

DATE: August 5, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-27335

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant assaulted his wife in 1986 and 2002, and was charged with assaulting a customer in 1997 at a bar at which he was working. He failed to mitigate criminal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 2 November 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 12 November 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 20 May 2005. On 22 June 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 30 June 2005.

FINDINGS OF FACT

Applicant is a 43-year-old information associate for a defense contractor. He served 20 years in the U.S. Air Force from 1980-2000, retiring at the rank of technical sergeant (E-6). He has worked for his present employer since 2001. He is married but legally separated. He has two children, ages 15 and 17. His oldest child spent a year in a drug rehabilitation program. On the final day of the program he was required to provide a urine specimen for drug testing. As a result, he is now serving a two year term of confinement in a state facility. Tr. 37-38.

After entering the Air Force, Applicant was granted a secret clearance in 1980 while working in fighter aircraft maintenance. He was a heavy drinker. Tr. 21. He married in August 1984. Ex. 6 at 2. He was an alcoholic and he thought of his wife as someone who was trying to control him. Answer at 1. In May 1986, he assaulted his wife. She was treated at the base hospital. He was arrested by military authorities for assault. He was ordered to attend anger management training. He failed the program by consuming alcohol. Because of his heavy drinking, he was enrolled in a military in-residence alcohol rehabilitation program in August 1986. After completing the almost four-week program,

he went into the follow-up program from September 1986-September 1987. He was also re-entered into the anger management program. Ex. 6 at 5. He was granted a top secret clearance in 1992. Ex. 1 at 9.

In 1997, Applicant worked as a doorman at a local bar. A customer entered who appeared to be drunk. When the customer went to a corner of the bar where a coat was laying, Applicant and the bouncer went to confront him to determine if the coat was his. The customer became abusive and Applicant put him in a bear hug and walked him outside. Applicant was arrested for simple assault. When the customer failed to appear at trial, the charge was dismissed. Answer.

In January 2002, Applicant became embroiled in a domestic dispute with his wife. He hit her with a telephone book twice and threw a gallon jug of water to the floor, causing it to crash. His wife called the police and he was arrested for harassment and menacing. He spent the night in jail and had a mandatory 72-hour restraining order against him prohibiting him from contact with his wife. Applicant pled guilty to third degree assault and the other charges were dismissed. He was ordered to serve 24 months of supervised probation and to complete a 36-week domestic violence program, which he did. Ex. 4 at 5. The restraining order was dismissed.

Although not alleged, Applicant admits he had other physical altercations with his wife that were not reported. Tr. 39.

In July 2003 interrogatories, Applicant claimed not to have had a drink since January 2002 and that he did not intend to consume alcohol in the future. Ex. 2 at 2. At his hearing, Applicant admitted that he still consumes alcohol, but asserts it is no longer a factor in his life. Tr. 22.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

In the SOR, DOHA alleged Applicant was arrested in 1986 and charged with spouse abuse (¶1.a), charged with simple assault in November 1997 (¶ 1.b), and arrested in January 2002 and charged with harassment, menacing, and assault in the third degree (¶ 1.c). Applicant admitted each of the allegations. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

The Government's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline J-admissions of criminal conduct (DC E2.A10.1.2.1) and multiple lesser offenses (DC E2.E10.1.2.2). There are three mitigating conditions that arguably apply to this case: (1) the criminal behavior was not recent (MC E2.A10.1.3.1); (2) the factors leading to the violations are not likely to recur (MC E2.A10.1.3.4); and there is clear evidence of successful rehabilitation.

The first incident alleged in the SOR occurred almost 20 years ago and the most recent occurred over three years ago.

There is no evidence Applicant was involved in any criminal behavior since his 2002 assault arrest. But the offenses alleged in the SOR all resulted from Applicant's inability to control his temper. After the first incident military authorities recognized his need for anger management counseling and saw a connection between his anger and his excessive drinking. So they referred him for anger management and alcohol treatment. After completing his alcohol treatment, and by his own account being sober, he engaged in several other physical altercatios, all but one with his wife. The bar altercation seems harmless on its face. But Applicant admitted that he was not the bouncer. Nevertheless, he was the one who grabbed the bar patron and escorted him out the door, resulting in the assault charge. The 2002 assault on his wife shows he still was not able to manage his anger appropriately.

As a consequence of his 2002 assault conviction, Applicant was required to complete a 36-week domestic violence program. He asserts he has now "changed the filter through which I view life. It's a filter of peace, patience, understanding and reality, versus a filter of anger, and self-centeredness." Tr. 10. Yet he has returned to consuming alcohol, one of the triggers of his anger in the past. Under all the circumstances of this case, sufficient time has not elapsed to convince me that the factors leading to his criminal behavior are not likely to recur or that his rehabilitation has been successful. I find against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

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