

DATE: June 4, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-22486

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Thirty-two-year-old Applicant had a 10 year pattern of violating motor vehicle laws, from speeding to failing to obey traffic control devices and failing to yield to pedestrians. Applicant has never had his driver's license suspended or revoked, has had a clean driving record the past two years, and has adhered to the rules and regulations at work. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant's request for a security clearance. In accordance with the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) on 21 January 2003 detailing the basis for its decision-security concerns raised under Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 7 March 2003. The case was assigned to me on 26 March 2003. On 25 April 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of seven exhibits. Applicant testified on his own behalf and submitted three exhibits. DOHA received the transcript (Tr.) of the proceeding on 5 May 2003.

FINDINGS OF FACT

Applicant has a lengthy history of motor vehicle violations. In May 1990, he was charged with speeding. Answer. In July 1990, Applicant was charged with failing to obey a traffic device for failing to clear an intersection before the light changed to red. In October 1990, he was charged with speeding. In June 1992, Applicant was charged with having unclear license plates because he had a tinted film covering the numbers. In July 1992, he was charged with disregarding a stop sign while making a right turn at a "T" intersection. Answer. In November 1994, Applicant was charged with failing to yield to pedestrians in a crosswalk. No one was injured and he paid a fine. Ex. 3. In May 1995, Applicant was again charged with speeding. Another speeding offense occurred in January 1996. In March 1996,

Applicant was charged with speeding 11 miles per hour (mph) over the 65 mph speed limit. He pled guilty and was paid a fine and court costs. Ex. 4. In February 1998, he was charged with disregard of a traffic control device. He pled guilty and was ordered to pay a fine and court costs. Ex. 5. In May 1999, Applicant was charged with traveling 71 mph in a 55 mph zone. Although he initially failed to appear in court, he pled guilty in December 1999 to traveling 69 mph in a 55 mph zone and was fined. Ex. 6. Applicant was charged with speeding 53 mph in a 40 mph zone. He pled guilty to driving in an unsafe manner and was fined. Ex. 7; Answer.

Applicant's driving record has been clean the past two years. Ex. A. He has never had his driver's license revoked or suspended. Tr. 17. He has not had any rules or regulations violations at work. Tr. 18.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

In the SOR, DOHA alleged under Guideline E that Applicant was charged with numerous traffic violations between 1990 and 2000 including speeding (¶¶ 1.a., c., g., h., i., k., l.), failing to observe a traffic device or stop sign (¶¶ 1.b., c., j.), the improper display of license plates (¶ 1.d.), and failing to yield to a pedestrian (¶ 1.f.). Under Guideline E, conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government has established by its evidence and Applicant's admissions that he has been involved in a pattern of rule violations. DC 5. While the rules violations may not be serious when evaluated individually, taken as a whole they show a disregard for safety of the public. But, Applicant has undergone a change of attitude. He is more mature and, after attending a driver safety course, has come to realize the error of his ways. His driving record has been clear for the past two years and Applicant made a convincing case that he will not repeat such conduct. After observing and listening

to Applicant, I am convinced he does not represent a threat to the proper handling of classified information. Finding is for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

DECISION

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 a security clearance for Applicant. Clearance is granted.

James A. Young

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.