driving. Applicant pled nolo contendere and was sentenced to 18 months probation. Following this incident, Applicant and his wife separated.

In January 2007, Applicant was charged with Attempted Assault With a Deadly Weapon. Applicant has no recollection of this charge. He believes that it may be related to the incident in December 2006 for Reckless Driving discussed above. No charges were filed by the District Attorney.

In February 2007, Applicant was charged with Reckless Driving. Applicant explained that this charge involved the incident that occurred in December 2006, discussed above.

In February and again in December 2007, the police were called out to Applicant's residence for Battery on a Non-Cohabitant Spouse. At the time, Applicant and his wife were separated and living apart. On each occasion, she came over to Applicant's apartment and started a fight with him. Both incidents involved screaming and shouting as well as physical fighting, shoving and pushing, and destruction of personal property. At some point, she broke Applicant's nose. She broke all of the Applicant's deceased grandmother's china. She also chopped up his brand new couches with a knife. Applicant described his wife as a very violent person. (Tr. p. 51.)

In January 2011, the police were called out to the Applicant's house for Domestic Violence. At this point, Applicant and his wife had reconciled and were living together again. Applicant testified that he and his wife had been consuming alcohol when they got into a fight. (Tr. pp. 53-54.)

In April 2011, Applicant was arrested and charged with Spousal Battery. His 12 year old son called the police to report his parents fighting. Applicant was arrested and taken to jail.

Since his last arrest in April 2011, Applicant believes that there were two more occasions where the police were called out to his home for a domestic disturbance. On neither occasion were the Applicant or his wife arrested or charged for this misconduct. (Tr. p. 56.) Applicant decided in September 2013, to leave his wife for good and moved out of the apartment.

Applicant provides his wife with child support in the amount of \$600 monthly. In his free time he spends time with his children and takes them to the park to play. Two of the three children are Applicant's biological children. Although the youngest son is not the Applicant's child, Applicant loves, nurtures and provides financial support to him as well.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that Applicant is ineligible for a security clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

Applicant completed a security clearance application dated November 7, 2011. (Government Exhibit 1.) Question 22(a) asked him if, in the past seven years, he has been issued a summons, citation, or ticket to appear in court in a criminal proceeding against him? Question 22(b) asked him if, in the past seven years, he has been arrested by any police officer, sheriff, marshal or any other type of law enforcement official? Question 22(c) asked him if, in the past seven years, he was charged, convicted, or sentenced of a crime in any court? Applicant answered, "Yes," and reported only a June 2011 arrest for Domestic Disturbance. Applicant failed to disclose the full extent of his police record discussed above.

Question 22, under Police Record - of the same questionnaire asked Applicant if he has **ever** been charged with any felony offense? Applicant answered, "No."

(Government Exhibit 1.) This was a false statement. Applicant failed to reveal his felony charge for Possession of Methamphetamine in 1986.

Question 22, under Police Record - of the same questionnaire asked Applicant if he has **ever** been charged with an offense involving alcohol or drugs? Applicant answered, "No." (Government Exhibit 1.) This was a false statement. Applicant failed to reveal his DUI in May 2001 and his felony charge for Possession of Methamphetamine in 1986.

Applicant denies that he deliberately attempted to conceal information or mislead the Government investigation when he answered as he did to the questions regarding his police record on his security clearance questionnaire. He states that if he made mistakes, it was not intentional. (Tr. pp. 64-66.) I do not find this explanation convincing. The questions were simple, not complicated, and he should have answered them correctly. Since he was untruthful, the only rational explanation for this can be that he did not want the Government to know about them.

A declaration from the Applicant's friend, who has known him for the past six years, states that he has witnessed Applicant's wife's volatile drunken behavior and that he himself has been assaulted with a deadly weapon by Applicant's wife. In his opinion, Applicant is a man of patience who has tried to keep the family together despite his wife's destructive behavior. He describes Applicant as a hard worker, honest person, and a good father who deserves a medal for what he has put up with. Applicant is said to be a man of integrity and honor who should be granted a security clearance. (Applicant's Post-Hearing Exhibit 1.)

Performance Appraisals of the Applicant for the period from May 2008 through April 2013 are favorable in every respect and reflect that he either "exceeds expectations" or "meets expectations" in every category. (Applicant's Post-Hearing Exhibit 2.)

Applicant has received several promotions from his employer for his fine work performance and professionalism on the job. (Applicant's Post-Hearing Exhibits 3 and 4.)

Letters from the Applicant's Security Facility Officer, and a Field Engineer, collectively indicate that he is dependable, honest, and hard working and that he is not the type of person to betray or endanger the national security of this country for any reason. Applicant is considered to be a major contributor to the company's success. He is described as having a positive attitude and a strong sense of team work. He is highly recommended for a security clearance. (Applicant's Post-Hearing Exhibits 5 and 6.)

## POLICIES

Enclosure 2 and Section E.2.2. of the Directive set forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline J (Criminal Conduct)

30. *The Concern.* Criminal activity creates a 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.

#### Conditions that could raise a security concern:

31.(a) a single serious crime or multiple offenses; and

31.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

#### Conditions that could mitigate security concerns:

None.

### Guideline E (Personal Conduct)

15. *The Concern.* 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.

#### Conditions that could raise a security concern:

16.(a) a 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; and

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, questionable judgment, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the administrative judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- b. The circumstances surrounding the conduct, to include knowledgeable participation;
- c. The frequency and recency of the conduct;
- d. The individual's age and maturity at the time of the conduct;
- e. The extent to which participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent behavioral changes;
- g. The motivation for the conduct;
- h. The potential for pressure, coercion, exploitation or duress; and
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The administrative judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an applicant for clearance may be involved in criminal conduct and dishonesty that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving that Applicant has engaged in criminal conduct (Guideline J), and dishonesty (Guideline E). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of Applicant. Because of the scope and nature of Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines J and E of the SOR.

It is noted that under the circumstances, Applicant has been a good father to his children and has tried to keep his family together as best he could. Despite this, Applicant's twenty-five year history of criminal activity and police involvement beginning in 1986, and continuing until at least April 2011, has not been mitigated. This behavior shows a pattern of conduct reflecting poor judgment and unreliability. Under Guideline J, Criminal Conduct, Disqualifying Conditions 31.(a) *a serious crime or multiple lesser offenses*, and 31.(c) *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted* apply. None of the mitigating conditions are applicable. Applicant's criminal activity, regardless of whether he was arrested, charged or not, shows an on going pattern of behavior that started as a juvenile and has continued well into his adulthood. Given this long dysfunctional history that has been established as part of a lifestyle pattern, it is likely to continue and recur, and casts doubt on his reliability, trustworthiness, and judgment. Based upon this exhaustive criminal record, there is insufficient evidence of successful rehabilitation at this time. Accordingly, I find against Applicant under Guideline J, Criminal Conduct.

Equally as troubling in this case is the fact that Applicant was untruthful concerning his police record on his security clearance application. He deliberately concealed material information from the Government. There is no excuse for this misconduct. The Government relies on the representations of its defense contractors and must be able to trust them in every instance. Applicant made no prompt, good-faith



effort to correct his mistakes. Applicant cannot at this time be deemed sufficiently trustworthy. In fact, he has demonstrated unreliability and untrustworthiness. Under the particular facts of this case, his poor personal conduct is considered a significant security risk, which prohibits a favorable determination in this case.

Under Guideline E, Personal Conduct, Disqualifying Conditions 16.(a) *a 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*, and 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, questionable judgment, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E, Personal Conduct.

I have also considered the “whole-person concept” in evaluating Applicant’s eligibility for access to classified information. Applicant is a 41 year old man who has made some very poor choices in his life. He has recently realized that he must do something to turn his life around, and so he has left his wife once and for all, and plans to divorce her. His long history of misconduct, however, are future indicators of poor judgment and unreliability that preclude him from security clearance eligibility at this time.

Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole supports a whole-person assessment of poor judgment, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

A security clearance is a privilege, not a right. In order to meet the qualifications for access to classified information, it must be determined that the applicant is and has been sufficiently trustworthy on the job and in his everyday life to adequately protect the Government’s national interest. Overall, based upon the seriousness of the conduct outlined here, this Applicant has demonstrated that he is not trustworthy, and he does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct.)

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

## **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

### Paragraph 1: Against Applicant.

- Subpara. 1.a.: Against Applicant.
- Subpara. 1.b.: Against Applicant.
- Subpara. 1.c.: Against Applicant.
- Subpara. 1.d.: Against Applicant.
- Subpara. 1.e.: Against Applicant.
- Subpara. 1.f.: Against Applicant.
- Subpara. 1.g.: Against Applicant.
- Subpara. 1.h.: Against Applicant.
- Subpara. 1.i.: Against Applicant.
- Subpara. 1.j.: Against Applicant.
- Subpara. 1.k.: Against Applicant.
- Subpara. 1.l.: Against Applicant.
- Subpara. 1.m.: Against Applicant.
- Subpara. 1.n.: Against Applicant.

### Paragraph 2: Against Applicant.

- Subpara. 2.a.: Against Applicant.
- Subpara. 2.b.: Against Applicant.
- Subpara. 2.c.: Against Applicant.
- Subpara. 2.d.: Against Applicant.

## **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Darlene Lokey Anderson  
Administrative Judge