

DATE: December 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00960

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 63-year-old security officer for a defense contractor. He inappropriately sexually touched female employees of a hospital where he was working and was terminated. He admitted having sexual relations with women not his wife, and his wife is not aware of his actions. He was terminated by another employer for insubordination. He also deliberately failed to inform security investigators of his actions for fear of losing his security clearance. Applicant has not mitigated security concerns for sexual behavior and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On June 16, 2005, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guideline D (Sexual Behavior), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on July 18, 2005. He admitted the allegations under both Guidelines D and 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 August 15, 2005. Applicant received a complete file of relevant material (FORM) on September 27, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due on October 28, 2005. As of November 14, 2005, he had not responded. The case was assigned to me on November 28, 2005.

FINDINGS OF FACT

Applicant is a 63-year-old security officer who has been employed by a defense contractor for over four years. He has

been married for over 40 years and has two grown children. He held a security clearance for over 20 years.⁽¹⁾

A number of female employees at a hospital where Applicant worked accused him of inappropriate and improper sexual touching during the latter half of 2000. Applicant was terminated by the hospital in January 2001 for his inappropriate activities.⁽²⁾

Applicant was employed as a supply clerk for a Housing authority in 1995. He was terminated by that agency for gross insubordination.⁽³⁾ Applicant initially denied to security investigators knowing he was terminated,⁽⁴⁾ but admitted it in his response to the SOR.⁽⁵⁾

There is an allegation that during his marriage Applicant had sexual relations with women not his wife, and his wife does not know of his actions. There is no information to support the allegations, but Applicant admits the allegations.⁽⁶⁾

Applicant did not reveal certain information concerning himself to security investigators. In his subsequent statement to security investigators, Applicant states "The reason why I did not reveal the above information regarding my inappropriate conduct and certain accusations that have been made against me, during my first subject Interview, was because I feared that I would not get my security clearance."⁽⁷⁾

POLICIES

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."⁽⁸⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽⁹⁾

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 and mitigating conditions 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. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹⁰⁾ 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.⁽¹¹⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽¹²⁾ 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽¹³⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽¹⁴⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁵⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed

⁽¹⁶⁾

therein and an applicant's security suitability." "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (17)

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline D - Sexual Behavior: Sexual behavior is a security concern if it involves a criminal offense, indicates a personality or emotional disorder, may subject the individual to coercion, exploitation, or duress, or reflects lack of judgement or discretion.

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 and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

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.

The government has established its case under Guideline D. Applicant's improper sexual conduct in touching female employees, and sexual relations with women not his wife brings the matter under Sexual Behavior Disqualifying Conditions E2.A4.1.2.1 (*Sexual behavior of a criminal nature, whether or not the individual has been prosecuted*); E2.A4.1.2.3 (*Sexual behavior that causes an individual to be vulnerable to coercions, exploitation, or duress*); and E2.A4.1.2.4 (*Sexual behavior of a public nature and/or that which reflects lack of discretion or judgment*). Applicant's unwanted and inappropriate touching of female employees is the criminal offense of assault. His sexual relations with other women that are unknown to his wife makes him vulnerable to coercion, exploitation or duress. His sexual activities and touching of women reflect a lack of discretion and judgement.

I have considered Sexual Behavior Mitigating Conditions E2.A4.1.3.2 (*The behavior was not recent and there is no evidence of subsequent conduct of a similar nature*); E2.A4.1.3.4 (*There is no other evidence of questionable judgement, irresponsibility, or emotional instability*); and E2.A4.1.3.4 (*The behavior no longer serves as a basis for coercion, exploitation, or duress*), and find none apply. The last known incident of inappropriate touching was late 2000. Even though this was five years ago, I conclude it is recent for this type activity. In addition, Applicant admits having sexual relations with women other than his wife but there is no admitted time line. Since his admission to this type activity was in July 2005, I conclude there is a strong inference it is ongoing and thus recent. There is evidence of other questionable judgment, the reasons for his termination from the Housing Authority, and his false statement to security investigators. Since there is no evidence he has informed his wife of his sexual activities, there is still a basis for coercion, exploitation, or duress. Applicant has failed to mitigate the security concerns for his sexual behavior.

The government has established its case under Guideline E. Applicant's false answers to the security investigator brings the matter under Personal Conduct Disqualifying Condition E2.A5.1.2.3 (*Deliberately providing false and misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination*). Applicant's admission in his statement that he deliberately omitted some of his inappropriate conduct to the investigator establishes the above disqualifying condition. I have considered Personal Conduct Mitigating Conditions E2.A5.1.3.1 (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*), and E2.A5.1.3.3 (*the individual made prompt, good-faith efforts to correct the falsification before confronted with the facts*). Lack of honesty in answering questions on a security clearance application has a direct bearing on a determination of a person's judgment, trustworthiness, and reliability. Applicant admits to the false statements in his statement to the security investigators, but he did not promptly correct the false statements and did so only after being confronted by the investigators. Applicant has not mitigated the security concerns for his false statements.

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 E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline D: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: 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.: Against Applicant

DECISION

In light of all of the circumstances in 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

1. Government Exhibit 4 (Security Clearance Application, dated Aug. 9, 2002).
2. Government Exhibit 6 (Employers Personnel Documents, dated Jan. 3, 2001).
3. *Id.*
4. Government Exhibit 5 (Applicant's statement, undated).
5. Government Exhibit 3 (Applicant's answer to SOR, dated Jul. 18, 2005).
6. *Id.*
7. Government Exhibit 5 (Applicant's statement, undated) at 4.
8. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
9. Directive ¶ E2.2.1.
10. *Id.*
11. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

12. *See* Exec. Or. 10865 § 7.

13. Directive ¶ E3.1.14.

14. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

15. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

16. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

17. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.