

DATE: February 13, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25630

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's two alcohol-related domestic violence convictions since 1996, related falsification of an employment application in 1998, and failure to resolve a related past due debt cast significant doubt on Applicant's fitness for access to classified information, especially where he failed to provide any significant evidence in extenuation, mitigation, explanation, or rehabilitation. Clearance denied.

STATEMENT OF THE CASE

On 8 August 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 25 August 2002, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 1 November 2002. The record in this case closed 20 December 2002--the day the response was due at DOHA. The case was assigned to me on 3 January 2003 and I received the case the same day to determine whether clearance should be granted, continued, denied, or revoked.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR; accordingly, I incorporate those admissions as findings of fact.

Applicant--a 45-year old employee of a defense contractor--seeks reinstatement of the clearance he held between approximately 1982 and 1996.

Applicant has a history of alcohol abuse, which has resulted in two convictions for domestic violence and created a kind of personal-life-cascade-failure. In ay 1996, Applicant and his girlfriend (who he later married) got into a fight when, after a day they both spent drinking, Applicant hit his girlfriend in the eye when she refused to fix him something to eat

⁽²⁾

(Item 5). In July 1996, Applicant was convicted of domestic battery and ordered to complete a domestic violence class and perform 30 days community service. Applicant took four weeks off from his job to complete the community service all at once. Although Applicant states he advised his supervisor of the reason for his absence, he acknowledged that he did not submit any formal paperwork requesting the time off (Item 10). When he returned to work, he was fired for job abandonment from a job he had held since July 1981. ⁽³⁾

Suddenly unemployed, Applicant cashed in his company 401k plan to meet his living expenses. The unanticipated tax consequences of that action caused Applicant to become indebted to the state and federal governments for the debts in subparagraphs 1.a. and b. He also fell behind in his payments on many accounts, including those at subparagraphs 1.c. and d. He was unemployed between approximately June 1996 and November 1997, when he obtained a job in his career field with a different employer.

In November 1998, he applied for a similar job with his current employer, but lied to them about his reasons for leaving his long-time employer in 1996 (Item 9). He did, however, disclose the 1996 domestic violence offense.

On 12 March 2000, Applicant was again arrested for an alcohol-related domestic assault, when he and his now-spouse got into a fight after another day of drinking and choked her. He pled no lo contendere, was convicted on 3 July 2000, and sentenced to 3-years probation, 20 hours community service, and fined. He was also required to complete a domestic violence program (Item 8).

On 16 March 2001, Applicant executed a Security Clearance Application (SCA)(SF 86)(Item 4) on which he truthfully disclosed all the adverse information at issue in this case (firing, 1995 and 2000 domestic violence convictions, and a number of past due debts, including the ones alleged). He also disclosed a 1976 drug arrest under the drug arrest question (#24) and his 1982 clearance.

Applicant's 12 June 2001 sworn statement (Item 10) reflects that he has paid a number of debts that became past due while he was unemployed, and had entered into repayment plans with the state and federal governments for his tax liability. He claimed to have paid the debt at subparagraph 1.d. (\$69.00, that he now admits). He had apparently not made any effort to repay the debt at subparagraph 1.c., despite a personal financial statement showing substantial positive monthly cash flow. He asserted that alcohol did not adversely effect his finances, but other than discussing the circumstances of the two domestic violence arrests, he did not provide any information on his alcohol consumption.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

PERSONAL CONDUCT (GUIDELINE E)

E2A5.1.1. **The Concern:** Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.2. 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

FINANCIAL CONSIDERATIONS (GUIDELINE F)

E2.A6.1.1. The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.1. A history of not meeting financial obligations;

E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

E2.A6.1.3. Conditions that could mitigate security concerns include:

E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . .).

ALCOHOL CONSUMPTION (GUIDELINE G)

E2.A7.1.1. The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

E2.A7.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A7.1.2.1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use.

E2.A7.1.3. Conditions that could mitigate security concerns include:

E2.A7.1.3.1. The alcohol related incidents do not indicate a pattern;

E2.A7.1.3.2. The problem occurred a number of years ago and there is no indication of a recent problem;

CRIMINAL CONDUCT (GUIDELINE J)

E2.A10.1.1. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

E2.A10.1.3. Conditions that could mitigate security concerns include:

None.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The Government has established its case under Guideline E. Although Applicant disclosed the 1996 domestic violence arrest to his employer, he failed to disclose the true reason he left his long-time employer. He later truthfully disclosed all his adverse information to the government on his clearance application. While his falsification to his employer--clearly aimed at obtaining the job--is not, strictly speaking, a falsification of a government document within the disqualifying factors, it nevertheless retains security significance. In the industrial security program, the government must be able to rely on an individual's willingness to report adverse information about himself to his employer, who has an obligation to report it to the government, so the government may perform necessary damage assessments or re-evaluation of the individual's continued fitness for access to classified information. Although, Applicant disclosed all his adverse information to the government, Applicant's falsification of his employment application to get the job suggests he might keep any new adverse information from his employer, and thus the government. I find Guideline E. against Applicant

The Government has established its case under Guideline F. The record evidence clearly establishes Applicant's indebtedness, which cannot be considered due to circumstances beyond his control, since Applicant's 1995 arrest was due to his misconduct, and his failure to formally request time off from his employer led to his termination for cause. Although Applicant's financial difficulties were clearly due to his unemployment--and his probably unwitting failure to account for the tax consequences of cashing in his 401K plan--between June 1996 and November 1997, Applicant's evidence fails to establish his financial difficulties are behind him. Applicant has entered into repayment plans with the two tax authorities and has apparently paid a number of past due debts long before his clearance processing. However, his failure to resolve the debt at subparagraph 1.c. despite having the apparent means to do so, or to explain his failure to act on this account, casts significant doubt on his financial responsibility. I resolve Guideline F. against Applicant. ⁽⁴⁾

The Government has established its case under Guideline G. Applicant's two domestic violence incidents in were clearly alcohol-related, under circumstances that suggest Applicant either had to be intoxicated (legally if not physically) or so tolerant of alcohol as to be able to drink all day without much physical effect. Applicant has provided no evidence to demonstrate that his alcohol abuse has no security concern, or that he has taken steps to reduce or cease his alcohol consumption. I resolve Guideline G. against Applicant.

The Government has established its case under Guideline J. Applicant's two domestic violence convictions since 1996 (and less than four years apart) are recent and serious. Applicant has provided no evidence to mitigate the security significance of these offenses. This misconduct casts doubt on Applicant's fitness for access to classified information. I find Guideline J. against the Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Paragraph 2. Guideline F: AGAINST THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: For the Applicant

Paragraph 2. Criterion G: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Paragraph 3. Criterion J: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
2. Applicant misrepresented this incident in his sworn statement (Item 10), when he stated that his "battery" was for restraining his girlfriend from leaving the house, a claim completely at variance with the girlfriend's recorded report at the time of the arrest as well as the arresting officer's observations of the girlfriend's physical condition at the time of the incident.
3. Applicant's statement (Item 10) and his clearance application (Item 4) state he was terminated from this job at the end of May 1996. However, the court records (Item 7) clearly state that Applicant was arrested in early May 1996, arraigned mid-month, and released on his own recognizance after his not guilty plea. With agreed continuances, he did not enter his no lo contendere plea to the domestic battery charge until July 1996.
4. Although I conclude that Applicant's repayment plans to the tax authorities, and the alleged \$69.00 debt in 1.c. lack security significance. It appear that the tax liability was due to Applicant's lack of understanding of the tax consequence of his cashing out his 401K, not any deliberate failure to report his income or file his tax returns.