



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



In the matter of:

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ISCR Case No. 24-02353

Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

06/13/2025

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On December 20, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J, Criminal Conduct. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on January 13, 2025, and requested a hearing before an administrative judge. The case was assigned to me on April 10, 2025. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 11,

2025, and the hearing was convened as scheduled on May 20, 2025. The Government offered four exhibits, which were marked as Government Exhibits 1 through 4, and were admitted into evidence without objection. The Applicant offered seven exhibits which were marked as Applicant's Exhibits A through G, and were admitted into evidence without objection. He called four witnesses and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 2, 2025.

Findings of Fact

Applicant is 30 years old single, and has no children. He has a high school diploma, about two years of college, and has Welding and Air Frame Power Plant certificates. He has no military training. He holds the position of Aircraft Mechanic with a defense contractor. A security clearance is required in connection with this employment.

Guideline J – Criminal Conduct

The SOR alleges that Applicant has a history of criminal conduct involving an arrest in November 2016, for Possession of a Controlled Substance, marijuana; an arrest in July 2019, for Boating while Under the Influence; and an arrest for Battery by Strangulation in June 2021.

Applicant started working for his current employer as a Maintenance Mechanic on December 5, 2022, in State A. In July 2023, he was promoted to the position of Aircraft Mechanic 1, on an Air Force Base in State A. In October 2024, his company transferred him to work in the same position in State B. He applied for a security clearance for the first time on March 28, 2024. (Government Exhibit 1.)

In November 2016, Applicant was arrested for Possession of a Controlled Substance. He explained that he was with a friend who had a big sack of marijuana. Applicant was using some of the marijuana to roll a joint. Applicant and his friend were leaving a club and getting into his friend's car when they noticed police sitting across the street watching them. As soon as they drove off, the police hit their lights and pulled them over. Applicant stated that he freaked out and threw the joint out of the window. Applicant stated that the police made him get out of the vehicle and sit in the police car, while they searched his side of his friend's vehicle. They found a small crumb of marijuana. Had they done a full search they would have found that his friend was sitting on a big sack of marijuana. Applicant's friend convinced the police not to arrest the Applicant because he was in school. Applicant was charged with Possession of a Controlled Substance. Applicant stated that he has not used marijuana since 2017. (Tr. pp. 73-75.) At court, Applicant made a plea deal to get the guilty adjudication withheld. He was placed on probation for six months, fined, and required to take an on-line course. He completed the sentencing requirements and later had the matter sealed. (Tr. pp. 73-77.)

Not alleged in the SOR is a minor incident that occurred in 2014, when Applicant was with the same friend he was with during his 2016 arrest, and was cited by the police for being a Minor in Possession of Alcohol. Applicant admitted that he was under the age of 21 and was consuming alcohol at the beach. Applicant stated that he had to do an online course and pay a fine. He was not arrested. (Tr. pp. 78-79.)

On July 4, 2019, Applicant was arrested for Boating Under the Influence of Alcohol. Applicant explained that he had rented, and was the driver of a double decker pontoon boat. There were about 11 or more people on the boat who had been partying all day. He had consumed about 3 or 4 beers throughout the day, and he believes that he was the most fit to drive. Boating Security was checking boats and they pulled the Applicant's boat over. They asked him to take a breathalyzer, and he refused. They cited him for refusal to take the breathalyzer, and charged him with reckless operation of a vessel, a reduced charge of boating under the influence. Applicant had to take an on-line alcohol class and pay costs. (Tr. pp. 79-81.)

Applicant and his roommate lived in the house that his roommate owned in State A. During May and June 2021, Applicant dated a girl for a few months. Their relationship was tumultuous. In June 2021, Applicant told her that their relationship was over. She was upset and one night she trespassed onto the property, went into the backyard where Applicant's car was parked, and "keyed" his vehicle on both the driver's side and passenger's side. Applicant's roommate told the Applicant that the girl was not permitted in his house, and if she ever returned again, Applicant would be kicked out. Applicant reported his damaged car to the police, and his ex-girlfriend admitted doing the crime. (Applicant's Exhibit C.)

Applicant testified that the following weekend he was out at a bar and he saw his ex-girlfriend. She came over to him and told him that she was going to see him that night. He told her, "No". That evening, another female gave him a ride home from the bar and then he went to bed. He woke up during the night to find that his ex-girlfriend had broken into the house and was trying to give him oral sex. He told her to get off of him and leave. He called the police. His ex-girlfriend asked him not to call the police, but to take her to her car down the road at the apartments where she had parked, and she would leave. So he did. At that time, Applicant's roommate was leaving to go to work and saw Applicant's ex-girlfriend's car driving towards his house. After he left for work, Applicant's ex-girlfriend showed back up at the house claiming that she had left her wallet. Applicant let her in the house to get her wallet. Applicant ended up having sex with her and then fell asleep. When he woke up, she was trying to transfer money from his account into her account using Venmo. She had changed all of his social media passwords, and she had shared his location with her phone. She was doing all of this without his knowledge. Applicant stated that he was angry and grabbed his phone from her and walked into the bathroom. She followed him, she was angry and frustrated, and kept ranting about him breaking up with her. Applicant claims that she ended up pushing him into the tub. Applicant tried to stand up and she tried to push him

back down when he grabbed her by her hair and told her to stop. They ended up talking things out, and they had sex one last time. She then left the house, and went to the hospital, and claimed that the Applicant choked her and slammed her head against a cabinet. Applicant believes that his ex-girlfriend was upset because he did not want to date her anymore. (At some point, Applicant went down to the fishing docks to find his roommate to let him know that he did not invite her in the house, but that she had broken in the house.) (Tr. pp. 82-98, and Government Exhibit 2.)

The Sheriff's report of the incident indicates that Applicant's ex-girlfriend stated that she went to the hospital because she was having a hard time swallowing. The officer observed that she had a bruise on the side of her forehead, a small laceration on the inside of her upper lip, and bruises on her right arm. (Applicant's Exhibit F.)

Applicant's ex-girlfriend's version of the altercation is very different than the Applicant's. She stated that he invited her to his home. She stated that she arrived prior to him, and when she made contact with him he was extremely intoxicated. After getting in his vehicle, she removed his keys from his truck ignition. She stated that he grabbed her by her hair and slammed her head in the dashboard area of the truck. She then began recording him with her phone. Standing in the porch area of the house, he grabbed her by her hair again and pulled her inside the residence and threw her to the ground. He sat on her chest and took her phone and demanded that she give him her pass code so the recording could be erased. She refused to give it to him. He then began choking her and she had to gasp for air, and ultimately, she gave him the pass code and the footage was erased. As she was getting up, he pushed her and the left side of her head hit a counter in the bathroom. She told the sheriff that she is able to see Applicant's location on her phone, and she provided that information to them. (Applicant's Exhibit F.)

Applicant was at a friend's house when the police arrived looking for him. The police questioned him about the altercation. Applicant told the police his version of what occurred, and that she broke into the house. He also denied having strangled her. They told him that there was obviously some domestic violence, and someone had to go to jail. Applicant was arrested and charged with a Battery by Strangulation and Domestic Violence. In court, Applicant pled not guilty. His ex-girlfriend failed to appear at the hearing. Applicant's attorney advised him to take the plea bargain. Applicant accepted the plea bargain agreement and adjudication of guilt was withheld. He was required to pay a fine of \$500, pay the cost of prosecution fee of \$50, pay restitution of \$796.80 to the victim, complete an on-line anger management course, and provide proof of completion at the time of the entry of the plea, and have no contact with the victim. (Applicant's Exhibit F.) Applicant satisfied all of sentencing conditions.

Applicant's roommate, who owns the house they lived in, testified that Applicant's ex-girlfriend was "trouble". She and Applicant dated for only a few months. She was always picking fights and screaming and hollering at the Applicant. She was much younger than the Applicant, maybe 18 years old, very jealous, very manipulative, and

always "out for trouble". She would show up unannounced at their house and just bust in the door. He is a Charter Fisherman, who has to leave very early in the morning to go to work, and she would drive around the neighborhood until he left the house and then come over. He verbally told the girl that she was no longer welcome at the house. She "keyed" Applicant's vehicle, and snuck in the house numerous times. He actually called the Applicant the day of the altercation and told him that he saw her driving in the neighborhood and asked him if she was at the house. Applicant told him that she had come over. That's when the altercation started. What he was told was that she shoved the Applicant into the shower, and tore down the shower rod and the curtain. (Tr. pp. 34-52.)

Applicant testified that he has learned a valuable lesson from his experience with his ex-girlfriend. He realizes that he must be careful about the women he allows in his life. He was raised to never "lay a hand" on a woman. Every day he grows to be a better person. He has not been in trouble since leaving his ex-girlfriend. He is a different person now. He no longer goes out drinking like he did when he was younger. He spends his free time in the gym. (Tr. pp. 98-99.)

Three witnesses who work with the Applicant testified on his behalf. They include, his past Maintenance Manager, the Production Superintendent, and a Pilot. They are all very pleased with the Applicant and his work product. They refer to him as an outstanding employee with a great work ethic. He is punctual, happy, easy to get along with, and well respected. They have had no performance issues or concerns with him since he started working with them. He does his job correctly the first time, and he has never had to get anything re-done. He is a great member of the team. In fact, he was so valuable that they offered him a full-time job with a contractor and then the opportunity to move once that contract ended, because they wanted to ensure that he had continued employment. (Tr. pp. 18, 21, 27-29, and 54-57.)

A letter of recommendation from Applicant's current Maintenance Manager who is also his supervisor and has worked with the Applicant for about one year, states that Applicant has exceptional character, professionalism, and reliability. Applicant is trusted with the daily maintenance and safety of millions of dollars worth of equipment and, more importantly, the lives of their pilots. His technical expertise exemplifies his unwavering integrity, sound judgment, and attention to detail. He consistently demonstrates a commitment to excellence and safety, and he is trustworthy beyond reproach. He has earned the respect and admiration of his colleagues and supervisors, who rely on his expertise and judgment every day, and he is highly recommended for a security clearance. (Applicant's Exhibit G.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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, administrative judges apply the guidelines 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. 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.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility 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.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters 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 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.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J – Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Two conditions apply, as discussed below:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Appellant's criminal history includes the three arrests described above that can be attributed to ignorance, immaturity, and poor judgment. This conduct raises the above security concerns.

The guideline in AG ¶ 32 contains several conditions that could mitigate criminal conduct security concerns. Two of the mitigating conditions are applicable in this case.

- (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, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

The true story of the altercation in 2021, lies somewhere between the Applicant's version and his ex-girlfriend's. What is clear is that since he left State A; and has gotten away from his ex-girlfriend, he has demonstrated that he is responsible, reliable, and trustworthy. The last incident of criminal conduct Applicant was involved in was in June 2021, about four years ago, and is unlikely to recur. He was much younger and immature then. He used drugs and alcohol for enjoyment, and he was in a bad relationship. Over the past four years, he has grown up and matured. He no longer uses marijuana. In fact, he has not used marijuana for the past seven years, since 2017, and has no intention of ever using it again. He no longer abuses alcohol. About once a month, he may have a glass of wine at dinner. Furthermore, he now realizes how important it is to be careful about the women he associates with, and he knows that he cannot allow relationships with younger women, or those without sufficient maturity and good sense. He has physically moved across the country for his job, getting far away from the ex-girlfriend, who once caused him serious problems. He understands the responsibilities that come with holding a security clearance, and has chosen to live the responsible lifestyle that is required.

Based upon the past four years, without any criminal misconduct, it is foreseeable that Applicant will remain professional, responsible, and use good judgment in all aspects of his life. He has too much to lose if he engages in any future misconduct or criminal behavior, or associates with individuals who engage in such. He must continue to live his life "on the straight and narrow" and demonstrate good judgment, reliability, and trustworthiness. There is sufficient evidence in the record to show that he is eligible for access to classified information. Appellant has mitigated the Government's concerns under the Criminal Conduct guideline.

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

- (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.

Under 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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. Applicant has not engaged in any criminal conduct for the past four years, and his future is promising. In addition, his supervisor and other professional colleagues attest to his outstanding work performance, professionalism, good judgment, and responsible character. Based upon the totality of this information, he has sufficiently mitigated his past criminal conduct. Accordingly, Applicant has mitigated the Criminal Conduct security concerns.

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 F: FOR APPLICANT

Subparagraphs 1.a. through 1.c. 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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge