

DATE: April 23, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-33058

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant answered "No" to question 26 on his Security Clearance Application (SCA). He misread the question, and thought that, as the charge against him was dismissed and was later expunged, he did not have to list the underlying arrest for Disorderly Conduct. The Applicant has had no other arrests. As there was no wilful falsification, Guideline E is found for the Applicant. Clearance is granted.

STATEMENT OF THE CASE

On September 22, 2003, 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, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on October 29, 2003.

The case was received by the undersigned on February 6, 2004. A notice of hearing was issued on February 27, 2004, and the case was heard on March 24, 2004. The Government submitted documentary evidence. Testimony was taken from the Applicant. The transcript was received on April 6, 2004. The issue raised here is whether the Applicant's alleged Personal Conduct militates against the granting of a security clearance. [The Applicant denies the allegation.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 24 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Personal Conduct

In September of 1997, the Applicant got into a fight while attending high school (Transcript (TR) at page 15 line 8 to page 16 line 22). He and the other individual, who threw the first punch, were arrested for Disorderly Conduct (*id*). The other individual did not show up at the arraignment; and as a result, the charge was dismissed, and subsequently expunged from the Applicant's record (TR at page 16 line 23 to page 21 line 10). He has had no other arrests (TR at page 25 lines 10~19).

1.a. In answering question 26 on his July 2002 SCA, the Applicant answered "No," that in the last seven years he had not "been arrested for, charged with or convicted of any offense . . ." (Government Exhibit (GX) 1 at page 6). The Applicant misread the question, and thought it read "**and** convicted" not "**or** convicted" (TR at page 19 line 22 to page 20 line 6). He had absolutely no intention of deceiving the Government (TR at page 26 line 6 to page 29 line 3).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, "[each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out its case under Guideline E (personal conduct); which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

Personal conduct is conduct involving questionable judgement, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places.

CONCLUSIONS

When the Applicant answered question 26 on his July 2002 SCA, he answered it based on his belief at that time and to the best of his ability. He simply misread the question asked. This being the case, I find no "**deliberate** omission, concealment, or falsification" here, as is required by

the second disqualifying condition under Personal Conduct (emphasis supplied). The Applicant testified credibly; and as there was no wilful falsification, Guideline E is for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his alleged Personal Conduct. The Applicant has thus met the mitigating conditions of Guideline E, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline E.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

a. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge