



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



In the matter of: )  
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[NAME REDACTED] ) ISCR Case No. 15-02208  
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Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

06/28/2016

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**Decision**

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MALONE, Matthew E., Administrative Judge:

Applicant did not meet his burden of producing information that mitigates the security concerns about his long history of criminal conduct and adverse personal conduct. His request for continued access to classified information is denied.

**Statement of the Case**

Applicant has worked for the same defense contractor since August 1997. He first received a security clearance in September 1997. On June 27, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to renew his eligibility for access to classified information. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to continue to have access to classified information.<sup>1</sup>

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive).

On October 27, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct).<sup>2</sup> Applicant timely responded to the SOR and requested a decision without a hearing. On January 7, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)<sup>3</sup> in support of the SOR. Applicant received the FORM on January 11, 2016, and timely submitted additional information. (Response to FORM). The record closed on February 10, 2016, and the case was assigned to me on May 2, 2016.

### **Findings of Fact**

Under Guideline J, the Government alleged that in October 1998, Applicant was arrested and charged with assault and battery (SOR 1.a); and that in June 2003 (SOR 1.b), June 2005 (SOR 1.c), and August 2007 (SOR 1.d), he was arrested and charged with assault and battery on a family member. It was further alleged that in August 2007, Applicant was charged with speeding and driving on a suspended license (SOR 1.e); and that on October 20, 2012, he was arrested and charged with driving under the influence of alcohol or drugs, for which he was convicted in January 2013 (SOR 1.f). Under Guideline E, the Government cross-alleged as adverse personal conduct the allegations at SOR 1.a - 1.f (SOR 2.a). In response to the SOR, Applicant admitted with explanations all of the Guideline J allegations, and by reference, all of the Guideline E allegations. (FORM, Item 1) In addition to the facts established by his admissions, I make the following findings of fact.

Applicant is 38 years old. After graduating from high school in 1997, he enrolled in his employer's apprenticeship school. He successfully completed this vocational training in August 2001. Applicant and his wife were married in June 1999. They separated in July 2008, and Applicant filed for divorce in January 2016. They have three children, ages 16, 12, and 9. The assault charges alleged in SOR 1.b - 1.d occurred in connection with domestic arguments with his estranged wife. Each time, Applicant was given probation and ordered to complete anger management counseling. He complied with all of the court's orders. (FORM, Items 1 - 4)

The 1998 assault charge arose from a bar fight involving Applicant and his friends. He was given a one-year suspended jail sentence. (FORM, Items 1 and 3)

In October 2010, Applicant was pulled over for speeding on his way to work. His license was found to have been suspended. Applicant was later convicted of both offenses but regained his driving privileges six months later. (FORM, Items 1 - 3)

On October 20, 2012, four months after submitting his EQIP, and five days before his personal subject interview with a Government investigator, Applicant consumed alcohol at his home before driving to his girlfriend's house. On the way, he hit

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<sup>2</sup> See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

<sup>3</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included seven exhibits (Items 1 - 7) proffered in support of the Government's case.

a parked trailer but left the scene and continued on to his destination. After several hours there he drove home. On the way, he was stopped by police and administered a breathalyser test, which he failed. He was arrested and charged with DUI and leaving the scene of an accident. He was convicted of the DUI in January 2013. (FORM, Items 1 and 3)

Applicant claims he has learned from his past mistakes, especially his most recent alcohol-related infraction. He attended court-ordered Alcoholics Anonymous (AA) and alcohol safety and awareness training. He also had his driver's license suspended for one year, but now has regained his driving privileges. He repeatedly expressed remorse for his arrests and the impact they had on his family. (FORM, Item 1; Response to FORM)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove

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<sup>4</sup> Directive. 6.3.

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

controverted facts alleged in the SOR.<sup>6</sup> If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>7</sup>

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.<sup>8</sup> A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.<sup>9</sup>

## Analysis

### Criminal Conduct

Available information is sufficient to support the SOR allegations under this guideline. Applicant has a long history of criminal conduct, some, but not all, of which, was related to his marriage. Even after separating from his wife and re-applying for his security clearance, Applicant continued to violate the law. The facts established by Applicant's admissions and by the information contained in the FORM reasonably raise a security concern addressed, in relevant part, at AG ¶ 30 as follows:

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.

Specifically, the record requires application of the disqualifying condition at AG ¶ 31(a) (*a single serious crime or multiple lesser offenses*). I have also considered the following pertinent AG ¶ 32 mitigating conditions:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life; and

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<sup>6</sup> Directive, E3.1.14.

<sup>7</sup> Directive, E3.1.15.

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(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.

Appellant's last criminal offense occurred two-and-a-half years ago and might not otherwise be considered recent. However, his record of criminal conduct spans most of the past 20 years, and he only completed the terms of his DUI sentence in early 2014. Not enough time has passed to support application of AG ¶ 32(a). His change of marital status also does not support mitigation here. Three of the six offenses documented here had nothing to do with his marriage. AG ¶ 32(b) does not apply. Finally, all of the foregoing precludes application of AG ¶ 32(d). On balance, Applicant has not mitigated the security concerns about his criminal conduct.

### **Personal Conduct**

Available information also reasonably raises a security concern about Applicant's overall judgment and reliability. Someone who is willing to repeatedly disregard laws regarding physical violence and public safety may also disregard rules and procedures for safeguarding classified information. The security concern in this regard is stated at AG ¶ 15 as follows:

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.

Because Applicant's conduct is directly addressed and is disqualifying under the criminal conduct guidelines at AG ¶ 31, none of the specific AG ¶ 16 disqualifying guidelines is applicable. Nonetheless, mitigation under the following AG ¶ 17 mitigating conditions is potentially available:

(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; and

(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.

For the same reasons that preclude application of the mitigating conditions at AG ¶¶ 32(a), 32(b) and 32(d), there can be no mitigation under this guideline. Applicant's conduct has been serious and repeated since 1997. His violent behavior recurred despite multiple anger management classes. Not enough time has passed since his last

criminal offense, and he has not produced any independent information to support a conclusion that he is rehabilitated. The security concerns about Applicant's personal conduct remain.

In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant had the burden of presenting sufficient information to refute or mitigate the resulting security concerns. Without such information, unresolved doubts are established about his continued suitability for access to classified information. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

### **Formal Findings**

Formal findings 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.f:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's security clearance is revoked.

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MATTHEW E. MALONE  
Administrative Judge