

DATE: November 25, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10290

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 26-year-old married man employed as a computer systems administrator for a governmental contractor. He has successfully mitigated the security concerns under Guideline E based on his history of multiple traffic offenses and a single bad-check offense. Clearance is granted.

STATEMENT OF THE CASE

On June 13, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline E for personal conduct.

Applicant answered the SOR on July 2, 2003, wherein he admitted all allegations (SOR subparagraphs 1.a through 1.x). He also requested a clearance decision based on a hearing record.

On September 24, 2003, DOHA assigned this case to another administrative judge to conduct a hearing and issue a written decision. Subsequently, the case was reassigned to me due to caseload considerations. On October 1, 2003, a notice of hearing was issued to the parties scheduling the hearing for October 30, 2003. Applicant appeared without counsel and the hearing took place as scheduled. The record was left open to allow Applicant to submit additional documentary evidence. Those documents were timely received and, government counsel having no objection, are admitted into the record as Applicant's Exhibits F, G, H, and I. DOHA received the hearing transcript November 10, 2003.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

In general, I find that the record evidence as a whole is sufficient to establish, by substantial evidence, the occurrence of all the factual events alleged in SOR subparagraphs 1.a. through 1.x.

Applicant is a 26-year-old man who married in May 2000. He has a son from a previous relationship. The mother of his son left two weeks after the child was born, and she has had little or no contact with Applicant and his son since the child was about two months old. As a result, Applicant found himself a single parent at the age of 22. Currently, his family life appears relatively stable and he enjoys a warm and loving relationship with his son. At his own expense, Applicant has enrolled his four-year-old son in a Montessori school to give him a head start on kindergarten.

Applicant is employed by a governmental contractor as a computer systems administrator. He has worked in the computer field since August 1996. Applicant performs his job well. He's described as professional and demonstrating above average competence. His direct supervisor believes Applicant is a trustworthy and reliable employee who is committed to both his job and family.

Applicant has a history of multiple traffic offenses starting in about April 1995 when he was still a juvenile. As alleged in the SOR, from April 1995 to about October 2001, Applicant was cited for numerous traffic violations (e.g., speeding, failure to wear a seat belt, failure to carry registration card, etc.). The typical pattern was as follows: (1) Applicant was cited for a traffic violation, (2) he would not pay the fine on time, (3) he would not appear for the court hearing, so his license was suspended, and (4) shortly thereafter he would pay the fine and the suspension was withdrawn. Other than a single incident in 1997 when Applicant was cited for racing on a highway (SOR subparagraph 1.i), none of the traffic citations involved reckless driving, drunk driving, road rage, or driving that resulted in causing injury to person or property. Applicant has been issued a couple of more speeding tickets since 2001, but he has paid the tickets and has not had any failures to appear in court.

Applicant is working at curtailing his speeding and has taken some driving courses to that end. Since the birth of this son, Applicant no longer drives what he considers to be fast cars. He has recently built a race car, which is used strictly for racing at a local race track. Like his father, he enjoys driving fast and he intends to do so lawfully on the race track.

In addition to the multiple traffic citations, Applicant was charged with a bad-check offense (under \$300.00) in 1999. He made good on the check and the case was placed on the court's stet docket.

Applicant has a current driver's license issued by the state of his residence. The license is without conditions or limitations. Applicant carries insurance for his vehicles and does not pay high-risk rates. Applicant is not under any type of court supervision or probation.

Applicant works on a military installation. He testified credibly that he has complied with security requirements and that he has even challenged people to ensure they have the proper badge upon entering an area. Applicant has also had access to proprietary information without a negative incident.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security-clearance eligibility, including the disqualifying and mitigating conditions for each applicable security guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1. through ¶ 6.3.6. of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the record evidence as a whole, the following adjudication guidelines are most pertinent here: Guideline E for personal conduct.

BURDEN OF PROOF

The only purpose of a security-clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The U.S. Supreme Court has said the burden of proof in a security-clearance case is less than the preponderance of the
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evidence. The DOHA Appeal Board has followed the Court's reasoning on this issue establishing a substantial-evidence standard.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ Once the government meets its burden, an applicant has the burden of presenting evidence of refutation, extenuation, or mitigation sufficient to overcome the case against him.⁽⁷⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

As noted by the Court in *Egan*, "it should be obvious that no one has a 'right' to a security clearance," and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽⁹⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard and handle classified information. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate a person may not properly safeguard or handle classified information.

Considering the record evidence as a whole, the government has established its case under Guideline E. Applicant's history of multiple traffic offenses, coupled with the bad-check offense, are indicative of an unwillingness to comply with rules and regulations, and I conclude that disqualifying condition (DC) 5⁽¹⁰⁾ applies against Applicant. The cumulative effect of these multiple violations is the central concern. Given the large number of traffic offenses, it is reasonable to question Applicant's attitude toward authority and his willingness to comply with security rules and regulations he might think are picky and unnecessary and do not merit his compliance.

I have reviewed the mitigating conditions (MC) under Guideline E and conclude none apply.

Under the whole-person concept, however, Applicant has persuaded me he is nevertheless a suitable candidate for a security clearance. First, many, but not all, of the traffic offenses occurred before his son was born in February 1999, a life-changing event for Applicant. So, much of the his behavior (SOR subparagraphs 1.a. - 1.n) can be excused or mitigated by his youth and immaturity at the time. Second, Applicant is making a conscious effort to modify his driving habits and, if ticketed, pay the fine in a timely fashion. Third, he has a valid driver's license without conditions or limitations, which means Applicant is still considered suitable for a driver's license despite his driving record.

In addition to these three reasons, a key positive quality that Applicant has demonstrated is the capacity for making commitments, or the ability to maintain personal or job commitments over time. Faced at a young age with raising a child by himself, Applicant did not run away from or shirk this responsibility. Instead, he has embraced the task of parenting and he has grown and matured greatly in the process. Likewise, he is a stable, steady, and reliable employee working for the same company or its successor since 1996. This positive quality outweighs the mildly derogatory information here. Accordingly, it is my predictive commonsense judgment, based on the record as a whole, that Applicant is unlikely to become a security concern or risk despite his history of multiple traffic offenses and the isolated bad-check offense.

FORMAL FINDINGS

SOR ¶ 1-Guideline E: For the Applicant

Subparagraphs 1.a - 1.x: For the Applicant

DECISION

In light of all 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 is granted.

Michael H. Leonard

Administrative Judge

1. This action was taken under Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), dated January 2, 1992, as amended and modified.
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Paragraph E3.1.14.
4. *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Paragraph E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Paragraph E3.1.15.
9. *Egan*, 484 U.S. at 528, 531.
10. Paragraph E2.A5.1.2.5 of Guideline E.