

DATE: October 29, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-14495

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has mitigated security concerns over his past criminal conduct, drug use, and personal conduct. Given his record of excellence at work and in the community, he has mitigated his past drug use in 1997 and his criminal conduct as he has not had any adverse incidents for five years. Thus, he has demonstrated his intent not to abuse any drugs in the future and he has demonstrated clear evidence of successful rehabilitation. The omissions on his security form were not intentional as he disclosed substantial other adverse information in response to other questions. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on June 20, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.⁽¹⁾ The SOR alleges specific concerns over drug use (Guideline H), criminal conduct (Guideline J), and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on July 7, 2003, where he admitted all of the allegations and requested a hearing.

The case was assigned to Department Counsel who on September 11, 2003, attested it was ready to proceed. The case was assigned to me on September 12, 2003. Subsequently, a mutually convenient date for hearing was agreed to; a Notice of Hearing issued⁽²⁾ on September 23, 2003, set the matter for October 7, 2003, at a location near where Applicant works and lives.

At the hearing the Government offered nine Government exhibits which were admitted into evidence. (Exhibits 1-9) The Applicant represented himself and offered nine exhibits which were admitted into evidence. (Exhibits A-I) Applicant testified and called two witnesses. The transcript (TR) was received on October 15, 2003.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 38 years old, has worked for a defense contractor (Company #1) in State #1 since May 2000. As Applicant needs a security clearance to perform his job, he completed a Security Clearance Application (SF 86) in June 2000. Applicant served in the U.S. military from 1984 to 1988 in the National Guard until he was medically discharged; and he served again from 1995 to 1998 in the National Guard. From November 1996 to January 1998 he worked for Company #2 in State #1. Applicant attended a state university in State #1 from 1985 to 1990 and received a Bachelor of Arts (BA) degree.

Drug Use, Criminal Conduct, and Personal Conduct

Applicant and his fiancée had a daughter in September 1995. Applicant was upset when the mother took the child and left him to live with another man. For much of the time he had no telephone number and no way to reach his daughter. When the child's mother sought public assistance, State #1 contacted him to pay child support. As he was also seeking visitation of his daughter, the court suggested he take a DNA test which he agreed to do. While waiting for the results of the tests, the child's mother was killed in an automobile accident. He then retained counsel to gain custody of his daughter. After he was granted custody of his daughter in July 2000, he was required to pay \$300 for the DNA test and \$900 for the public assistance that the child's mother had received before her death. He has repaid State #1 for these expenses.

Before Applicant got custody of his daughter, he went to State #2 in the fall of 1997 and used marijuana while on vacation. After he returned to work, he failed a urinalysis drug test in 1997. At the time he held a security clearance with the National Guard. In January 1998 Applicant left his job with Company #2 by mutual agreement as he was selected for a reduction in force; the fact that he had tested positive for marijuana in 1997 after a random drug test may have been a contributing factor. (SOR 1.a. through 1.c.) Applicant has not used marijuana since 1997. He has subsequently passed a drug test for employment qualification with Defense Contractor #1.

Applicant admits a series of arrests: an alcohol-related arrest from December 1991; a November 1992 arrest for writing bad checks; a February 1994 arrest and finding of guilty to driving while his license was revoked and violation of probation; a February 1996 arrest and guilty plea for assault, a March 1996 arrest and guilty finding for Driving while under the Influence (DUI) and Driving While License Revoked; and a December 1997 charge and finding of guilty for Driving with a Revoked Drivers License on a military facility in State #1. (SOR 2.a. through 2.g.) However, after the 1997 arrest when he spent 60 days in jail, he attended alcohol classes, and Alcoholics Anonymous and began to change his life style. Further life style changes were motivated after he was granted custody of his daughter in July 2000.

For the past five years, Applicant's State #1 record has shown no adverse incidents. He no longer drinks excessively. He has also worked diligently to re-establish his credit rating. He has recently purchased a home. He now comes home after work to be with his daughter and is involved with her school. He supports the school and her activities in the community.

The principal at his daughter's school has known Applicant for three years and wrote a letter endorsing Applicant's contributions to the school and community. He concluded Applicant is "an asset" to the school and community.

When Applicant completed his security form (SF 86), through an oversight and misunderstanding he failed to list all of his arrests; while he omitted arrests in 1994 and 1997 as he did not think they fell within the perimeters of the question, he disclosed all his other arrests. Further while he failed to disclose in answer to Question 40 on Public Record Civil Court Actions that he had been involved in a paternity/child support action in November 1999 in State #1 in a domestic relations court, he explained he did not understand that court action was a civil action he needed to disclose as he did not understand that an action in domestic relations court was a civil action. (SOR 3.a. and 3.b.) I found him credible that he had no intent to falsify by these omissions as he disclosed substantial adverse information in response to other questions on the security form.

Job Performance

Applicant was given a commendation, a spot bonus award of \$500 and a pay raise of 3% in January 2003 because of the high quality of the technical support he provided in a military exercise. His performance was commended by the Government.

In November 2000 Applicant received a letter of commendation from a project manager for the U.S. Army for his contributions to the success of an important project.

His July 2003 evaluation described Applicant's contributions as "vital"; his expertise and contributions made the Government customer very satisfied.

Applicant's supervisor testified on his behalf as he has know Applicant for three years and supervised him for one year where he has had daily contact. The supervisor has given Applicant good evaluations. He reported that Applicant has an outstanding reputation within the company. This supervisor recommended that Applicant be granted a security clearance.

The Deputy Director of a U.S. Army program testified on behalf of Applicant as he is the contracting officer for the work that Applicant performs. He praised Applicant's past contributions to an important project and recommended him for a security clearance so he can work on future projects.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole, I weighed relevant Adjudication Guidelines as set forth below:

Guideline H - Drug Involvement

Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Drugs are defined as mood and behavior altering:

[First] Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and

[Second] Inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

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

1. Any drug abuse (see above definition);

Conditions that could mitigate security concerns include:

1. The drug involvement was not recent;
3. A demonstrated intent not to abuse any drugs in the future;

Guideline J - Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

- a. Allegations or admissions of criminal conduct
- b. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

- a. The criminal behavior was not recent
- d. [T]he factors leading to the violation are not likely to recur;
- f. There is clear evidence of successful rehabilitation

Guideline E - Personal Conduct

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 also include:

None

Conditions that could mitigate security concerns include:

2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. The Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS**Drug Use**

Applicant mitigated the Government's security concerns over his isolated marijuana use in 1997 which led him to fail a drug test after he used drugs at a time he was on leave but during a period when he had been granted access to classified information. While his using marijuana while he had a security clearance is a serious concern, he has reformed his lifestyle and subsequently passed a drug test to gain employment with Company #1 in May 2000. Applicant made a convincing commitment to avoid all future drug use and has not use any marijuana in over six years. He gained custody of his daughter in 2000 and fully reformed his lifestyle as demonstrated by his record of excellence at work and in the community. Thus, he has mitigated his past drug use under Mitigating Condition (MC) 1, as the drug involvement was not recent and under MC 3, as he has demonstrated his intent not to abuse any drugs in the future. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a., 1.b., and 1.c. incorporated under SOR Paragraph 1.

Criminal Conduct

Applicant has similarly mitigated the Government's security concerns over his criminal conduct from 1991 to 1997

when he had arrests and convictions related to his alcohol abuse, assault, and financial problems. To his credit, Applicant now has reformed his conduct. He has a very successful work record and favorable community references which indicate his successful change in his lifestyle.

Consequently, the actions that led to his convictions may now be mitigated under MC a, as the criminal behavior was not recent, under MC d., as the factors leading to the violation are not likely to recur, and under MC f., as there is clear evidence of successful rehabilitation. Hence, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 2.a. through 2. h. incorporated under SOR Paragraph 2.

Personal Conduct

While the Government raised security concerns over Applicant's personal conduct in failing to disclose fully all adverse information in answering questions 26 and 40, I am persuaded that he had no intent to falsify as he disclosed substantial other adverse information on his security form. For example, he disclosed his drug use and the adverse consequences as well as several other arrests. Thus no disqualifying conditions apply. Even were one to conclude these omissions were deliberate, they would be mitigated under MC 2. As the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily.

In addition to his omissions not being intentional, I also conclude Applicant's consistently good work record and favorable reference letters establish that he is generally viewed as an honest and trustworthy person. Hence, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 3.a. and 3.b. under SOR Paragraph 3

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: For Applicant

Subparagraph 2.h.: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: 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 a security clearance for the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Because of a hurricane in the Washington, DC, area which closed the federal government, the formal notice did not give Applicant the recommended 15 days notice; however, at the hearing Applicant made clear that he wanted his case expedited and had no objection to going forward with his hearing on the scheduled date. (TR 11-12)