



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



In the matter of:)
XXXXXXXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 15-03545
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Jacob, T. Ranish, Esquire

03/30/2017

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I grant Applicant's clearance.

On 12 February 2016, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, Personal Conduct.² 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 29 August 2016. DOHA received the transcript 7 September 2016.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-5, hearing exhibit (HE) I, and Applicant exhibits (AE) A-B. AE B was timely received post hearing. The record closed 7 September 2016, when Department Counsel stated no objection to AE B.

²DoD 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 36-year-old field engineer employed by a defense contractor since May 2013. He was unemployed/attending college full time from December 2011 to May 2013. He served honorably in the United States (U.S.) military from November 2000 to December 2011, attaining paygrade E-5. He married in March 2002. His wife served in the same service branch as Applicant. They have two sons, born in October 2003 and February 2007.

In May 2007, Applicant was investigated by the military service criminal investigation division for an April 2007 incident in which Applicant disciplined his oldest son—then three-and-a-half years old—by spanking his bare bottom with a belt, hard enough to raise bruises (GE 2; Tr. 58). During the investigation, Applicant acknowledged that he had spanked his son too hard. After receiving some parenting training, Applicant stopped using spanking as a means of discipline (Tr. 39, 58).

In 2009, the military family advocacy group recommended that Applicant take parenting classes after he used a caustic magic eraser brush to remove a temporary tattoo from his oldest son.³ No disciplinary action was taken against Applicant by the military, but during the course of the interviews and parenting classes, Applicant realized that he had an alcohol problem. He began alcohol counseling in July 2009, and continued it until November 2010, during which time he attended two or three Alcoholics Anonymous (AA) meetings per week. He abstained from alcohol from Christmas 2009 to July 2013 (GE 5). He no longer abuses alcohol.

In June 2012, Applicant was charged with child abuse and assault. The assault charge was dismissed, and he received a deferred sentence of three years on the child abuse charge, pending successful completion of supervised probation (GE 4).⁴ Applicant successfully completed his probation and the latter charge was dismissed (GE 3).

In March 2016, Applicant underwent a detailed psychological evaluation, conditioned (by the psychologist) on the understanding that the evaluation would be objective, even if the conclusions proved unhelpful to Applicant. Among other things, the psychologist reviewed both the SOR and Applicant's 2013 interview with a Government

³Applicant's son had been allowed to get the temporary tattoo as a reward for his good behavior. However, when he shoplifted a plastic play ball from a local store, Applicant decided to revoke that privilege by literally removing the tattoo. He used a magic eraser, not realizing that the cleanser contained in it was caustic, and raised a red mark on his son's chest (Tr. 39-41).

⁴Applicant's youngest son, then five-years-old, had gotten his mother's nail polish all over him. Applicant used a warm terry cloth towel to scrub the nail polish off his son, raising blisters on his son's skin. His wife reported the incident to the hospital and the police, resulting in Applicant being charged. Applicant spent one night in jail, which he described as an eye opener. In August 2012, while the case was still being investigated, Applicant was ordered to leave the family residence and not see his children. Applicant also began weekly counseling at the recommendation of child protective services. After a year of investigation and therapy, the case was dismissed in June 2013 (GE 5; Tr. 42-47).

investigator. The psychologist considered Applicant both with regard to the child parenting issues and Applicant's fitness to hold a clearance. He concluded that Applicant was free from any psychological defect, disease or condition that would prevent him from holding the security clearance appropriate for his employment. He further opined that Applicant has acquired the parenting skills, the lack of which caused him to become involved with the authorities (Answer; AE B).

Applicant provided nine character references from his current supervisor, several coworkers, and two coworkers from his time in the military, one of whom is also a current coworker (Answer; AE A). They all praise his honesty and trustworthiness and recommend him for his clearance. They all purport to know generally about Applicant's parenting issues, but none have professed the knowledge claimed by the psychologist. Applicant has excellent employee evaluations, and had received recognition, both from his current employer and the military. Applicant's wife provided two extensive letters (Answer; AE A) detailing Applicant's transformation from the man whose lack of parenting skills caused the three child-abuse incidents described in the SOR to the man who is fully involved with his family and has the parenting skills to deal with his growing boys.

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 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.⁵

⁵See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The Government established a case for disqualification under Guideline E, but Applicant mitigated the security concerns. Applicant had three encounters with the authorities over Applicant's treatment of his children between May 2007 and June 2012.⁶ However, those encounters resulted in administrative resolutions in the first two instances, in both of which Applicant learned some of the parenting skills he lacked, and dismissal of charges after successfully completing probation in the third, accompanied by more extensive counseling and parenting training.

The appropriate mitigating conditions encompass the fact that the judicial system took comparatively minor action against Applicant for his criminal charges, and none for the other two incidents.⁷ I do not understate the seriousness of Applicant's behavior toward his children. However, Applicant undertook considerable counseling and parenting training in the process of completing his probation. Moreover, his recent psychological evaluation and his wife's assessment confirm that Applicant is not the same man that had difficulty dealing with his sons.⁸ 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-c:	For Applicant

⁶¶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.

⁷¶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;

⁸¶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;

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