

DATE: September 14, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00799

ECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's falsification of his security clearance application in response to a question concerning his criminal history, and his criminal charge and conviction in 2001, have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On March 25, 2004, 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 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing on April 13, 2004, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on June 21, 2004, consisting of eight documents. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on June 29, 2004, and he submitted a reply, a letter from his company dated July 8, 2004.

The case was assigned to the undersigned for resolution on August 1, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the exhibits, and his reply to the FORM. The Applicant is 25 years old, and is unmarried. He is employed by a defense contractor as a Technician, and is seeking to obtain a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has been involved in questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations.

The Applicant has admitted all of the factual allegations set forth in the SOR under this guideline. The Applicant completed a Security Clearance Application (Standard Form 86) dated July 31, 2002. Question 26 of the application asked the Applicant if in the last seven years he has been arrested for, charged with, or convicted of any offenses not listed in modules 21, 22, 23, 24 or 25. The Applicant answered "NO". (See Government Exhibit 4, page 5). This was an intentional false answer. The Applicant failed to reveal that in June 2001 he was charged with (1) Sex Solicitation, and (2) Disorderly Conduct. (See Government Exhibits 6 and 7).

In a signed sworn statement to the Defense Security Service dated October 11, 2002, the Applicant denied that he solicited a female for sex on June 27, 2001. (See Government Exhibit 5). This was also false information. The police report of the incident indicates that the Applicant admitted that he picked up the female with the intention of paying her for a sex act. (See Government Exhibit 7). In Applicant's Answer to the SOR he admits the criminal conduct. (See Government Exhibit 3).

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant has admitted the allegations set forth in the SOR under this guideline. The Applicant was detained by police on June 26, 2001, and charged with (1) Sex Solicitation, and (2) Disorderly Conduct. The police report indicates that the Applicant's vehicle had stopped for a female in a high prostitute area. The Applicant originally told the police that he picked the girl up to give her a ride home. After the police explained that they had been following the Applicant for about thirty minutes, the Applicant admitted that he picked up the female with the intention of paying her for a sex act. The police report further indicates that the female told the police that the Applicant exposed his penis to her in order to prove that he was not a police officer. (See Government Exhibit 7). The Applicant was issued a citation by the police and required to appear in court. The Applicant pled guilty to count (1) and was sentenced to 45 days in jail, suspended, placed on probation for one year and fined \$300.00. Count 2 was dismissed.

A letter from the Applicant's security manager indicates that since the Applicant has been employed in a classified area from August 5, 2002, until his clearance was withdrawn on April 26, 2004, the Applicant has not had any security violations. It goes on to say that the Applicant has further demonstrated reliability through his attendance, professionalism and good work ethics. (See letter dated July 8, 2004 from Security Manager of Applicant's company).

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline E (Personal Conduct)

Condition that could raise a security concern:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Conditions that could mitigate security concerns:

None.

Guideline J (Criminal Conduct)

Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in criminal conduct, alcohol abuse and dishonesty that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in dishonesty (Guideline E) and criminal conduct (Guideline J). The evidence indicates a history of poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under any of the Guidelines alleged in the SOR.

The evidence shows that the Applicant did not reveal his complete criminal charge and conviction in 2001 for Sex Solicitation in response to question 26 on his security clearance application. He also denied the criminal conduct in his statement to the DSS. The Applicant provides no evidence in mitigation for these falsifications other than to say that he was not arrested nor taken to jail, so that is why he left the information off of the form. The Applicant knew or should have known the importance of the application and should have answered the question correctly. He also should have been honest in his statement to DSS. Consequently, the evidence shows that the Applicant has not been completely honest with the Government regarding his criminal history and in fact sought to conceal the truth. None of the mitigating factors set forth in the Directive under Guideline E apply. I find that the Applicant deliberately failed to reveal this information to the Government.

The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of his personal background. The Applicant has not provided this Administrative Judge with sufficient evidence in mitigation that would negate the negative impact his falsifications have on his security worthiness. Furthermore, the Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

The Applicant's criminal conduct in 2001 shows poor judgment and unreliability. Although, there is no evidence in the record that the Applicant has engaged in any criminal conduct since 2001, a period of three years, I am not convinced that the Applicant understands the seriousness of his past conduct or that he is sufficiently rehabilitated. Given the extent and seriousness of his criminal conduct sufficient rehabilitation and mitigation has not been shown. None of the mitigating factors under Guidelines J apply. Accordingly Guideline J (Criminal Conduct) is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. At this time, I cannot find that it is clearly consistent with the national interests to grant the Applicant a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: 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 the Applicant.

Darlene Lokey Anderson

Administrative Judge