

DATE: January 22, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22671

DECISION OF ADMINISTRATIVE JUDGE**JAMES A. YOUNG****APPEARANCES****FOR GOVERNMENT**

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT*Pro Se***SYNOPSIS**

Applicant has a history of not meeting his financial obligations and engaging in conduct that is both criminal and demonstrates an unwillingness to abide by rules and regulations. Applicant's conviction in 1980 on two counts of theft and his sentence to more than a year in prison makes him ineligible for a Department of Defense security clearance. 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 11 August 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline F (Financial Considerations), Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 27 August 2003 and elected to have a hearing before an administrative judge. The case was assigned to another judge on 6 November 2003 and transferred to me on 26 November 2003. On 16 December 2003, 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 transcript (Tr.) of the proceeding on 2 January 2004.

FINDINGS OF FACT

Applicant is 44 years old, divorced from his first wife, and married to another woman. The following chart summarizes the SOR allegations in ¶ 1 concerning Applicant's financial situation:

¶	Nature and Amount	Status	Record
1.a.	Collection acct \$175	Claims paid, but no documentation	Ex. A
1.b.	Credit card acct charged off \$480	Paid	Ex. A

1.c.	Credit card acct charged off \$669	Unpaid	Ex. A
1.d.	Collection acct \$54	Transferred or sold	Ex. A
1.e.	Chiropractor collection acct \$201	Unpaid. Claims medical insurance should pay	Ex. A; Tr. 26-27
1.f.	Insurance \$299	Claims paid, but no documentation	Tr. 17
1.g.	Radiology \$628	Unpaid-due to ex-wife's pregnancy	Tr. 26-27
1.h.	Debt of \$95	Unpaid	Tr. 17
1.i.	Five accts \$881	Unpaid	Tr. 28
1.j.	Pager debt of \$97	Unpaid	Tr. 17
1.k.	Hospital \$1,321	Unpaid-due to ex-wife's pregnancy	Tr. 26-27

Some of these debts do not appear on his most recent credit report. Ex. A. However, Applicant presented no evidence to show the reason they no longer appear is because he paid them. Likewise, Applicant produced no evidence that he was not liable for the debts in ¶¶ 1.e., 1.g., and 1.h.

Applicant admits he was cited on at least four occasions for driving while his driver's license was suspended and received over 30 speeding tickets that he rarely paid until he was notified that his license was about to be suspended. Answer; Tr. 45-46; Ex. 3 at 2. He has a tendency not to take traffic tickets seriously. Ex. 3 at 2. Applicant admits having his driver's license suspended but disputes the number of times and its relevance to a consideration of his security worthiness. Answer. Many of the documents the Government submitted concerning Applicant's license suspensions are unreadable. Nevertheless, there is evidence Applicant was convicted of driving on a canceled, suspended, or revoked license in 1979 (Ex. 13) and pled guilty to driving on a suspended license in 1996 (Ex. 10).

In 1980, Applicant was arrested and charged with burglary and theft. He was convicted of two counts of theft and sentenced to imprisonment for 10 years and a \$1000 fine. The sentence to imprisonment was suspended and Applicant was placed on probation for five years. Ex. 6 at 3; Ex. 3 at 3.

Applicant was charged with driving while intoxicated (DWI), although when is uncertain. In his statement to a Defense Security Services investigator, Applicant claimed it was in 1992. Ex. 3 at 5. At the hearing, Applicant claimed he had been charged with DWI only once, in 1983. Tr. 41-42. He asserts he received 24 months probation, a fine, and community service for this offense.

Applicant was arrested in 1994 for battery. During an argument with his wife, he grabbed her by the neck. The case was placed on the stet docket. Ex. 6 at 4. Applicant was ordered to attend counseling on domestic violence. Ex. 3 at 4.

In 1996, Applicant was arrested for obstructing and hindering a police officer in the performance of his duties. Applicant was involved in a motor vehicle accident while his driver's license was suspended. When a police officer interviewed him, he initially denied he was the driver of the vehicle.

In 2000, Applicant consented to the issuance of a protective order for his wife that was based on allegations Applicant had a history of physically abusing her. Exs. 7, 8.

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 F-Financial Considerations

In the SOR, DOHA alleged Applicant had several delinquent debts (¶ 1.a.-1.k.). An individual 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 each of the allegations contained in ¶ 1 of the SOR. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and being unable or unwilling to satisfy his debts (DC E2.A6.1.2.3.). None of the mitigating conditions listed under the guideline apply to Applicant's case. He has not shown much interest in resolving his debts. I find against Applicant.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant had a protective order issued against him after he physically attacked and threatened his wife (¶ 2.a.); was arrested for obstructing and hindering in 1996 (¶ 2.b.); was arrested for battery in December 1994 (¶ 2.c.); was arrested for DWI in 1992 (¶ 2.d) and 1983 (¶ 2.e.); had his license suspended at least 19 times since 1976 (¶ 2.f.); received over 30 speeding tickets many of which he failed to pay (¶ 2.g.); and was cited for driving while his license was revoked or suspended on at least four occasions (¶ 2.h.); Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations contained in ¶ 2 of the SOR. The case contains reliable, unfavorable information concerning Applicant (DC E2.A5.1.2.1.) showing Applicant's demonstrated pattern of rules violations (DC E2.A5.1.2.5.). Applicant is a scofflaw. He refuses to abide by the rules that govern civilized behavior. Not only does he continue to violate the speeding laws, but he ignores the subsequent sanctions that are imposed to deter him from such behavior in the future. He refuses to pay fines until his license is about to be suspended and, when it is suspended, he continues to drive. I find against Applicant on all but ¶ 2.d. Applicant claims there was only one DWI offense and it occurred in 1983. Based on the lack of evidence that there were two separate DWI offenses, I find for Applicant on ¶ 2.d.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant was arrested and convicted for burglary and theft in 1980 (¶ 3.a.) and, because he was sentenced to confinement for more than one year as a result of that conviction, he is ineligible for a security clearance under 10 U.S.C. § 986 (¶ 3.b.). 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 that he was convicted of two counts of theft and sentenced to 10 years in prison. Allegations or admissions of criminal conduct may raise a security concern (DC E2.A10.1.2.1.) whether it is a single serious crime or multiple lesser offenses (DC E2.A10.1.2.2.) Theft is a serious offense. None of the mitigating conditions listed under the guideline apply to this applicant. Although the theft convictions were the only criminal conduct listed in ¶ 3 of the SOR, other evidence of record (and allegations contained in other paragraphs of the SOR) establish additional criminal conduct committed by Applicant. He committed a battery on his wife in 1994, he was convicted of DWI, arrested for obstructing and hindering a police officer, and was involved in a physical attack on his wife. Thus, Applicant's criminal conduct was recent and is not isolated. Mitigating conditions E2A10.1.3.1. and E2.A10.1.3.2. do not apply. Considering all the circumstances of this case, I find against Applicant.

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 the provisions of 10 U.S.C. § 986 by virtue of being sentenced to 10 years in confinement as a result of his conviction on two counts of theft. The provisions of that statute apply even though Applicant did not serve any time in prison for that offense. ISCR Case No. 01-13566 at 5 (App. Bd. Apr. 15, 2003). Under the circumstances, I am required to find against Applicant on ¶ 3.b. As my adverse security decision 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.).

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Subparagraph 2.g.: Against Applicant

Subparagraph 2.h.: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: 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. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.