

DATE: April 27, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17102

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was convicted of several offenses in 1980 and sentenced to more than a year in jail. He has delinquent debts totaling more than \$25,000. Although Applicant mitigated his criminal conduct, his sentence disqualifies him from holding a security clearance absent a waiver from the Secretary of Defense. Applicant failed to mitigate security concerns raised by his financial problems. 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 18 July 2003, DOHA issued a Statement of Reasons (SOR) ⁽¹⁾ detailing the basis for its decision—security concerns raised under Guideline J (Criminal Conduct) and Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 13 August 2003 and elected to have a hearing before an administrative judge. The case was originally assigned to another judge, but was reassigned to me on 13 January 2004. On 16 March 2004, 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 25 March 2004. I kept the record open to permit Applicant to provide a current credit report. Applicant provided the report through Department Counsel on 22 March 2004, and it was admitted into evidence as Exhibit E.

FINDINGS OF FACT

Applicant is a 43-year-old aircraft mechanic who works for a defense contractor. Tr. 16; Ex. 1 at 1, 2. He served 13 years as a voluntary firefighter and emergency medical technician. Ex. 2 at 3.

In December 1979, when Applicant was 19 years old, he lived with a friend whom he believed was not paying his fair share of the bills. Applicant stole from his employer by taking money from the cash register. Later that month, Applicant stole three checks from his roommate and used them by forging his roommate's signature. Tr. 17-18.

In January 1980, Applicant was indicted on three counts of criminal possession of a forged instrument. In February 1980, Applicant pled guilty to, and was convicted of, the three counts. He was sentenced to two years' confinement on each offense, with the sentences to run concurrently. As a result, Applicant was jailed until November 1980, when he was released on parole. Ex. 3.

In May 1980, Applicant pled guilty to, and was convicted of, theft by failure to make required disposition of the money he took from his employer's cash register. The court sentenced him to a year in jail, to run concurrently with his sentence for the possession of the forged instruments. Ex. 3.

In his Answer to the SOR, Applicant admitted 9 of the 11 delinquent debts alleged. He denied the debts alleged in ¶¶ 2.b. and 2.c. were delinquent and the credit report he submitted into evidence confirms those debts were paid, although after they had been charged off as bad debts. Ex. E at 4.

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 has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal 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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

CONCLUSIONS

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant was convicted in 1980 on three counts of criminal possession of a forged instrument (¶ 1.a.) and one count of failure to make required disposition (¶ 1.b.). DOHA further alleged his sentences as a result of the possession of forged instruments disqualified him from holding a security clearance absent a waiver from the Secretary of Defense. ¶ 1.c. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR.

Applicant has a history of criminal conduct involving serious and lesser offenses. DC E2.A10.1.2.2. However, the criminal conduct is not recent-it all occurred almost 25 years ago. MC E2.A10.1.3.1. At the time of the offenses Applicant was only 19 years old and he has not committed had any further criminal conduct. There is clear evidence of successful rehabilitation. MC E2.A10.1.3.6. Finding is for Applicant on ¶¶ 1.a. and 1.b.

Absent a waiver from the Secretary of Defense, the Department of Defense may not grant or continue a security clearance for any applicant who has been sentenced by a U.S. court to confinement for more than one year. 10 U.S.C. § 986. Applicant is subject to 10 U.S.C. § 986 by virtue of being sentenced to two years in confinement on each count of his possession of forged instrument convictions. That statute applies even though Applicant did not serve two years in prison for the offenses. ISCR Case No. 01-13566 at 5 (App. Bd. Apr. 15, 2003). Under the circumstances, I am required to find against Applicant on ¶ 1.c. As my adverse security decision against Applicant is not based solely on the applicability of 10 U.S.C. § 986, it is inappropriate for me to make a recommendation as to whether Applicant's case should be considered for waiver. ISCR Case No. 02-00500 at 6 (App. Bd. Jan. 16, 2004) (citing DOHA Operating Instruction 64 ¶ 3.e.).

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had 11 delinquent debts. ¶ 2.a.-2.k. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence and Applicant's admissions that Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and is unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). Some of the debts alleged as delinquent in the SOR, and admitted to by Applicant in his answer, do not appear on the credit report Applicant submitted. Ex. E. However, Applicant failed to demonstrate that these debts had been paid rather than just removed from the credit report for lack of payment. Ex. E confirms the delinquent nature of several debts including those alleged in SOR ¶¶ 2.a., 2.h., 2.i., and 2.k. In addition, Applicant refuses to pay the debt alleged in ¶ 2.f. The delinquent debts total well over \$25,000. Applicant failed to demonstrate that any of the mitigating conditions listed under the guideline apply. After reviewing all of the evidence, and without viewing each debt in isolation, I find against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline J: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Subparagraph 2.g.: Against Applicant

Subparagraph 2.h.: Against Applicant

Subparagraph 2.i.: Against Applicant

Subparagraph 2.j.: Against Applicant

Subparagraph 2.k.: Against Applicant

DECISION

In light of all of 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 Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. Pursuant to 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.