

DATE: March 26, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-22382

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer J. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This technician for a defense contractor violated company policy over a period of several years and was warned by his company about his marginal performance. He posted a message on his company's internet message board that was reasonably construed as threatening physical harm to the company's Chief Executive Officer. He was terminated for both reasons. No mitigation was shown. Clearance is denied.

STATEMENT OF THE CASE

On September 17, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

Applicant timely submitted an undated response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on December 4, 2002. The Form instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. Applicant did not submit any response to the FORM. The matter was assigned to me for resolution on January 14, 2003. January 14, 2003.

FINDINGS OF FACT

Applicant is a technician for a defense contractor. The SOR contains three allegations, 1.a.(1) - 1.a.(3), under Guideline E (Personal Conduct). Applicant *admits* all three allegations, with explanations (Government Exhibits (GX) 3 and 5).

After considering the totality of the evidence derived from the FORM and its attachments, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline E (Personal Conduct)

SOR 1.a. - Applicant posted on the internet message board of his company, a message that was interpreted to be a threat against his employer's (Company A) CEO (Chief Executive Officer), concerning potential physical harm to the CEO;

SOR 1.b. - Applicant received a verbal warning from Company A on August 24, 1999, regarding his time management. Subsequently, he was issued a formal warning by his company concerning his disregard for company policy on September 6, 1999;

SOR 1.c. - Applicant was terminated from his job at Company A because of his disregard for company policy and the threat he made to his Company A's CEO, as set forth in SOR 1.a and 1.b., above.

Applicant received a favorable letter from a coworker at Company A (Attachment to Response to SOR)

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant

in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding

the conduct, to include knowing 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; (6)

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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because Applicant chose to have this matter decided without a hearing and without submitting any additional information in response to the FORM, all credibility determinations and findings of fact are necessarily based entirely on the contents of the FORM.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE E (Personal Conduct)

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

1. Reliable, unfavorable information provided by associates, *employers*, neighbors, and other acquaintances.

6. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement between the individual and the agency.

Conditions that could mitigate security concerns include:

None that are applicable under the facts of this case.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

The origins of Applicant's problems at Company A are discussed in a memorandum by Company A officials, dated September 6, 1999. It cites Applicant's being rated "marginal" for time management in his 1997 and 1998 evaluations. The basis for the criticism appears to be his lack of focus on the work he has been assigned, in favor of activities that seen preferable to him. As to the specific incident cited in the memorandum, Applicant "under[stood] it was not the right decision." Applicant was placed on a "formal warning period" of 90 days. At a follow up meeting on September 16, 1999, his supervisor cited Applicant's "excessive socializing, standing around, and taking long breaks as the key points" of concern. On December 9, 1999, his supervisor ended the formal warning period, restored Applicant to full duty and advised him of current workload requirements. Applicant indicated his understanding (GX 5).

On August 19, 1999, Applicant sent a message (e-mail) to his company's message board. Referring to the Company CEO, Applicant wrote "getting rid of" the CEO "is the only thing that will help this suffering company." The message discusses possible strikes and meetings and concludes with the following: "I think a better solution to this company's problems is to get some guns and fora a march on [State A] and the hope the [the CEO] hasn't bullet proofed his limousine yet" (GX 6).

On his security clearance application, at Question 20. YOUR EMPLOYMENT RECORD

[PROBLEMS AT WORK], Applicant answered "Yes," and stated that he was fired by Company A on April 4, 2001 for "Disregard of Company Policy. Took too many long lunches" (GX 4)

The only explanation for Applicant's behavior appears in an attachment to his response to the SOR (GX 3). As to SOR 1.a. - Applicant admits placing the e-mail in question on his company's message board and cab "now see how it can be interpreted in a threatening manner," but he "did not mean it a threat." It was "in fact a poor attempt at sarcasm" and he "did not intend to cause any harm or undue stress to any employee of [Company A]. Even seen in its best light, Applicant's e-mail showed extremely poor judgment and, I conclude, could reasonably be construed a threat.

As to SOR 1.b. and 1.c. - Applicant agrees that he had been warned about his "time management" shortcomings, but states that "Disregard for Company Policy" was the official reason his employment was terminated. As he views it, he was terminated because of the e-mail message cited in SOR 1.a. The timing of each incident shows that the e-mail incident occurred on August 19, 1999, although it is not clear when management became aware of it. The time management problems cover the period from August 24, 1999 (first warning) to November 1999 (when he was taken off the warning period). He was terminated on April 4, 2001, a year and a half or more after both incidents occurred. It is a distinction without a difference. SOR 1.c. states that Applicant was terminated "due to [his] disregard of Company Policy and the threat he made to [his] company's CEO." In any case, context, Applicant's explanation does not have any impact on the final decision.

Applicant's security clearance application (GX 4) indicates that Applicant began his present employment on April 4, 2001, the same date given for his termination from Company A. In addition to Applicant's admissions, the record

evidence independently supports the accuracy of all three SOR allegations. The proven allegations, in turn, create a nexus, or connection, with Applicant's suitability to hold a security clearance. The sole remaining issue is whether Applicant has provided adequate evidence of mitigation or extenuation. I conclude that Applicant has not done so. His misconduct at Company occurred over a period of several; years. He was given warnings several times over the two years and was finally terminated less than two years ago, presumable because his unacceptable behavior had not ended or improved. In mitigation, Applicant provides only uncorroborated explanations that, in any case, do not mitigate the totality of the negative evidence

Disqualifying Condition 1 (reliable unfavorable evidence from employers) applies. Applicant has not demonstrated the applicability of any of the possible mitigating Conditions cited under Guideline E. Under these circumstances, the record evidence establishes that Applicant currently lacks the judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. 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 Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE