



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



In the matter of: )  
)  
) ISCR Case: 15-03418  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

03/15/2017  
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**Decision**  
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WHITE, David M., Administrative Judge:

Applicant was convicted of multiple crimes involving domestic violence, disorderly conduct, and violating a no contact order between December 2008 and July 2014. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of Case**

On October 3, 2014, Applicant submitted a security clearance application (SF-86). On November 6, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline J, Criminal Conduct. (Item 1.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the DOD after September 1, 2006.

Applicant answered the SOR on December 14, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On March 14, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items,<sup>1</sup> was mailed to Applicant on March 14, 2016, and received by him on March 24, 2016. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. He did not file any objection to the Government's FORM, submit additional evidence for consideration, or request additional time to respond. DOHA assigned the case to me on December 13, 2016.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted all four allegations concerning his criminal conduct. His admissions are incorporated into these findings of fact.

Applicant is 53 years old. He has worked for a defense contractor since 2014. He has no military service, and this is his first application for a security clearance. He was married from 1986 to 1989, and has no children. He has been living with his current cohabitant since July 2010. (Item 3.)

Applicant was arrested and charged with felony Domestic Assault on December 13, 2008. Later that day he was released on bail and issued a no contact order. The following day he was arrested again for violating the no contact order. That charge was dismissed on December 22, 2008. However, he violated the no contact order again, leading to an additional misdemeanor charge. In March 2009, he was convicted of the misdemeanor crimes of Simple Assault/Domestic and Violation of No Contact Order. He was sentenced to one year in jail (suspended) and placed on probation for one year. (Item 2; Item 3; Item 4; Item 5; Item 6.)

In July 2014, Applicant was arrested and charged with disorderly conduct. On August 19, 2014, he pled Nolo Contendere and was convicted of this offense. He was sentenced to six months in jail (suspended) and placed on probation for six months. He remained on probation at the time he submitted his SF-86 in October 2014. (Item 2; Item 3; Item 7.)

Applicant offered no supplemental evidence concerning the circumstances surrounding his offenses or whether he satisfactorily completed any counseling or rehabilitation programs. He offered no statement expressing remorse for his crimes, character references from people who know him, or evidence concerning the quality of

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<sup>1</sup> The FORM says that nine Items were included. However, the March 4, 2009 document that is listed in Section II as Item 7 was omitted. Item 8 is part of an OPM Report of Investigation that is not admissible, per Directive E3.1.20, since Applicant did not adopt it and Department Counsel provided no authenticating evidence. Item 8 contains no mitigating information that is not duplicated elsewhere in the record, so its exclusion is not detrimental to Applicant.

his work performance. I was unable to observe his character or credibility in person because chose not to have a hearing.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## Analysis

### Guideline J, Criminal Conduct

AG ¶ 30 sets forth the security concerns pertaining to criminal conduct:

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.

AG ¶ 31 describes two conditions that could raise a security concern and may be disqualifying in this case:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

The evidence established the above disqualifying conditions. Between 2008 and 2014, Applicant committed several misdemeanor offenses involving domestic violence, violating a court order, and disorderly conduct. He was convicted, sentenced to a total of 18 months in jail (suspended) and placed on probation for 18 months.

AG ¶ 32 provides two conditions that could mitigate the above security concerns:

- (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 good judgment; 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.

Applicant was convicted of criminal conduct that occurred in 2008, 2009, and 2014, shortly before he applied for a security clearance. His offenses reflect his inability or unwillingness to conform his behavior to accepted rules and regulations. The offenses were not shown to have occurred under unusual circumstances and are relatively recent. Applicant offered no explanation for his conduct that would establish mitigation under AG ¶ 32(a). Applicant expressed no remorse for his criminal conduct. He offered no evidence of successful rehabilitation or counseling to support a conclusion that recurrence is unlikely. Accordingly, mitigation under AG ¶ 32(d) was not established.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

According to 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.

## Formal Findings

Paragraph 1, Guideline J: **AGAINST APPLICANT**

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### **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.

DAVID M. WHITE  
Administrative Judge