

KEYWORD: Criminal Conduct

DIGEST: Applicant was arrested three times between September 2000 and September 2003, the last two for physical confrontations with his girlfriend. Applicant failed to mitigate security concerns raised by his criminal conduct. Clearance is denied.

CASENO: 03-23651.h1

DATE: 02/21/2006

DATE: February 21, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23651

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was arrested three times between September 2000 and September 2003, the last two for physical confrontations with his girlfriend. Applicant failed to mitigate security concerns raised by his criminal conduct. 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. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 7 December 2004 detailing the basis for its decision—security concerns raised under Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 22 February 2005 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 18 November 2005. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 2 December 2005 and did not respond within the required 30 days. The case was assigned to me on 25 January 2006.

FINDINGS OF FACT

Applicant is a 32-year-old analytical engineer for a defense contractor. Item 6 at 1, 6. He has worked for this employer since March 1998.

In September 2000, Applicant was arrested for speeding, driving 100 mph in a 65 mph zone, and aggravated unlicensed operation of a motor vehicle. He pled guilty to aggravated unlicensed operation and was fined \$200 plus court costs.

Applicant and his girlfriend, with whom he lived, have a son who was born in October 1998. In August 2002, the couple had a dispute over whether he would go out with his friends. When he tried to leave with her cell phone, that he had bought and was paying for, she tried to wrest it from him. He ended up throwing her to the floor and then chasing her to a neighbor's house. The police were called and he was arrested for assault. Applicant's girlfriend admitted to the police that she had previously been arrested for committing domestic violence against Applicant. Applicant was charged with third degree assault, unlawful restraint, and risk of injury to a minor (because their son was in the house). Applicant reached an agreement with the prosecutor and the case was nolle prossed. Applicant received anger management counseling after this incident.

In August 2003, Applicant's pregnant sister and her husband were visiting Applicant and his girlfriend. Applicant's sister was washing the kitchen floor. Applicant's girlfriend wanted to get something to drink, but Applicant's sister did not want her to cross the wet floor. An argument ensued in which Applicant's girlfriend threatened to hit his sister in the stomach. Applicant intervened. Later, Applicant and his girlfriend argued over the use of a television set. The argument turned into a physical altercation. Applicant's sister and brother-in-law intervened. Applicant called the police. He was arrested for disorderly conduct. His girlfriend was arrested for making a threat against Applicant's sister.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel 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.

CONCLUSIONS

In the SOR, DOHA alleged Applicant was convicted of aggravated unlicensed operation of a motor vehicle in 2000 (¶ 1.a); was arrested for and charged with assault, unlawful restraint, and risk of injury to a minor in August 2002 (¶ 1.b); and arrested for and charged with disorderly conduct in August 2003 (¶ 1.c). In his answer, Applicant admitted each of the allegations. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

The Government's evidence and Applicant's admissions established potentially disqualifying conditions under Guideline J. Applicant engaged in criminal conduct (DC E2.A10.1.2.1) consisting of multiple lesser offenses (DC E2.A10.1.2.2). An applicant may mitigate security concerns raised by criminal conduct by establishing the criminal behavior was not recent (MC E2.A10.1.3.1), the pressures or factors leading to the violation are no longer present (MC E2.A10.1.3.3 and E2.A10.1.3.4), and there is clear evidence of successful rehabilitation (MC E2.A10.1.3.6). I am unable to conclude these, or any other mitigating conditions apply.

Applicant insists that, since the relationship with his girlfriend ended after the August 2003 incident, the stress that led to his criminal behavior "has been completely removed," and "it is impossible to imagine any repeat occurrence." Item 3. But Applicant and his girlfriend have a child who, at least for the first couple of years, he helped to raise. If he still plays a part in the child's life, he would have to interact with the child's mother. He failed to explain the child's current status and whether he is still having problems controlling his anger. There are just too many unanswered questions to conclude Applicant has mitigated the criminal conduct security concerns.

FORMAL FINDINGS

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

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

DECISION

In light of all of the circumstances 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