

DATE: May 20, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-03397

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant committed a single, serious security violation in March 1999. The incident was isolated, partially due to inadequate training, and he has demonstrated a positive attitude towards the discharge of his security responsibilities in the subsequent three years. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On December 10, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the 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 denied or revoked.

The Applicant responded to the SOR in writing on January 14, 2002, and requested a hearing. The case was received by the undersigned on February 26, 2002, and a Notice of Hearing was issued on March 5, 2002.

A hearing was held on March 26, 2002, at which the Government presented four documentary exhibits. Testimony was taken from the Applicant, who also submitted six hearing exhibits and one post-hearing exhibit (Applicant's Exhibit G). The transcript was received on April 3, 2002.

FINDINGS OF FACT

The Applicant is 48, married and has a Bachelor of Science degree in Engineering. He is employed by a defense contractor as a manager, and he seeks to retain a DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline K - Security Violations). The Government alleges in this paragraph that the Applicant is ineligible for clearance because of noncompliance with security regulations which raises doubts about the individual's trustworthiness, willingness, and ability to safeguard classified information.

In February 1999, the Applicant scheduled a classified briefing for March 10, 1999, for his supervisor, a corporate vice president. A computer which was accredited to process classified information was necessary at the briefing. The Applicant tasked his assistant with obtaining the computer. The assistant asked the computer support manager to obtain the computer. (1)

On March 10, 1999, the Applicant was informed by the computer support manager, approximately one hour before the briefing was scheduled to begin, that a computer accredited to process classified information had not been found. The computer support manager asked to use the Applicant's computer. He refused to allow it. The Applicant then told the computer support manager that "It is your call" as to whether the briefing should proceed. The Applicant did not tell his supervisor of the problems with obtaining an accredited computer. (Government Exhibit 2 at 2.)

The computer support manager brought in a computer and the briefing was held. The computer was not accredited to process classified information. The Applicant made no attempt to discover whether the computer was properly accredited, even though he knew there had been problems before. He stated that he saw the classified hard drive that was going to be used in the presentation, and assumed that security knew and approved of the way the computer support manager had resolved the situation. (Transcript at 27, 33-34.)

According to the Applicant, he only became aware that a security violation had absolutely happened when the computer support manager told him that the computer would have to be secured. Then he knew that an unaccredited computer had been used. (Transcript at 56.)

The Applicant received a written reprimand from his company for his conduct in this affair. (Government Exhibit 1.)

Mitigation.

The Applicant submitted letters of recommendation from various executives within his organization. The writers of Applicant's Exhibits B and D state that they believe the Applicant can be entrusted with classified information. The vice president to whom the March 10, 1999, briefing was given submitted Applicant's Exhibit C. He states, "I am familiar with the incident in question and can assure you that this was a one-time occurrence. I strongly request that a favorable decision be made, and [the Applicant] is granted a continuance of his security clearance."

The Applicant testified that he had never received security instructions at his place of employment. (Transcript at 36-37.) After this incident, the Applicant has made it a point to become very conversant in security protocols and activities. (Transcript at 37-39.) The program security representative states, "[The Applicant's] professional reputation was one of honesty, trustworthiness and dedication to the job." (Applicant's Exhibit F.)

The Applicant testified that in a 30 year career in the military and in the defense industry this was his only security violation. (Transcript at 35.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it

cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline K (Security Violations)

Condition that could raise a security concern:

(2) Violations that are deliberate or multiple or due to negligence.

Conditions that could mitigate security concerns include actions that:

(2) Were isolated or infrequent;

(3) Were due to improper or inadequate training;

(4) Demonstrate a positive attitude towards the discharge of security responsibilities.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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 security violations that demonstrate poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant

concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation that is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has been involved in a single, serious, security violation in 1999 (Guideline K).

The Applicant, on the other hand, has successfully mitigated the Government's case. The incident occurred because of a combination of factors. The Applicant's desire to please his superior and not cancel the briefing, his decision not to check whether the computer ultimately used was properly accredited, and his inadequate security briefings by his employer. In other words, he took the path of least resistance and did not ask any inconvenient questions.

The incident was isolated and the only one in his 30 year career. It appears to have occurred, at least in part, because of improper or inadequate security training. Finally, the Applicant has otherwise shown a positive attitude towards the discharge of his security responsibilities. In this respect, the three years that have passed since the incident happened without another security violation is a positive sign.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraph 1.a.: 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 the Applicant.

Wilford H. Ross

Administrative Judge

1. The computer support manager is the Applicant in ISCR Case No. 01-13962.