



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
XXXXXXXXXXXXXXXXXXXXXXX ) ISCR Case No. 15-01891  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro se*

09/22/2016

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> I grant Applicant’s clearance.

On 2 November 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, Personal Conduct.<sup>2</sup> Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 7 June 2016 and I convened a hearing 22 August 2016. DOHA received the transcript 29 August 2016.

<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-8, and hearing exhibit (HE I).

<sup>2</sup>DoD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), 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.

## Findings of Fact

Applicant admitted the SOR allegations. He is a 33-year-old computer infrastructure architect employed by a defense contractor since November 2010. He has been employed continuously in similar jobs since May 2005, except for a period of unemployment from June-August 2009. He has not previously held a clearance.

Applicant was born in Nigeria, and immigrated to the United States (U.S.) in June 2001. He became a naturalized U.S. citizen in January 2009, and obtained his U.S. passport in August 2012. He is married and has two sons, ages two and four.

Between July 2007 and June 2015, Applicant had a variety of run-ins with law enforcement, resulting in very little punishment. In January 2007, Applicant was charged with trespassing after warning (SOR 1.a).<sup>3</sup> In August 2007, a warrant was issued when Applicant failed to appear at his scheduled hearing (SOR 1.b). However, in January 2008, Applicant appeared at his hearing and the case was nolle prosequere (GE 2, 3). In March 2009, Applicant was charged with **unknowingly** operating a vehicle with a suspended, canceled, or revoked driver's license (SOR 1.c)(my emphasis). Applicant apparently paid a fine, but did not appear for two scheduled hearings. No warrants were issued. Nevertheless, Applicant appeared for a hearing in March 2010, and the charge was dismissed (GE 2).

In April 2009, Applicant was charged with disorderly intoxication in a public place that caused a disturbance (SOR 1.d).<sup>4</sup> In June 2009, Applicant pled nolo contendere on the advice of counsel, and adjudication of the case was withheld (GE 2). In May 2009, Applicant was charged with operating a vehicle with a suspended, canceled or revoked driver's license (SOR 1.f).<sup>5</sup> However, in June 2009, the case was nolle prosequere (GE 5). Also in May 2009, Applicant was discharged by his employer for failing to report his arrests (SOR 1.e),<sup>6</sup> a requirement Applicant claimed to be unaware of until the day he was fired (Tr. 32-33).

---

<sup>3</sup>Applicant was at a bar when a fight broke out amongst other patrons. The police ordered everybody in the bar to leave. Applicant was charged with trespassing after warning when he kept insisting that he and his friends were not involved in the fight (Tr. 24-26).

<sup>4</sup>Applicant drank too much at a bar. Not wanting to drive home intoxicated, Applicant asked a nearby police officer to summon a cab for him, which the officer did. However, when the Applicant discovered—after the cab ride had begun—that the cabby expected to charge \$90 for a 10-mile ride, Applicant stopped the cab. The cabby called the police officer to the scene. After Applicant paid \$10 for the ride he had taken to that point, he was arrested because the police officer would not let him sleep it off in his car, and would not let Applicant call another cab (Tr. 29-32).

<sup>5</sup>Applicant was also charged with failure to provide proof of insurance, a charge which the court dismissed.

<sup>6</sup>The record does not reflect if Applicant was fired over just the March and April 2009 arrests, or for the 2007 incidents as well.

In July 2012, Applicant got into an argument with his girlfriend. The police were called, but no arrests were made. On 29 July 2012, the girlfriend sought an interim protective order. On 31 July 2012 and 7 August 2012, temporary protective orders were issued (SOR 1.g). On 17 August 2012, a final order dismissing the protective order was issued when the petitioner requested dismissal (GE 6).

In March 2014, Applicant was charged with second degree assault on his wife (previously his girlfriend)(SOR 1.h).<sup>7</sup> In December 2014, Applicant was awarded supervised probation before judgment. In June 2015, a bench warrant was issued alleging that Applicant had violated the terms of his probation (SOR 1.i). On 7 August 2015, Applicant was found to be in violation of some, but not all, of the terms of probation originally alleged.<sup>8</sup> His probation was terminated unsatisfactorily, with the only additional consequence being sentenced to three days in jail, with credit for time previously served (GE 7).<sup>9</sup>

Applicant has undertaken driver improvement programs, domestic violence counseling, and relationship counseling with his wife. The driving-related incidents (SOR 1.a-1.e) all occurred when Applicant was much younger, at a time when he admits he was immature, and have not recurred in over seven years. The more recent incidents involve relationship issues that Applicant and his wife continue to address (Tr. 53).

### **Policies**

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to

---

<sup>7</sup>Applicant and his wife got into an argument, which devolved into mutual hitting, with Applicant's wife starting the physical confrontations.

<sup>8</sup>Specifically, Applicant was found to have paid his fees and associated costs as required, and to have maintained his employment as required. He was found to have failed to meet with his probation supervisor as required, which was true because Applicant's company had assigned him to a contract located out of state. He was also found to have left the state without his probation supervisor's permission. It appears to have not mattered that Applicant maintained telephone contact with his probation supervisor. It also appears to have not mattered that Applicant informed his probation supervisor that he was being assigned to a job out of state. Apparently, he was supposed to have obtained written permission to leave the state, a requirement which appears nowhere on any of the court orders or related documents provided to Applicant by the state. Moreover, Applicant had previously been given telephonic permission to go to a job out of state, albeit just across the state line from Applicant's home.

<sup>9</sup>Applicant sought reconsideration of the judge's findings, which was denied. Applicant appealed the judge's ruling, which appeal is currently pending (Answer; Tr. 43).

classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is 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, the burden shifts to applicant to 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>10</sup>

### **Analysis**

The Government established a case for disqualification under Guideline E, but Applicant mitigated the security concerns. Applicant had several encounters with law enforcement between July 2007 and June 2015.<sup>11</sup> However, those encounters resulted in little or no punishment, some indication of what the judicial system thought of the seriousness of the offenses.

The appropriate mitigating conditions encompass the fact that the judicial system took comparatively minor action against Applicant,<sup>12</sup> and Applicant (and his wife) have undertaken a variety of counseling to improve their relationship.<sup>13</sup> Most of the questionable behavior occurred while Applicant lived in another state (SOR 1.a-1.f), and the two most serious of those incidents consist largely of violating the unwritten rule that

---

<sup>10</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>11</sup>¶16 (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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. This included but is not limited to consideration of: . . . (3) a pattern of . . . rule violations.

<sup>12</sup>¶17 (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;

<sup>13</sup>¶17 (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;

thou shalt not vex the police. The more recent incidents (SOR 1.g.-1.i) involve domestic arguments with his girlfriend/wife that they have addressed through counseling. Under the circumstances, I consider Applicant's behavior unlikely to recur. Accordingly, I resolve Guideline E for Applicant.

**Formal Findings**

Paragraph 1. Guideline E:	FOR APPLICANT
Subparagraphs a-i:	For Applicant

**Conclusion**

Under 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.

---

JOHN GRATTAN METZ, JR  
Administrative Judge