

DATE: December 14, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30900

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a lengthy history of drug and alcohol abuse, and arrests, apprehensions, convictions, and other non-criminal sanctions for these offenses. Although Applicant cleaned up his act, he deliberately falsified his security clearance application and a statement he gave to a government agent. Applicant failed to mitigate personal and 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 16 April 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision—security concerns raised under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 6 July 2004 and elected to have a hearing before an administrative judge. The case was originally assigned to another judge, but reassigned to me on 18 July 2005. On 12 September 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 5 October 2005.

SOR ¶ 1.a(3) was amended to read as follows: You were arrested on October 18, 1994, ... and charged with driving while intoxicated and possession of marijuana. You pleaded nolo contendere to those charges on June 15, 1995. You were arrested on February 5, 1995 in ... and charged with driving while intoxicated. Your blood alcohol content was .22%. You pled guilty and were sentenced to 180 days in jail, probation for two years, 80 hours of community service, and to pay a fine of \$500 and court costs of \$260.

I kept the record open so Applicant could present additional evidence. Applicant submitted 33 pages of evidence. Department Counsel had no objection and the documents were admitted as Ex. A.

FINDINGS OF FACT

Applicant is a 51-year-old field engineer for a defense contractor. He served on active duty with the U.S. Army from 1974-86 and was a member of the inactive reserve for two more years. Ex. 1 at 5. He held a top secret clearance while in the Army.

In 1971, Applicant was arrested for and charged with possessing dangerous drugs.

In August 1984, Applicant was apprehended by military police for wrongfully possessing

marijuana. He accepted nonjudicial punishment and was reduced in grade from E-6 to E-5 and ordered to forfeit \$450 a month for two months. Ex. 3 at 2. He was administratively discharged after his urinalysis showed he had used marijuana.

In October 1994, police were called to Applicant's home to investigate a domestic disturbance. Shortly after they arrived, Applicant returned to his home. When he got out of the car he almost fell down. Applicant had blood-shot eyes, his speech was slurred, and he smelled strongly of alcoholic beverage. Applicant was arrested for DWI. During a search of his vehicle, police found a small quantity of marijuana. Ex. 9. In June 1995, Applicant pled nolo contendere. He was convicted of DWI. He was sentenced to 90 days in jail, but it was suspended for two years and he was placed under state supervision. Ex. 10.

While his October 1994 charges were pending, Applicant was involved in a single vehicle motor vehicle accident in February 1995 just before 8:00 a.m. His eyes were bloodshot and his speech was slurred. He originally denied driving the vehicle, but later admitted doing so. Applicant agreed to an intoxilyzer test which revealed a breath-alcohol concentration of .22%. He was arrested for driving while intoxicated (DWI). Applicant pled guilty and was sentenced to jail for 180 days, fined, and ordered to pay court costs. The sentence was suspended for two years and Applicant was placed under supervision and ordered to complete a DWI education program and perform community service. Exs. 4, 5.

Applicant received a travel permit from his probation officer to leave the state on 7 August 1995 to travel to Saudi Arabia to work. In 1997, Applicant was released from state supervision.

On 2 April 2001, Applicant completed a security clearance application (SCA) by certifying that his answers were "true, complete, and correct" to the best of his knowledge and belief and acknowledging that a "knowing and willful false statement" could be punished by imprisonment and/or fine under 18 U.S.C. § 1001. Question 24 asked if he had ever been charged with or convicted of any offenses related to alcohol or drugs. Applicant answered "yes," but listed only the 1995 DWI offense.

An agent of the Air Force Office of Special Investigations (AFOSI) interviewed Applicant on 12 November 2001 concerning his SCA. Applicant claimed he had only been arrested once for DWI and possession of marijuana and that it was his only arrest. He denied the marijuana was his and claimed he had never used illegal drugs. On 14 November 2001, Applicant contacted the special agent and stated that he had in fact had two DWI offenses, but they had been handled simultaneously by the court. He still did not mention his other drug-related arrests and his positive urinalysis. Applicant admits he failed to provide accurate information because he feared he would lose his job. Tr. 12-13.

Applicant still consumes alcoholic beverages, but only an occasional beer. He seems to have sobered up while working in Saudi Arabia where he can not get alcoholic beverages. Tr. 15.

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

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified his SCA by deliberately failing to list all of the drug- and alcohol-related offenses of which he had been charged or convicted (¶ 1.a); and falsified material facts in statements to an investigator by failing to admit all of his arrests (¶ 1.b) and his illegal use of drugs (¶ 1.c). Applicant admitted each of the allegations. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government's evidence established potentially disqualifying conditions under Guideline E. An applicant's police record and history of alcohol and drug abuse are relevant and material to a determination of an applicant's security worthiness. Applicant deliberately omitted such information from his SCA (DC E2.A5.1.2.2) and from a statement he made to an AFOSI agent who interviewed him about his clearance (DC E2.A5.1.2.3). An applicant may mitigate these disqualifying condition by showing he made a prompt, good-faith effort to correct the falsification before being confronted by the facts. MC E2.A5.1.3.3. I find this mitigating condition applies to Applicant's false statement to the AFOSI agent about his two DWI arrests between October 1994 and February 1995. It does not mitigate his omission of his 1971 arrest for possession of dangerous drugs nor his positive urinalysis in 1983. I find none of the other mitigating conditions applicable. Under the circumstances, I find against Applicant on ¶ 1.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant was convicted of DWI and possession of marijuana in July 1995 (¶ 2.a); was charged with violation of a state dangerous drug law in 1971, convicted of wrongful possession of marijuana and violation of a general order in 1984, and arrested for DWI in 1995 (¶ 2.b); and violated 18 U.S.C. § 1001 by deliberately falsifying his SCA and a statement to an AFOSI agent (¶ 2.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. It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan*, 484 U.S. at 527.

Applicant engaged in criminal conduct by his possession and use of marijuana, his DWIs, and his deliberate omission of relevant and material information about these offenses from his SCA. He also violated 18 U.S.C. § 1001 by deliberately trying to mislead the AFOSI agent who interviewed him about his criminal conduct and failure to list it on his SCA. An applicant may be disqualified if he admits criminal conduct (DC E2.A10.1.2.1) and by engaging in serious criminal offenses (DC E2.A10.1.2.2). Applicant admitted serious criminal offenses, two violations of 18 U.S.C. § 1001, that carries a penalty of up to five years in jail for each offense. He mitigated, in part, his deliberate attempts to mislead the AFOSI agent by notifying the agent within two days of the omission. Nevertheless, it does not mitigate his omission of his 1971 arrest for possession of dangerous drugs. After weighing all of the evidence in this case, I find against Applicant on ¶ 2.

FORMAL FINDINGS

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

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a(1): Against Applicant

Subparagraph 1.a(2): Against Applicant

Subparagraph 1.a(3): Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c(1): Against Applicant

Subparagraph 1.c(2): Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.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).