

DATE: March 8, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17007

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has been involved in an extensive number of traffic related criminal offenses from 1997 through at least 2002. While not major individually, the weight of the number of incidents shows that the Applicant does not have the maturity yet to be entrusted with a security clearance. The Applicant did not falsify a statement to the Defense Security Service and his foreign connections are not of a type to cause security concerns. Overall, insufficient mitigation evidence has been shown. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On February 4, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on February 27, 2003, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on July 14, 2003. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM on July 25, 2003, and submitted no additional information. The case was received by the undersigned on September 3, 2003.

FINDINGS OF FACT

The Applicant is 26, single and has a Bachelor's Degree in Engineering. He is employed by a defense contractor as an Engineer, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR and the exhibits.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has members of his immediate family who are not citizens of the United States or may be subject to duress.

The Applicant was born in Hong Kong. He became a naturalized American citizen in March 1994. His parents, who were also born in Hong Kong, are naturalized American citizens as well. At the time the SOR was issued the parents lived in Hong Kong. According to the Applicant's Answer, however, the parents moved back to the United States in June 2003. Before that, he visited Hong Kong every year from 1997 to 2000.

The Applicant's aunt and uncle were also born, and currently live, in Hong Kong. They are, however, citizens of Spain and Canada respectively. In his Answer, the Applicant states that he has had no contact with them for two years.

The Applicant has a friend in Hong Kong. In his Answer he states, "She is just a regular friend of mine which occasionally we exchange e-mails." (Answer at 1.)

Paragraph 2 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in conduct which involves questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations which could indicate that the Applicant may not properly safeguard classified information.

The Applicant has an extensive history of minor criminal conduct regarding his automobile. The SOR alleges that he received vehicle citations seven times in 1997, six times in 1998, once in 1999, twice in 2000 and once in 2001. In his Answer, the Applicant admits to all of the above, as well as to an additional citation for Speeding in 1998 and one for Failure to Obey Highway Sign in 2002.

The offenses the Applicant was cited for include Speeding (four times), Failure to Obtain Registration (twice), Failure to Yield Right of Way, No State Inspection (three times), Improper Registration Tags (twice), Driving on a Suspended License, Improper Registration of Vehicle, Reckless Driving, Possession of Radar, Failure to Secure Registration and Certificate of Title, Failure to Wear Seat Belt, Expired Tag and Failure to Obey Highway Sign.

For all the offenses above the Applicant was fined a total \$1296. His driver's license was suspended for 90 days in May 1998. In July 1998, for the offense of Reckless Driving, his driver's license was suspended for a year, he was sentenced to ten days in jail with ten days suspended and ordered to perform 100 hours of community service (Government Exhibit 5).

There is no statement in the file. In his Answer, the Applicant states:

In many instances in the past, I was very lazy in getting my car registered and inspected. After I get a new car, I would be very eager to drive it right away before I registered the vehicle. I would think, 'well, I would get it done when I have time and nothing serious can happen to me other than a ticket.' My assumptions were tremendously wrong. Not only did it cost me money for my irresponsibility, but it put blemishes on my record.

....

I have learned my lessons from my reckless way in the past. I got the bitter taste of punishments from the court. Punishment by fines, losing my driving privileges and did community service by working 100 hours in the library's media lab at [the Applicant's university]. Today, I am a different person then [when] I was a young reckless teenager. After going to court in July of 98, and almost got put in jail for offenses. I was so shocked and frightened. I fully awoken (*sic*) from my irresponsibility. That moment was a turning point of my life. From then on, I no longer was reckless and irresponsible. I take responsibility for my action from driving to my daily routines. (Answer at 2-3.)

In subparagraph 2.r., the SOR alleges that the Applicant lied during an interview in December 2001 with a Defense Security Service Special Agent by stating he had not had any adverse contact with law enforcement authorities since his 1998 charge of Driving on a Suspended License. As stated above, there were several traffic related offenses that occurred after that time. There is no statement, report of investigation, or certified results of interview in the file.

The Applicant denied this allegation in his Answer at page 2, "I had not stated I have no contact with law enforcement authorities since May of 1998. I told the Special Agent that I am a better, more responsible and cautious driver and I haven't got any speeding tickets for almost three and half years. I also had stated that my license was suspended for a year due to numerous tickets I have got in the past." This allegation was denied by the Applicant and the Government has presented no evidence to support it. Subparagraph 2.r. is found for the Applicant.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline B (Foreign influence)

Condition that could raise a security concern:

(1) An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

Conditions that could mitigate security concerns include:

(1) A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

(3) Contact and correspondence with foreign citizens are casual and infrequent;

Guideline E (Personal conduct)

Condition that could raise a security concern:

(5) a pattern of dishonesty or rule violations, including the violation of any written or recorded agreement made between the individual and the agency.

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation

- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of poor judgment that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part, or that he has foreign connections which leave him vulnerable to duress or influence.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has foreign connections (Guideline B); and that he has a long history of poor judgment connected to many criminal incidents regarding his automobile (Guideline E).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part. Under Paragraph 1 (Guideline B), the evidence shows that the Applicant's parents are American citizens who once lived in Hong Kong. According to the Applicant, his parents have now returned to the United States. His aunt and uncle are citizens of Spain and Canada, living in Hong Kong. He has very little communication with them. Finally, he has a friend in Hong Kong who he communicates with by email. In my opinion, Mitigating Factors 1 and 3 apply. Paragraph 1 is found for the Applicant.

Regarding Paragraph 2 (Guideline E): Subparagraph 2.r. is found for the Applicant as I have determined that he did not

falsify any statement to the Defense Security Service.

The Applicant is a young man who, over the years, showed a penchant for violating the law regarding his automobile. Taken individually, his offenses are not that severe. However, it is obvious that the local courts finally decided that a year's suspension of his driving privileges was necessary to teach him a lesson. While it is true that his driving record has not been nearly as bad as earlier, he still gets in trouble about once a year.

The record shows that the Applicant is a very immature young man who has shown extremely poor judgment in an important part of his private life over an extended period of time. There are some indications that he has learned his lessons and can be relied upon to safeguard classified information. While he has not had a speeding ticket since 1998, he continued to have other infractions every year from 1999 through 2002. After examining this case closely, I do not find that the Applicant has presented sufficient mitigating evidence at this time that shows he has changed his attitude towards rules and obligations. In his case, it is not enough to reduce his tickets to one a year, he must eliminate them. If he shows over an extended period that he has changed and can be responsible, he may be eligible for a security clearance in the future. He is not now. Paragraph 2 is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraph 2 of the Government's Statement of Reasons. As stated above, Paragraph 1 is found for the Applicant.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

Subparagraph 1.c.: For the Applicant.

Subparagraph 1.d.: For the Applicant.

Subparagraph 1.e.: For the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.b.: Against the Applicant.

Subparagraph 2.c.: Against the Applicant.

Subparagraph 2.d.: Against the Applicant.

Subparagraph 2.e.: Against the Applicant.

Subparagraph 2.f.: Against the Applicant.

Subparagraph 2.g.: Against the Applicant.

Subparagraph 2.h.: Against the Applicant.

Subparagraph 2.i.: Against the Applicant.

Subparagraph 2.j.: Against the Applicant.

Subparagraph 2.k.: Against the Applicant.

Subparagraph 2.l.: Against the Applicant.

Subparagraph 2.m.: Against the Applicant.

Subparagraph 2.n.: Against the Applicant.

Subparagraph 2.o.: Against the Applicant.

Subparagraph 2.p.: Against the Applicant.

Subparagraph 2.q.: Against the Applicant.

Subparagraph 2.r.: For the Applicant.

DECISION

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

Wilford H. Ross

Administrative Judge