

DATE: March 24, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-18621

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Jennifer Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 45-year-old communications technician was arrested on alcohol-related offenses in 1992 and 1997, and failed to mention the two arrests on his April 19, 2000 security clearance application. No mitigation was shown. Clearance is denied.

STATEMENT OF THE CASE

On August 26, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

Applicant timely submitted an undated response to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on December 6, 2002. The Form instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. Applicant did not submit any response to the FORM. The matter was assigned to me for resolution on January 14, 2003.

FINDINGS OF FACT

Applicant is a 45-year-old communications technician. The SOR contains two allegations, 1.a.(1) and 1.a.(2), under

Guideline E (Personal Conduct). Applicant *admitted* both allegations, without explanations (Government Exhibits (GX) 3).

After considering the totality of the evidence derived from the FORM and its attachments, including but not limited to Applicant's response to the SOR, I make the following FINDINGS OF FACT as to each SOR allegation:

Guideline E (Personal Conduct)

SOR 1.a. - Applicant falsified material facts on his security clearance application (SF 86), dated April 19, 2000, when he replied to Question **24. YOUR POLICE RECORD - ALCOHOL/DRUG OFFENSES**, "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs," by answering "No," and deliberately failing to cite the following:

1.a.(1) - On March 13, 1992, Applicant was arrested and charged with Possession of Marijuana (GX 3, GX 4, GX 5, and GX 6).

1.a.(2) - On July 20, 1997, Applicant was arrested and charged with Driving Under the Influence (.12% B.A.C. on the portable unit) (GX 3, GX 4, GX 5, GX 7, and GX 8).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because Applicant chose to have this matter decided without a hearing and without submitting any additional information in response to the FORM, all credibility determinations and findings of fact are necessarily based entirely on the contents of the FORM.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE E (Personal Conduct)

Condition that could raise a security concern and may be disqualifying:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any security clearance application.

Conditions that could mitigate security concerns include:

None that are applicable under the facts of this case.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

In addition to the Applicant's admissions, the record evidence independently supports the accuracy of both SOR allegations. The proven allegations, in turn, create a nexus, or connection, with Applicant's suitability to hold a security clearance. The sole remaining issue is whether Applicant has provided adequate evidence of mitigation or extenuation. *There is a total absence of:* (1) any explanations or excuses in his response to the SOR; (2) a response to the FORM; and (3) a sworn statement provided to the Defense Security Service during the investigation. This means that there is absolutely no evidence to contradict, deny, mitigate, or extenuate the negative evidence of his failure to mention the 1992 and 1997 arrests in his April 19, 2000 security clearance application.

Disqualifying Condition 2 clearly applies. Based on the lack of any evidence of mitigation or extenuation, I conclude that Applicant has not demonstrated the applicability of any of the possible Mitigating Conditions cited under Guideline E.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 1.a.(1) Against the Applicant

Subparagraph 1.a.(2) Against 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 Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE