

DATE: December 11, 2003

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-15302

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was cited for multiple traffic-related violations (to include equipment violations, moving violations, the lack of a driver's license or proof of insurance in his possession, and failure to display inspection stickers). Applicant attributes his encounters to bad timing and poor judgment. His judgment lapses resulted in fines and warnings, in addition to dismissals of several of the issued citations. But from his adverse experiences, he has learned to be more responsive in his driving habits and keeping his driver's license and proof of his insurance in his possession when he drives. He is credited with meritorious contributions to both his employer and his community. His aggregate efforts to date produce enough rehabilitation to mitigate security concerns associated with his past record of traffic-related citations. Clearance is granted.

STATEMENT OF THE CASE

On May 21, 2003, the Defense Office of Hearings and Appeals (DOHA), 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 June 16, 2003, and requested a hearing. I was assigned this case on August 6, 2003, and scheduled it for hearing on September 24, 2003. A hearing was convened on September 24, 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 two exhibits; Applicant relied on two witnesses (including himself) and eight exhibits. The transcript (R.T.) of the proceedings was received on October 2, 2003.

SUMMARY OF PLEADINGS

Applicant is a 44-year-old software test specialist for a defense contractor who seeks a security clearance.

Under Guideline E, Applicant is alleged to have accumulated 21 traffic-related citations between 1984 and March 2000, for offenses ranging from equipment violations, moving violations, failure to have a driver's license in his possession, prohibited parking, lack of security verification, to failure to display a valid state inspection sticker.

For his response to the SOR, Applicant admitted each of the covered allegations while claiming (a) they each involved minor traffic violations resulting in fines of less than \$150.00, (b) several were dismissed, and (c) others were issued as warning tickets that should

not be held against him.

FINDINGS OF FACT

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.

Between 1984 and March 2000 (when he accumulated his last traffic citation), Applicant amassed some 21 traffic-related citations for assorted offenses, ranging from equipment violations, moving violations, failure to have a valid state driver's license in his possession, prohibited parking, lack of security verification (insurance) and failure to display a valid inspection sticker on the windshield of his car. Applicant attributes his numerous assorted offenses to bad timing and failure to carry his driver's license and proof of auto insurance on with him when he was stopped by police. In those instances in which he was cited for failure to show proof of a license or insurance, he consistently produced documentation of each within 48 hours of his citation. In these cases where he was able to document his possession of a valid state driver's license and insurance, the citations were dismissed (*see* R.T., at 29). Of the 21 traffic citations he was issued, seven were dismissed outright, another seven involved only warnings and did not count against his driving record, and the remainder he paid (*see* ex. A). He documents to having continuous auto insurance between 1979 (when his policy first issued) and August 2003 (*see* ex. B), and to having been awarded a good defensive driving certificate in 1978 (*see* ex. C).

With so many citations incurred over a 16-year period, Applicant has learned to be more cautious about his driving, and more attentive about keeping copies of his license and insurance with him at all times when he drives. He has incurred no additional traffic citations since his last citation in March 2000.

Applicant, an Army veteran with an excellent promotion record, is highly regarded by his supervisor and his colleagues at work (*see* ex. F). His company FSO who has known Applicant for 14 years credits him with being very rule conscious at work and trustworthy in protecting classified information. His performance evaluations covering the past year indicate he fully meets his employment objectives (*see* ex. H). Among his community contributions is a year of service as a certified basketball official (*see* ex. E).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) lists policy guidelines to be made by judges in the decision making process covering DOHA cases. These policy guidelines, 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 guidelines 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 E2.2 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:

Personal Conduct

Basis: conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Disqualifying Conditions:

DC 5: A pattern of dishonesty or rule violations.

Mitigating conditions: None

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 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 to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, 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 accessible risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof by either showing admitted facts or establishing controverted facts relative to the SOR allegations, the burden of proof 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 traffic-related citations (21 in all) over a 16-year period spanning 1984 and March 2000. His citations entail equipment violations, moving violations, failure to present a valid driver's license, lack of insurance verification, and failure to display a state inspection sticker. He reports seven of the citations being dismissed (mostly after presenting proof of his having a valid license and auto insurance), another seven constituting only warnings which were not charged against his driving record, and the remainder being paid. Applicant attributes his arrests to judgment mistakes that do not reflect the type of reliable professional he is credited with being by his supervisors and colleagues at work.

Taken together, Applicant's collection of amassed citations over an extended time period have security significance and are covered by one of the disqualifying conditions (DC) of the Adjudicative Guidelines for personal conduct: DC 5 (pattern of dishonesty or rule violations).

Nonetheless, the positive way Applicant has acquitted himself at work and in his community reflects very favorably on his judgment and reliability and warrants considerable credit in mitigation. Not only has he been successful in developing and improving himself professionally with his company, but he has been able to make significant military and community contributions as well in recent years (dating to 1989). His professional and personal development are marked by over three years of trouble-free behavior. On the strength of his demonstrated successes in his professional and community pursuits, and otherwise renewed commitments to complying with the driving laws of his jurisdiction, Applicant mitigates the adverse security implications derived from his numerous traffic-related incidents by virtue of his combined showing of increased attentiveness to safe driving requirements. Favorable conclusions warrant with respect to the allegations covered by Guideline E of the SOR.

In reaching my decision, I have considered the evidence as a whole, including each of the factors and conditions

enumerated in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR in the context of the FINDINGS OF FACT, CONCLUSIONS and the FACTORS and CONDITIONS listed above, this Administrative Judge makes the following separate FORMAL FINDINGS with respect to Appellant's eligibility for a security clearance.

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Sub-paras. 1.a through 1.u: 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