



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



In the matter of: )  
)  
) ISCR Case No. 15-04983  
)  
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Applicant for Security Clearance )

**Appearances**

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

12/09/2016

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**Decision**

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CURRY, Marc E., Administrative Judge:

Upon considering the surrounding circumstances of Applicant's criminal charges and the comprehensive presence of rehabilitation, I conclude that Applicant has mitigated the criminal conduct and personal conduct security concerns. Clearance is granted.

**Statement of the Case**

On December 23, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J, criminal conduct, and E, personal conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG).

Applicant answered the SOR on January 5, 2016, denying all of the allegations except subparagraph 1.c, and requesting a hearing. On August 11, 2016, the case was assigned to me. On September 8, 2016, a notice of hearing was issued scheduling the case for September 26, 2016. At the hearing, I received three Government exhibits marked as Government Exhibits (GE) 1 through 3. Also, I considered Applicant's testimony, and took administrative notice of a discovery letter that Department Counsel mailed to Applicant (HE I). The transcript (Tr. ) was received on October 4, 2016.

### **Findings of Fact**

Applicant is a 46-year-old married man with two children, ages 12 and 7. He has been separated from his wife since 2011, and he has physical custody of the children. He is a high school graduate who repairs copiers for a living. He has performed this type of work for 17 years and he has been with his current employer for the past three years.

In February 2014, Applicant was charged with harassment stemming from an incident with a neighbor, as alleged in subparagraph 1.a. The incident began when the neighbor discovered that Applicant had reported her daughter to the school principal for bullying his daughter. (Tr. 22) After harsh words were exchanged on Applicant's front lawn, the neighbor filed the charges. The charges were later dropped. (Tr. 22)

Subparagraphs 1.b through 1.e related to domestic conflicts between Applicant and his wife. Their relationship is estranged because of her alcoholism. When she is intoxicated she becomes belligerent, hitting Applicant and "throwing things" at him. (Tr. 25) On one occasion, she hit him so hard in the face that his eye was swollen shut. (Tr. 25) And on another occasion, his wife was so angry, that Applicant locked his children in the car, fearing for their safety. (Tr. 26)

The November 2009 episode, as alleged in subparagraph 1.b, occurred after Applicant's intoxicated wife told him that she was going to go out to pick up their kids. Applicant refused to let her drive the car. When she did not relent, he pushed her to the bed and locked her in the bedroom, whereupon she called the police. (Tr. 23) Applicant was arrested and charged with assault on a family member. It is unclear from the record whether the charges were later dropped or Applicant received probation.

In August 2008, Applicant was arrested, as alleged in subparagraph 1.c, after a dispute with his wife. The episode was precipitated by her intoxication. The court later dismissed the charge. (Tr. 25) The arrests of May 2007 and February 2003, as alleged in subparagraphs 1.d and 1.e, respectively, occurred under similar circumstances as those alleged in subparagraphs 1.b and 1.c. The outcome of the charges is unknown from the record.

In 1988, when Applicant was a teenager, he was arrested and charged with carrying a concealed weapon and brandishing a firearm. (Tr. 27) Applicant contested the charge contending that the weapon was a BB gun, and that his friend was the one

who “pulled [it] out on somebody.” (Tr. 27) The charges were dropped after his friend came to court and admitted to the crimes. (Tr. 27)

Currently, Applicant’s wife’s whereabouts are unknown. Her last fixed address was a homeless shelter. (Tr. 33) Periodically, he will see her in the street with other homeless people. The last time he saw her, a few weeks before the hearing, she was in a supermarket parking lot, intoxicated. Applicant took her to his home, fed her, and showered her. (Tr. 34) She left after a few days.

Applicant’s wife has a son, age 22, from a previous relationship. He splits time between Applicant and his father, living with Applicant for two days per week. Applicant is entirely responsible for his stepson’s financial needs, including his schooling. (Tr. 30)

Applicant has taken an anger-management class as part of the court-ordered requirements related to one of his arrests. He is not sure which episode prompted the court to impose the anger-management order. (Tr. 32) Applicant has enrolled his children in therapy. (Tr. 40)

## **Policies**

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a security clearance.

## **Analysis**

### **Guideline J, Criminal Conduct**

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability and trustworthiness. Moreover, by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” (AG ¶ 30) Applicant’s history of arrests triggers the application of AG ¶ 31(a), “a single serious crime, or multiple lesser offenses.”

The 1988 charge was dismissed, as another person admitted committing the crime. AG ¶ 32(c), “evidence that a person did not commit the offense,” applies. I resolve subparagraph 1.f in Applicant’s favor.

As for the domestic-conflict charges, Applicant testified that he was either the victim or the conscientious intervenor trying to shield his wife and children from her self-destructive behavior. Applicant's wife, whose whereabouts are unknown, did not testify, and there is no other corroborating evidence. Consequently, an evaluation of the surrounding circumstances is completely reliant on Applicant's testimony.

The multiple number of domestic-violence episodes is troubling. Moreover, the most recent arrest in November 2014 stemmed from a dispute with a neighbor, not a marital issue. This suggests that Applicant may have an anger-management problem, and undercuts his credibility. Conversely, Applicant has maintained a paternal relationship with his wife's son, a young adult, providing financial support and allowing him to live at his home two days per week, despite his marital separation from his stepson's mother. Sensitive to his wife's current plight, he responds with compassion rather than vindictiveness when he periodically encounters her in the streets, taking her home to shelter her. Also, he has completed an anger-management course, and he has enrolled his children in therapy to address the issues of their mother's abandonment. Under these circumstances, I conclude Applicant's testimony is credible.

### **Guideline E, Personal Conduct**

Under this guideline, "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." Applicant mitigated the personal conduct security concerns for the same reasons set forth above.

### **Whole-Person Concept**

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

- (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.

I considered the whole-person factors in my credibility determination of Applicant in the criminal conduct section of the Decision.

### **Formal Findings**

Formal findings for or against Applicant 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 J:	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY  
Administrative Judge