

DATE: October 30, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00480

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Juan R. Rivera, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's inconsistent statements fail to adequately explain or mitigate his omission from his security clearance a conviction for Speeding and Refusal to Submit to a Breathalyzer Test. He has also failed to sufficiently explain or mitigate not reporting that he was charged with Cursing and Abusing his wife. Finally, Applicant failed to adequately address or mitigate an incident involving two fires in his mobile home. Although he denies that he intentionally set fire to his mobile home in order to obtain an insurance payment, Applicant admitted to the Defense Security Service that it was a "possibility," given his memory loss from the use of alcohol and prescribed medications at the time. Clearance is denied.

STATEMENT OF THE CASE

On November 26, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On December 31, 2002, Applicant executed a response to the SOR and requested a hearing. The case was assigned to me on February 20, 2003. A notice of hearing was issued on March 26, 2003 and the hearing was held on April 23, 2003. During the hearing, six Government exhibits and the testimony of Applicant were received. The transcript (Tr) was received on May 1, 2003.

PROCEDURAL ISSUE

Applicant testified he had requested records from the fire department that would corroborate his explanation of the cause of his mobile home fire. Prior to the conclusion of the hearing, I granted applicant 30 days in which to submit

such evidence or evidence to substantiate that his insurance company paid his claim on the mobile home. Applicant did not submit any additional evidence.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, including Applicant's admissions to SOR ¶ 1.a and SOR ¶ 1.b, I make the following findings of fact:

Applicant is a 50-year-old electrical supervisor, who is employed by a defense contractor. He is seeking a security clearance.

On April 17, 1992, Applicant was arrested and charged with Speeding, Driving While Impaired, and Refusal to Submit to a Breathalyzer Test. On June 19, 1992, he was found guilty of

Speeding and Refusal to Submit to a Breathalyzer Test. Applicant was sentenced to 30 days in jail, which was suspended, had his driver's license revoked, and was fined \$250.00 plus costs. ⁽³⁾

On May 9, 1997, Applicant was summoned to appear in court on a charge of Cursing and Abusing his wife. On October 31, 1997, the charged was dismissed. ⁽⁴⁾

On August 2, 2001, Applicant executed a security clearance application (SF 86). In response to question 24, ⁽⁵⁾ Applicant answered, "no." ⁽⁶⁾

In response to question 26 ⁽⁷⁾ on the same SF 86, Applicant also answered, "no." ⁽⁸⁾

In the summer of 1991, Applicant was going through a divorce and a bankruptcy. He was engaged in a heavy use of alcohol and was taking prescribed drugs, prozac and xanax. At that time, there was a fire in Applicant's mobile home. After being notified of the fire by his ex-wife, he returned from a trip to an adjacent state. Applicant contacted his insurance company and subsequently submitted a claim for his loss from the fire. The mobile home was not completely burned. A second fire occurred as a result of Applicant's use of the washer. The fire department responded and cut off the power to the mobile home. ⁽⁹⁾

On October 30, 2001, Applicant provided a statement concerning the mobile home fires to the Defense Security Service (DSS). In it, he denied any recollection of doing anything to cause the fire. However, he acknowledged that it was a "possibility," given his loss of memory from his use of alcohol and the drugs. ⁽¹⁰⁾

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish controverted facts in the SOR. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines also includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable 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. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guideline is applicable to this case.

Guideline E, Personal Conduct, concerns 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. Conditions that could raise a security concern and may be disqualifying under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 addresses 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, determine employment, qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

None of the conditions that could mitigate security concerns are applicable in this case.

CONCLUSIONS

With regard to SOR ¶ 1.a, Applicant's omission from his security clearance application (SF 86) of a driving conviction that included his refusal to take a breathalyzer test establishes Disqualifying Condition 2. His failure to report his 1997 arrest for Cursing and Abusing his spouse on the same SF 86, as set forth in SOR ¶ 1.b, also establishes Disqualifying Condition 2.

Applicant told the Defense Security Service that he failed to list his "breathalyzer charge" because he thought it was a civil matter and did not have to be listed.⁽¹¹⁾ It is not reasonable that Applicant would interpret an arrest by law enforcement authorities as a "civil matter." In his response to the SOR, Applicant claimed he did not think he had to report the offense because it was seven years old. He reasserted this explanation at the hearing.⁽¹²⁾ Applicant's latest explanation does not meet his burden under section E3.1.15 of the Directive, since question 24 is not limited to a seven year period. Neither of Applicant's explanations are credible or mitigate his omission of the conviction from the SF 86. Moreover, his inconsistent explanations for the omission undermine his attempt to proclaim that his omission was not deliberate. Therefore, I find against Applicant with regard to SOR ¶ 1.a.

Applicant says that he did not think he had to report being charged with cursing and abusing his spouse because the charge was dismissed. This is not a satisfactory explanation for his omission because his interpretation is contrary to the plain reading of question 26. Question 26 specifically states, "have you been arrested for, charged with, or convicted of." Once again, Applicant has not

met his burden in accordance with section E3.1.15 of the Directive. Consequently, I find against Applicant with regard to SOR ¶ 1.b.

With regard to the fires in Applicant's mobile home (SOR ¶ 1.c), he asserts that the insurance investigator determined that a screw that penetrated electrical wiring during construction caused the fire. However, he was not able to provide corroboration of this from either his insurance company or the fire department.

Furthermore, Applicant's statements concerning the incident are inconsistent. At the hearing, he denied there was a second fire but he simply smelled something that smelled like smoke. He insisted that he did not have to call the fire department. In his earlier statement to the DSS, however, Applicant admitted there was a second fire and he had to call the fire department.

Although Applicant denies he started the fire, he previously admitted to the DSS that it was a "possibility," given his memory loss from the use of alcohol and prescription drugs at the time. Since he was pursuing a bankruptcy at that time, there existed motive for such an action. Moreover, the fact he caused a second fire, immediately after the initial fire that had not completely destroyed the mobile home, is highly suspicious and suggests that Applicant is culpable.

The evidence in the record is sufficient to shift the burden to Applicant to adequately explain or mitigate this issue.

Since he has failed to do so, I find against Applicant with regard to SOR ¶ 1.c.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

DECISION

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. Govt Ex 3; Govt Ex 5 at 6. Although the SOR alleges and Applicant admitted the fine was \$350.00, Govt Ex 3 records the fine as \$250.00.
4. Govt Ex 4.
5. "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?"
6. Govt Ex 1 at 7.
7. "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25?"
8. Govt Ex 1 at 7.
9. Govt Ex 2.
10. *Id.*
11. Govt Ex 5.
12. Tr 45-46.