

DATE: July 25, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00422

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

No Applicant or Representative

SYNOPSIS

Applicant is a 30 year-old employee of a defense contractor. Security concerns are raised

based on three misdemeanor convictions, five unpaid debts, and the falsification of material facts on his security clearance application. Applicant has not mitigated these concerns and serious concerns remain as to his security eligibility and suitability. Clearance denied.

STATEMENT OF THE CASE

On January 31, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under Guideline J (Criminal Conduct), Guideline F(Financial Considerations), and Guideline E (Personal Conduct) 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 Applicant, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated February 28, 2003, Applicant responded to the SOR allegations. He requested a hearing. This case was originally assigned to Administrative Judge Joseph Testan on May 6, 2003. The case was reassigned to me on May 8, 2003 due to caseload considerations. A Notice of Hearing was issued on May 27, 2003, setting the hearing for July 2, 2003. Applicant acknowledged receipt of the Notice of Hearing on June 2, 2003. Department Counsel contacted him on Monday, June 30, 2003, to reconfirm the hearing and seek his consent to start the hearing earlier in the day. He agreed to the change, but did not appear on the hearing date. On July 2, 2003, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance.

The Government presented ten exhibits which were admitted into evidence. Applicant did not appear. Instead, his mother appeared and acknowledged he was aware of the scheduled hearing, but decided to go to work instead (Tr. at 8) and defaulted his hearing. I received the transcript of the hearing on July 14, 2003.

FINDINGS OF FACT

Applicant admitted the SOR allegations in subparagraphs 1, 2, and 3. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 30-year-old employee of a defense contractor seeking a security classification

Applicant is divorced and has two children. (Exhibit 4 at 3 and 4; Answer)

Applicant has two misdemeanor arrests and convictions in 1993 for discharging a firearm and underage possession and consumption of alcohol. He has an arrest and conviction in 1997 for a misdemeanor shoplifting charge. (Exhibits 1, 2 and 7; Answer)

Applicant has five unpaid debts incurred from 1997 onward, and which were unpaid in 2001. (Exhibits 3, 5, 6, 8, 9, and 10)

Applicant failed to disclose on his security clearance application completed on April 7, 2000, that he had the three arrests and convictions in 1993 and 1997. He answered "No" to Question 26 when he should have answered "Yes" and list the three arrests and convictions. (Exhibit 4 and Answer)

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline J: Criminal Conduct

(A) The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

(B) 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.

(C) Conditions that could mitigate security concerns include:

(1) The criminal behavior was not recent.

Guideline F: Financial Considerations

(A) 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.

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

(1) A history of not meeting financial obligations.

(3) Inability or unwillingness to satisfy debts.

(C) Conditions that could mitigate security concerns include:

(4) The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

(6) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline E - Personal Conduct:

(A) 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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

Refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personal security or trustworthiness determination.

(B) Conditions that could raise a security concern and may be disqualifying also include:

(2) The deliberate omission, concealment, falsification or misrepresentation 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;

(C) Conditions that could mitigate security concerns include:

None

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, I can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. Likewise, I have attempted to avoid drawing any inferences that are based on mere speculation or conjecture.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

Initially, it should be noted that because of Applicant's failure/refusal to appear at the hearing, the Department Counsel was unable to exercise her right to cross-examine Applicant to develop any desired additional information or clarification. However, the state of the record is such that I have sufficient information upon which to base a decision, notwithstanding Applicant's absence.

Regarding Guideline J (Criminal Conduct), the Government proved its case. A history or pattern of criminal activity creates doubt about a person's judgement, reliability and trustworthiness. A security concern arises and may be disqualifying in this case when there are allegations or admissions of criminal conduct, regardless of whether the person is formally charged, which is Disqualifying Condition (DC) 1, or a single serious crime or multiple lesser offenses occurs, which is DC 2.

The Mitigating Conditions (MC) that apply are MC 1 (incident was not recent) and MC 3 (there is evidence of successful rehabilitation). The arrests were 10 and six years ago. There are no repeated offenses on record. Applicant is employed now and was married. The offenses occurred when Applicant was 20 and 26, not a teenager. He should have known better. But he has stayed out of trouble since then with the help of his mother and his sister. Therefore, I find for Applicant on Guideline J.

Considering Guideline F (Financial Considerations), I find DC 1 and DC 3 apply. These debts are small, but they show a pattern of over-expenditures from a lack of responsibility about money. MC 4 and MC 6 apply here. While Applicant has not received formal counseling on his debts, his statements are that his sister and mother have helped him prepare a budget and plan the repayment of his debts. His statement of October 30, 2001, was that he was going to pay off all his debts which were not included in his 1999 bankruptcy. By not appearing at the scheduled hearing, I do not know if he paid off these debts. However, Exhibits 9 and 10 show Applicant's financial problems continue, and subparagraph 2.e. loan appears to be unpaid as of May 5, 2003. Therefore, I find against Applicant on Guideline F.

With respect to Guideline E, I conclude the Government proved its case as it sets forth in subparagraph 3.a. that Applicant deliberately failed to disclose his police arrest record on the personnel security questionnaire submitted in . Under Guideline E conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicated that the person may not properly safeguard classified information. A security concern may exist when an applicant deliberately omits, conceal, or falsifies relevant and material facts from her personnel security questionnaire or deliberately provides false or misleading information concerning relevant and material matters to an investigator in connection a personnel security determination. I find DC 2 applies to this issue. I do not find any MC which applies here. Consequently, I find against Applicant on Guideline E.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline J: For Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2 Guideline E: Against Applicant

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Paragraph 3 Guideline J: Against Applicant

Subparagraph 3.a.: Against Applicant

DECISION

In light of all the circumstances and facts 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.

Philip S. Howe

Administrative Judge