

DATE: January 14, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-00038

ECISION OF ADMINISTRATIVE JUDGE

BURT SMITH

APPEARANCES

FOR GOVERNMENT

Peregrine D. Russell-Hunter, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Thirty-eight year old Applicant's marijuana use is reformed, but he is ineligible for security clearance because of repeated instances of personal misconduct and criminal activity arising out of his deceptive answers on Government's 1999 security questionnaire and three arrests for admitted criminal conduct during the period 1988 through 1996. Clearance is denied.

STATEMENT OF THE CASE

On June 22, 2001, the Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865 "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended, and DoD Directive 5220.6 (Directive) dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied or revoked.

The Applicant responded to the SOR in an answer dated July 13, 2001, in which he requested a hearing. The case was originally assigned to Administrative Judge R. Wesley and it was transferred to the undersigned on October 4, 2001. On October 9, 2001 a Notice of Hearing was issued scheduling the matter for a hearing on October 25, 2001. The hearing was conducted on that date in -----.

FINDINGS OF FACT

The Applicant is thirty-eight years old, and he is employed by a defense contractor as a security officer. He seeks a DoD security clearance in connection with his employment in the civilian defense industry.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the attached SOR. The following findings of fact are entered as to each paragraph of the SOR.

Paragraph 1, Guideline H: Drug involvement. During the approximate period 1978 to 1984 (when Applicant was 14 years to 20 years of age) he smoked marijuana on a regular basis, several times per week. In approximately 1984, when Applicant was in his early twenties, his desire for marijuana decreased, and his use of the substance diminished to only a few times per year thereafter.

In 1996 while walking to work Applicant was approached by two police officers, and as they came near he reached into his jeans and threw away a marijuana cigarette he carried in his pocket. Applicant was arrested for possession of a controlled substance, and he was later sentenced to community service and a drug rehabilitation program. Applicant completed his sentence, and the drug charges were then dismissed. Applicant has not used marijuana since completing the rehabilitation program, a sobriety period of five years.

Paragraph 2, Guideline E: Personal Conduct. On January 29, 1999 Applicant completed a DoD Security Clearance Application (Gov. Ex. 1) which required him to provide truthful information concerning aspects of his personal life deemed relevant to a security evaluation. Questions 37 through 39 asked Applicant to provide specific information about his financial history, to include judgments and delinquent debts.

In its SOR the Government alleges that when the Applicant completed the 1999 questionnaire he intentionally gave a false and misleading picture with regard to his financial history. According to the SOR, the Applicant understated the extent and nature of his debts by failing to identify one past judgment and two seriously delinquent accounts. (The debts remain delinquent, but for its own reasons the Government does not allege the Applicant is ineligible for clearance on the basis of his failure to pay these debts. They remain delinquent.)

In response to question 37 Applicant denied any financial judgments against him in the last seven years. In response to question 38 he admitted he was over 180 days delinquent in paying a tuition debt owed to technical school. In response to question 39 he admitted he was over 90 days delinquent in paying the same debt. Applicant identified no other debts or court-ordered judgments against him.

However, at the time Applicant completed the 1999 questionnaire he had a 1994 judgment of approximately \$1,800 filed against him by the landlord of an apartment he vacated without giving notice. Applicant claims he was justified in vacating the apartment because of unresolved maintenance problems, but the judgment implies he violated the terms of his rental agreement.

In responding to question 38 of the questionnaire Applicant also failed to identify an overdue debt owed to a bank which afforded him a credit card that he used to secure the \$1,500 maximum limit of cash withdrawals. At the time he accepted and used the credit card Applicant had no intention of re-paying the bank. This debt was incurred well over the 90 day period specified in the questionnaire, and Applicant was obligated to reveal it.

In his answer to the Government's SOR Applicant concedes that he provided false information about his past debts, as alleged. By way of mitigation he claims in his testimony and in written explanations that the debts were incurred at a time when he was less responsible and mature than now. As evidence of reform Applicant claims he is making payment arrangements to satisfy the debts, but he offers no documentary evidence to support this assertion.

Paragraph 3, Guideline J: Criminal conduct. In its SOR the Government alleges the Applicant is ineligible for clearance because he has engaged in a pattern of criminal activity in the past. Applicant's answer to the SOR admits that during the period 1988 to 1996 he was arrested three times for violations of criminal law.

In 1988 Applicant was arrested for knowingly participating in a fraud scheme in which he accepted \$100 as payment for cashing a \$1,000 forged check unlawfully taken from an insurance company. In 1995 Applicant was arrested on charges of domestic assault arising out his physical attack upon a female companion. In 1996, as described above in Paragraph 1, Applicant was arrested for possession of marijuana.

The arrests of 1988 and 1995 did not result in convictions, but Applicant candidly admits to his criminal culpability in each incident. As noted earlier, Applicant was sentenced to drug rehabilitation and community service for the 1996 marijuana arrest, but charges were dismissed upon his completion of the sentence.

In his testimony at the hearing Applicant stated in general that his criminal activities were the result of immature judgment in the past, and he is now reformed. He no longer associates with former companions who were a bad influence, and he is now focused on his job performance, his child, and constructive activities in his personal life. As support for his reform he presented the testimony of a character witness who knows him well. The witness testified favorably in support of the Applicant's claim of present trustworthiness and reliability.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. The guidelines are divided into those that may be considered in deciding whether to deny or revoke an Applicant's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's request for access to classified information (Mitigating Conditions).

In addition to these guidelines the Directive provides that under the "whole person concept" the Administrative Judge shall also consider (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 voluntariness of participation; the presence or absence of rehabilitation and other pertinent 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.

In reaching a determination in this case I have considered the DoD whole person concept. Additionally, I have considered the adjudicative guidelines set forth below.

[GUIDELINE H - Drug involvement]: Improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Conditions that could raise a security concern and may be disqualifying include:

- (1.) Any drug abuse.
- (2.) Illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution

Conditions that could mitigate security considerations include:

- (1.) The drug involvement was not recent.
- (3.) A demonstrated intent not to abuse any drugs in the future.
- (4.) Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse and a favorable prognosis

by a credentialed medical professional.

[GUIDELINE E - Personal Conduct]: Conduct involving questionable judgment, unreliability, lack of candor, dishonesty or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying include:

- (2.) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

(4.) Personal conduct or concealment of information that may increase an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail.

Conditions that could mitigate security concerns include:

(5.) The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation or duress.

(7.) Association with persons involved in criminal activities has ceased.

[GUIDELINE J - Criminal activity]: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

(1.) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged.

(2.) A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

(No mitigating conditions have application.)

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in repeated instances of off-duty drug usage, false official statements, and criminal conduct which demonstrates unreliability or reckless behavior on the Applicant's part. These personal characteristics, if carried over into a security environment, can result in a loss of classified information through Applicant's neglect or intentional misconduct.

Upon consideration of the entire record, I conclude the following as to each allegation set forth in the SOR:

Applicant's use of marijuana occurred during a twelve-year period that ended in 1996. During his early years of marijuana use Applicant smoked the substance on a regular basis. However, by 1984 Applicant's marijuana use diminished to a few times per year, and in 1996 he completed a rehabilitation program as a result of his arrest for marijuana possession. Applicant has not smoked marijuana in over five years, and it is not likely he will return to its use in the future. No security disqualification is present with respect to Applicant's prior marijuana usage, and Paragraph 1 is concluded in his favor.

However, Applicant's knowing false statements on the government's security questionnaire present evidence of a lack of trustworthiness and a serious failure to use good judgment. Under Paragraph 2 of the SOR, the Government alleges and proves that Applicant intentionally misrepresented his financial history in an attempt to create a picture of reliable and responsible behavior in his personal life.

These misrepresentations were recent and they were repeated in multiple parts of the questionnaire. In doing so Applicant was willing to deceive the Government about his security eligibility, and this might easily have resulted in an erroneous evaluation of his qualifications. Applicant now admits he failed to provide honest information on the questionnaire, but his admission was not made in a timely manner, i.e., within a reasonably brief period after he engaged in the deceptions. Paragraph 2 of the SOR is concluded against the Applicant.

With respect to the allegations of criminal conduct under Paragraph 3 of the SOR, the Applicant admits that during the period 1988 to 1996 he was arrested three times for criminal offenses, one involving felony theft. Although Applicant

was not convicted of these offenses (as noted above, charges of marijuana possession were dismissed after completion of sentence) it is clear that Applicant engaged in the unlawful conduct which resulted in his arrest.

Applicant's criminal behavior formed a pattern which revealed itself over a period of eight years. It is disturbing that Applicant did not grasp the need to reform his behavior after his 1988 arrest for felony theft. He was subsequently arrested for criminal violations in 1995 and again in 1996. As a security guard during part of this time Applicant placed himself in a position of

vulnerability to coercion or possibly blackmail. Applicant now regrets his past unlawful behavior and permanent reform may be in his future. However, it is too soon to conclude with safety that Applicant's criminal conduct is a thing of the past. For these reasons Paragraph 3 is concluded against the Applicant.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1. Guideline H. FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Paragraph 2. Guideline E. AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Subparagraph 2.b.: Against the Applicant

Subparagraph 2.c.: Against the Applicant

Paragraph 3. Guideline J. AGAINST THE APPLICANT

Subparagraph 1.: Against the Applicant

Subparagraph 2.: Against the Applicant

Subparagraph 3.: Against the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Burt Smith

Administrative Judge