

DATE: August 5, 2003

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-01181

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 43-year-old manufacturing specialist was arrested four time between 1989 and 2000, three times for alcohol-related offenses. He used and purchased cocaine between 1994 and 1998. He owes a past due debt of about \$36,000.00 for child support. He knowingly falsified answers to four questions on his April 4, 2000 security clearance application. No mitigation has been shown. Clearance is denied.

STATEMENT OF THE CASE

On January 24, 2003, 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.

On February 24, 2003, Applicant submitted a 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 April 16, 2003. The FORM instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. The response was due by May 24, 2003. DOHA received a response to the FORM on May 19. The matter was assigned to me for resolution on May 28, 2003.

FINDINGS OF FACT

Applicant is a 43-year-old manufacturing specialist for a defense contractor. The SOR contains four allegations under Guideline J, one allegation under Guideline G, two allegations under Guideline H, one allegation under Guideline F, and four allegations under Guideline E. Applicant *admitted* all of the SOR allegations, except for the Guideline G allegation, to which he did not respond, and which is considered as if it were a denial. Each of his admissions is accepted and made a Finding of Fact.

After considering the totality of the evidence derived from the FORM and its attachments, including but not limited to Applicant's response to the SOR, I make the following additional FINDINGS OF FACT.

As cited in the SOR:

Guideline J (Criminal Conduct)

- 1.a. - On June 10, 2000, Applicant was arrested in State A and charged with Driving While Intoxicated (DWI);
- 1.b. - On September 23, 1995, Applicant was arrested in State A for Domestic Violence and Disorderly Conduct/Language/Riot;
- 1.c. - On February 15, 1992, Applicant was arrested in State B for Driving under the Influence (DUI) and Driving with a Blood Alcohol Content of more than .08%;
- 1.d. - On August 10, 1989, Applicant was charged in State B with DUI.

Guideline G (Alcohol)

- 2.a. - Applicant consumed alcohol to excess, as cited in 1.a., 1.b., and 1.c.

Guideline H (Drugs)

- 3.a. - From about 1994 to at least 1998, Applicant used cocaine;
- 3.b. - Applicant purchased cocaine on approximately ten occasions.

Guideline F (Financial Considerations)

- 4.a. - Applicant is indebted to County C in State B for approximately \$36, 758.00 in past due child support.

Guideline E (Personal Conduct)

Applicant falsified material facts on his Standard Form 86, dated April 4, 2000, when he answered:

- 5.a. - No to Question 24 (Alcohol/Drug Offenses), when he should have reported the information in 3.a and 3.b.;
- 5.b. - No to Question 26 (Police Record - Other Offenses), when he should have reported the information cited in 1.b.;
- 5.c. - No to Question 27 (Use of Illegal Drugs - Use of Drugs), when he should have reported the information cited in 3.a.;
- 5.d. -No to Question 29 (Drug Activity), when he should have cited the information in 3.b.

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 J (Criminal Conduct)

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

Conditions that could mitigate security concerns include:

None that are applicable under the facts of this case.

GUIDELINE G (Alcohol)

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

1. Alcohol-related incidents away from work, such as driving while under the influence;
5. Habitual or binge consumption.

Conditions that could mitigate security concerns include:

None that are applicable under the facts of this case.

GUIDELINE H (Drugs)

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

1. Any drug abuse;
2. Illegal drug possession, including purchase.

Conditions that could mitigate security concerns include:

None that are applicable under the facts of this case.

GUIDELINE F (Financial Considerations)

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

2. A history of not meeting financial obligations;

3. Unwillingness or inability to satisfy debts.

GUIDELINE E (Personal Conduct)

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

2. The deliberate omission, concealment, or falsification of relevant and material facts from any security clearance application.

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

In addition to the Applicant's admissions, the record evidence independently supports the accuracy of all 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.

Guideline J (Criminal Conduct)

The existence of the four arrests, in 1989, 1992, 1995, and 2000 is definitively established by the record. I have carefully considered the explanations in the FORM (GX 3 - 12), and in Applicant's response to the FORM. The latter states that the charge alleged had been dismissed, but was reinstated on appeal and that he was scheduled to go on trial on this matter. Even accepting his claim as correct, it does not change the fact that he was arrested for DWI as alleged, or that he was intoxicated when arrested.

Applicant's response to the FORM adds no new information or argument as to the 1995 arrest alleged in SOR 1.b., and which he admitted and which was independently established by the record evidence. As to SOR 1.c., Applicant's response to the FORM states that the middle name shown on the Criminal Complaint issued for this offense (GX 9) is different from the one cited in the SOR, although both begin with the same letter, S. He is correct in this, but if the suggestion is that the Complaint is not against him, he is clearly incorrect. The complaint is signed with the middle initial S, and the distinctive handwriting is clearly the same as that on his response to the FORM, even to a layman. Applicant also notes a one month difference in dates shown on GX 9 (March 15) and that alleged in the SOR (February 15), but this does not affect the validity of the arrest as charged. I find that the arrest charged in SOR 1.c. was on March 15, 1992, as shown in the court records (GX 9).

As to SOR 1.d., Applicant states he has not been able to independently verify this charge, which he previously admitted

in his response to the SOR (GX 3). The fact that the county court involved has not been able to find a record of this 1989 arrest (Attachment 2 to response to FORM) is noted, but this does not establish that the arrest did not occur as alleged. This arrest does not appear in the FBI Criminal History report (GX 11). It is found in the Advisement of Rights, Waiver, and Plea Form in the 1992 arrest (GX 7), which was signed by Applicant and his attorney on April 20, 1993. In response to the section entitled "Nature of Charges," Applicant wrote "11971 VC [section of Vehicle Code]" and the date "9/10/89" (GX 9 at page 2). Applicant has thus not established that the 1989 arrest did not occur as alleged.

Disqualifying Conditions (DC) 1 (allegations or admissions of criminal conduct) and 2 (multiple lesser offense) are clearly applicable. After considering the number and time sequence of Applicant's criminal conduct, I conclude that the conduct must be considered as still recent, so that Mitigating Conduct (MC) 1 is not applicable, nor is MC 2, since the criminal conduct is not an isolated incident. As to MC 6, because of the totality of Applicant's criminal conduct and the other concerns cited below, there is no clear evidence of Applicant's successful rehabilitation.

Guideline G (Alcohol)

The concerns cited under Guideline G (SOR 2.a.), have also been established because of the alcohol-related arrests cited in SOR 1.a., 1.c., and 1.d. In his May 30, 2001 Sworn Statement (GX 6), Applicant stated that he continues to drink "approximately 24 twelve-ounce beers per week" and that he had thought about "cutting back," but there is no evidence that he has done so. In his February 18, 2003 response to the SOR (GX 3), Applicant admits the allegations and does not claim he has stopped his drinking or that he has substantially reduced it. His response to the SOR FORM does not contain any reference to his drinking problems. On this basis, I conclude that the alcohol-related concerns in DC 1 (alcohol-related arrests) and DC 5 (habitual or binge drinking to excess) are applicable, but that Applicant has not established any Mitigating Conditions. There is a pattern of drinking (MC 1) that apparently continues to the present (MC 2), and Applicant has not established the existence of "positive changes in behavior supportive of sobriety"(MC 4).

Guideline H (Drugs)

Applicant's admitted use of cocaine from 1994 to 1998 drugs and his purchase of that illegal substance on at least 10 occasions, establish the applicability of DC 1 (any drug abuse), and DC 2 (illegal drug possession and/or purchase). In the context of a drug use that lasted for four years and ended five years ago, I conclude the drug use is no longer recent (MC 1), but Applicant has not expressed an intent not to avoid drug use in the future, as required by MC 3. In the context of his overall misconduct, I conclude that the risk of future drug use continues to exist.

Guideline F (Financial Considerations)

The single past due debt is of security significance primarily because of its size, \$36,758.00 as of August 2000, but also because it is for child support arrearage going back a number of years. In his response to the FORM, Applicant claims weekly child support payments have been taken out of his paycheck since he began working for his present employer, in April 2000 according to his SF 86 (GX 4), but he has not documented this claim.

Guideline E (Personal Conduct)

Applicant admits falsifying his answers to four questions on his April 4, 2000 SF 86. His only explanation on this point is found in his answer to the FORM, but it relates to only one of the four questions, and does not mitigate even that question, since he again admits purchasing the cocaine, even though it was for his own use.

In summary, considering the totality of the record, I conclude that Applicant has not established mitigation or extenuation of any of the 11 allegations contained under five separate Guidelines. As a result, I conclude that he has not established that he currently possesses the good 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 J (Criminal Conduct) Against the Applicant

Subparagraph 1.a. - 1.c. Against the Applicant

Guideline G (Alcohol) Against the Applicant

Subparagraph 2.a. Against the Applicant

Guideline H (Drugs) Against the Applicant

Subparagraph 3.a. and 3.b. Against the Applicant

Guideline F (Financial Considerations) Against the Applicant

Subparagraph 4.a. Against the Applicant

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 5.a. - 5.d. 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