

DATE: August 26, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28141

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Juan Rivera, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was charged and convicted of four misdemeanor incidents over a three-year period while in college (two of them alcohol-related). Applicant attributes his encounters to immaturity and a bad attitude towards the police. With his excellent record of academic and professional achievement, he has changed his lifestyle and altered his attitude towards law enforcement for the better. No longer does he associate with the kind of friends and acquaintances that attracted him to trouble with the authorities as an adolescent. Applicant mitigates the security risks associated with his prior judgment lapses by demonstrated reliability and trustworthiness in his work and personal life. Clearance is granted.

STATEMENT OF THE CASE

On March 14, 2003, the Defense Office of Hearings and Appeals, pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), issued a Statement of Reasons (SOR) to Applicant, which detailed reasons 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 determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on April 15, 2003 and requested a hearing. I was assigned this case on June 4, 2003, and scheduled it for hearing on June 27, 2003. A hearing was convened on June 27, 2003, as scheduled, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of seven exhibits; Applicant relied on three witnesses (including himself) and seven exhibits. The transcript (R.T.) of the proceedings was received on July 8, 2003.

STATEMENT OF FACTS

Applicant is a 24-year-old security specialist for a defense contractor who seeks a security clearance.

Summary of Allegations and Responses

Under Guideline J, Applicant is alleged to have been arrested on four occasions between February 1997 and April 2000: on a disorderly conduct charge in February 1997, to which he pleaded guilty and was fined \$200.00; on an open container charge in November 1998, to which he pleaded *nolo contendere* to possession by a minor and was fined \$250.00; on a charge of prohibited sales of alcohol in January 2000, to which he pleaded guilty to a reduced violation and was fined \$300.00 (\$200.00 suspended), and on a charge of disorderly conduct/simple assault in April 2000, to which he pleaded guilty to disorderly conduct and was fined \$150.00 (with the simple assault charge *nolle prossed*).

For his response to the SOR, Applicant admitted the allegations. He claimed he paid each of the fines assessed and has not been involved in any further offenses or infractions since his last arrest in April 2000. Applicant attributes alcohol, immaturity, and an unfavorable attitude towards police authority as the principal sources of his errant behavior. He claimed to have enjoyed considerable academic success in college in spite of the four incidents in his record. Since relocating to his current state to accept his current professional employment, he claims to have matured and changed his attitude for the better. He claimed the last of the four incidents represented a wake-up call for him. Since this last incident, he assured he has corrected the causes of his judgment lapses with authorities and now acknowledges the police as his friends. He claimed to have demonstrated reliability and trustworthiness in his academic and professional pursuits and is no longer a risk to repeat his earlier mistakes.

Relevant and Material Factual Findings

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

While in college and a minor, Applicant was involved in four separate incidents in which he was arrested, charged, and convicted of misdemeanor offenses. In each case, he was fined only. He attributes his actions to immaturity and a negative attitude against police authority in general. His experiences with campus police in his first few years of college weakened his faith in the law and accounted for much of his drinking and disregard of behavioral restraints in the small college community where he resided.

Two of Applicant's covered incidents were alcohol-related. In the first of these incidents (in November 1998), he had been drinking with several other similarly under age minors when he was arrested for possession of alcohol. Applicant's other alcohol-related incident occurred in January 2000. Preceding his arrest he had bought beer for three others under age. His last campus incident occurred in April 2000. This arrest was non-alcohol-related and occurred after he had pushed a police officer and made an expletive remark about a police officer's giving a ticket to another.

Since his last arrest incident in April 2000, Applicant has avoided any kind of criminal behavior. Now that he has completed his college schooling and accepted a position with his current employer in another state, he no longer associates with anyone under 21 years of age. He does not engage in alcohol-related behavior that could place him at risk to encounters with law enforcement authorities. His attitude towards police has changed for the better: He now considers them to be on his side.

Applicant has received excellent employment evaluations from his current employer and is highly regarded by his current supervisor and assistant security officer. Both characterize Applicant as very reliable and trustworthy. Neither has detected any judgment lapses in the one and one-half years he has been employed by the company (*see R.T.*, at 47-54). Applicant's excellent academic record includes not only solid grades, but credits for design recognition by a regional media association, a governor's grant and certificates of appreciation for his work in a college-oriented peer tutoring program (*see exs. C through G*).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these

factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Criminal Conduct

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

Disqualifying Conditions:

DC 1 Allegations or admission of criminal conduct.

DC 2 A single serious crime or multiple lesser offenses.

Mitigating Conditions:

MC 1 The criminal behavior was not recent.

MC 6 There is clear evidence of successful rehabilitation.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on mere speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing on the applicant's eligibility to obtain or maintain a security clearance. The required showing of materiality, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant has a history of misdemeanor criminal arrests and convictions (four in all) over a three-year period while he was in college. He attributes his run of offenses to alcohol, adolescent immaturity and a bad attitude towards the police while a college student.

To be sure, Applicant's acknowledged judgment lapses did not affect his academic pursuits. Just the same, these lapses were concentrated over a three-year period and together reflect poor judgment and immaturity. Taken together, these incidents have security significance and are covered by two of the disqualifying conditions (DC) of the Adjudicative Guidelines for criminal conduct: DC 1 (allegations or admission of criminal conduct) and DC 2 (a single serious or

multiple lesser offenses).

Since relocating and accepting employment with his current employer, Applicant has inspired considerable confidence among his supervisors and colleagues. He attributes much of his success to a significant attitude change about his perceptions of the police. Now he sees the police as his friend and looks to find ways of rendering assistance to his community. No longer does he associate with the kind of acquaintances he got into trouble with back in college. His professional and personal development are marked by over three and one-half years of trouble-free behavior in his adopted state. Since his last offense in April 2000, he has not violated any public laws or ordinances (not even a traffic law). Applicant may invoke several mitigating conditions (MC) covered by the Adjudicative Guidelines for criminal conduct: MC 1 (behavior not recent) and MC 6 (there is clear evidence of rehabilitation).

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors set forth in the Procedures section (paragraph 6) of the Directive, as well as E.2.2 of the Adjudicative Process of Enclosure 2 of the same Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE J (CRIMINAL CONDUCT): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Roger C. Wesley

Administrative Judge