

DATE: November 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-20462

ECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a mechanic for a defense contractor. He was arrested six times from 1984 to 2000 for driving while intoxicated. In addition to these arrests, he has been arrested five more times for various offenses, two of which were felonies. He served 14 months in jail for one of these offenses. The provision of 10 U.S.C. 986 apply. He has various large and small debts that he has not satisfied and his monthly expenses exceed his monthly income. Clearance is denied.

STATEMENT OF THE CASE

On July 9, 2004, The Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb 20, 1990), 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 (Directive). Applicant acknowledged receipt of the SOR on July 19, 2004. The SOR alleges security concerns under Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on July 26, 2004. He admitted to the allegations under Guideline G, to all but one of the allegations under Guideline J, to all but one of the allegations under Guideline F, and denied all of the allegations under Guideline E. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on September 23, 2004. Applicant received a complete file of relevant material (FORM) on October 1, 2004 and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due October 31, 2004. As of November 8, 2004, he had not responded. The case was assigned to me on November 17, 2004.

FINDINGS OF FACT

Applicant is a 46-year-old mechanic employed by a defense contractor since 2001. He had worked for defense contractors before but a security clearance was not required. Applicant submitted a security clearance application about a year after being employed by the defense contractor when his work required a clearance. Applicant listed a series of criminal offenses and financial problems in his application. He was interviewed by a special agent of the Defense Security Service (DSS) and provided a lengthy and detailed history (43 pages) of his past conduct.

Applicant admitted to six alcohol related driving offenses. He was arrested in November 1984 for driving while intoxicated and refused to take a Breathalyzer test. He was convicted of the offense and his license was suspended and he was fined. He was arrested in 1986 for driving while intoxicated and again refused to take the Breathalyzer test. He was found not guilty but his license was again suspended for a year for refusing to take the Breathalyzer test. He was arrested in August 1989 for driving while intoxicated and again refused to take the Breathalyzer test. He was found not guilty of the driving while intoxicated offense but his license was suspended for a year for refusing to take the test. He was arrested for driving while intoxicated in 1990 after an accident. He was found guilty of the offense and sentenced to a year in jail. He only served six months of this sentence. His license was suspended for three years. He completed an alcohol driving abuse program, and he paid a fine. In May 1991, he was arrested for driving while intoxicated and driving while his license was suspended. He refused to take a Breathalyzer test. He was convicted of the offense and sentenced to four years in jail as a habitual offender. He was incarcerated for 14 months and served six more months on work release. His license was suspended until 1999 and he paid a fine. He was arrested for driving while intoxicated in October 2000 and took the Breathalyzer but failed. His license was suspended for six months and he was fined. He received a restricted drivers license after six months. In his statement to DSS, applicant admitted to consuming alcohol during the 1980s and driving while his license was suspended. He did not drive in the 1990s when his license was suspended because a further offense would mean incarceration for over 10 years.

Applicant admitted to drinking alcohol to excess since he was 14 years old. There were periods of time that he did not drink, particularly after the accident in 1991. He now consumes six to 12 beers on the week-end and some alcohol during the week. He admits to having an alcohol drinking problem in the 1980s but does not believe he has such a problem now. His ex-wife and his parents recommended to him that he cut back his drinking of alcohol. He has not entered any formal alcohol abuse program but he completed a state alcohol driving safety program in 2003.

Applicant was arrested in January 1975 for contributing to the delinquency of a minor for giving an underage girl alcohol. This offense was not prosecuted. He was arrested in October 1978 for destruction of private property for kicking in a car door. He was fined and received a suspended jail sentence. In August 1980, Applicant was arrested for rioting and unlawful assembly following an alcohol-related fight and sentenced to a fine and suspended jail sentence. In October 1980, he was charged with and convicted of carrying a concealed weapon (a buck knife) when appearing in court on the rioting and unlawful assembly charge. He served three days in jail. He was charged with and convicted of felonious assault and battery in 1982 for punching another prisoner while in jail for one of his driving while intoxicated offenses. He was sentenced to a two year suspended jail sentence.

Applicant admits to being indebted for a variety of minor and major debts. He admits to an indebtedness of approximately \$25,000 to the Internal Revenue Service for unpaid taxes from 1992. He is making small payments on this debt. He admits to an indebtedness of approximately \$26,000 for child support. His wages are garnished for \$900 per month to satisfy this debt. He admits to five minor debts, none more than \$200, that are past due or in collection. These are mainly medical bills incurred by his former wife for the care of their children. His monthly income is approximately \$2,600 and his total monthly expenses are approximately \$2,800.

Applicant did not list all of his felony or driving while intoxicated arrests and all of his debts on his security clearance application. He did not list his 1982 felonious assault and battery arrest in response to question 21 on the application. He did not list all of his driving while intoxicated arrests in response to question 24. He did not list the minor debts past due in response to question 38. He did list his major debts to the Internal Revenue Service and for child support. He stated he did not list these items because he did not remember all of them since they were committed a long time in the past.

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 judgement, 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.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 of recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determination should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

Applicant's incidents with alcohol brings his conduct under Guideline G of the Directive. Under Guideline G (Alcohol Consumption), a security concern exists because excessive alcohol consumption often leads to the exercise of questionable judgement, unreliability, failure to control impulses, and increased risk of unauthorized disclosure of classified information due to carelessness. Directive ¶ E2.A7.1.1. Applicant's multiple arrests for driving while intoxicated brings the matter within Disqualifying Condition Directive ¶ E2.A7.1.2.1. (*alcohol related incidents away from work, such as driving while under the influence...*). Applicant admitted to the six driving while intoxicated offenses from 1982 until 2000. He also admitted to driving while intoxicated at other times but not being arrested. I conclude the

alcohol consumption disqualifying condition has been established.

Conditions that may mitigate the disqualifying condition are Directive ¶ E2.A7.1.3.1. (*alcohol related incidents do not indicate a pattern*); Directive ¶ E2.A7.1.3.2. (*problems occurred a number of years ago and there is no indication of a recent problem*); and Directive ¶ E2.a7.1.3.3. (*positive changes in behavior supportive of sobriety*). The series of arrests for driving while intoxicated over a period of time are a pattern of alcohol abuse. These abuses are current with the last one happening in 2000. Applicant does not admit to an alcohol problem but he does admit to currently drinking six to 12 beers on week-ends and some during the week. Even though he has completed some programs for driving while intoxicated, he continued to drink and drive. He was asked by his wife and parents to curtail his drinking but there is no indication he has done so. I conclude Applicant has not established any of the mitigating conditions under Guideline G.

Applicant's arrests for driving while intoxicated, felony assault and battery, contributing to the delinquency of a minor, destruction of private property, rioting and unlawful assembly, and carrying a concealed weapon bring his conduct under Guideline J. Under Guideline J (Criminal Conduct), a security concern exists because a history or pattern of criminal activity creates doubt about a person's reliability and trustworthiness. Directive ¶ E2.A10.1.1. Applicant's convictions for various offenses raised a security concern under Disqualifying Conditions Directive ¶ E2.A10.1.2.1. (*allegation or admission of criminal conduct, regardless of whether the person was formally charged*); and Directive ¶ E2.A10.1.2.2. (*a single serious crime or multiple lesser offenses*). Applicant admitted to six driving while intoxicated offenses and to five other criminal offense of which two were felonies. I conclude that the criminal conduct disqualifying conditions have been established.

Conditions that may mitigate this criminal conduct are Directive ¶ E2.A10.1.3 (*the criminal conduct was not recent*): Directive ¶ E2.A10.1.3.2 (*the crime was an isolated incident*); Directive ¶ E2.A10.3.6 (*there is clear evidence of successful rehabilitation*); and Directive ¶ E2.A10.1.3.5 (*acquittal*). The criminal activity of the Applicant is long and recent. The latest offense was committed in 2000. There is no evidence of any rehabilitative activities by Applicant. He was acquitted of several driving while intoxicated offenses and the Contributing to the Delinquency of a Minor offense when it was not prosecuted. I conclude there are no mitigating conditions, except for the acquittal of some of the driving while intoxicated offenses and one other offense, established by Applicant under Guideline J.

Under the provisions of 10 U.S.C. 986, absent a waiver from the Secretary of Defense, a security clearance cannot be granted for an individual who has been convicted of a crime and incarcerated as a result of that sentence for not less than one year. Applicant was convicted in a court in the United States of driving while intoxicated and being a habitual offender and incarcerated for 14 months. The provisions of 10 U.S.C. 986 apply.

Under Guideline F (Financial Considerations), a security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. Directive ¶ E2.A6.1.1. Applicant's financial situation brings the matter within Financial Consideration Disqualifying Condition Directive ¶ E2.A6.1.2.1 (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3. (*inability or unwillingness to satisfy debts*). The Applicant has two serious debt totaling over \$50,000 that show a history of not meeting his financial obligations. His monthly expenses that exceed his monthly income show an inability to satisfy his debts. I conclude the disqualifying conditions under Guideline F have been established.

The conditions that may mitigate the disqualifying conditions are Directive ¶ E2.A6.1.3.1. (*the behavior was not recent*); Directive ¶ E2.A6.1.3.2 (*it was an isolated incident*); and Directive ¶ E2.A6.1.3.6 (*individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant's financial problems are long standing and go back to Internal Revenue Service debts from 1992. The debts are varied and not isolated. There is no evidence Applicant has made a good faith effort to resolve the debts even though he is paying some by garnishment. I conclude the mitigating conditions under Guideline F have not been established.

Under Guideline E (Personal Conduct), a security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, *lack of candor*, *dishonesty*, or unwillingness to comply with rules or regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information

Directive ¶ E2.A5.1.1. The lack of information provided by Applicant in his security clearance application brings this matter within Personal Conduct Disqualifying Condition Directive ¶E2.A5.1.2.2. (*Deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or personal history statement, or similar form used to conduct investigations,...to determine security clearance eligibility or trustworthiness...*). Applicant listed some of his felony arrests and alcohol related driving offenses and some of his debts in response to pertinent questions on the security clearance application. He stated that he did not list other offenses because he determined they were committed beyond the time limit for listing the offenses or he did not remember them. It is conceivable Applicant did not remember all of his offense because of the number. When asked about the offenses by the DSS special agent, Applicant readily admitted them. I conclude Applicant did not deliberately omit or conceal his arrest, alcohol related incidents, or debts in responding to the questions on the security clearance application. Disqualifying Conditions under Guideline E have not been established.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.22 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline G: 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

Paragraph 2, Guideline J AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Paragraph 3, Guideline F AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

Subparagraph 3.d.: Against Applicant

Subparagraph 3.e.: Against Applicant

Subparagraph 3.f.: Against Applicant

Subparagraph 3.g.: Against Applicant

Subparagraph 3.h.: Against Applicant

Paragraph 4, Guideline E FOR APPLICANT

Subparagraph 4.a.: For Applicant

Subparagraph 4.b.: For Applicant

Subparagraph 4.c.: For 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.

Thomas M. Crean

Administrative Judge