

DATE: June 2, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04244

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had a delinquent debt of over \$21,000, was arrested and charged with DUI in 1991 and 1998, and was involved in several domestic affrays between 1997 and 1999. Applicant mitigated the financial considerations, criminal conduct, and alcohol consumption security concerns. He failed to mitigate the security concerns raised by his failure to list his arrests, charges, and convictions on his security clearance application. 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. On 3 June 2004, DOHA issued a Statement of Reasons ⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on 6 July 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 19 January 2005. On 31 March 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 12 April 2005.

FINDINGS OF FACT

Applicant is a 33-year-old electronic technician for a defense contractor. He was married between January 1993 and January 1995. He has two children by his ex-wife. Tr. 14.

Applicant had over \$21,000 in delinquent debt from student loans. He started making payments in April 2004 and has kept them up to date. He owes the IRS \$1,500 for tax year 2004 that he stated he would pay before it was due on 15 April. Applicant was late on his mortgage twice in the past seven years, but is now current.

In September 1991, police stopped Applicant for driving a vehicle with only one headlight. After they determined he had consumed alcoholic beverages, he was tested with a Breathalyzer that revealed a blood-alcohol content of 0.135%.

He was charged with operating a vehicle while intoxicated and consuming alcohol while a minor. After he was arrested, Applicant was placed in jail where he broke a light in his cell trying to get his jailer's attention that he needed a drink of water.

Sometime after his divorce, Applicant moved back in with his ex-wife. In April 1997, Applicant went out with some friends despite his ex-wife's protestations. She was pregnant at the time. After he returned home, Applicant, who had been drinking, and his ex-wife became embroiled in a physical dispute. Applicant went to the police department for assistance. The police observed injuries to both Applicant and his ex-wife. They were both charged with domestic violence/assault. The judge dismissed the offenses.

In January 1998, Applicant and his ex-wife had another physical confrontation after which his ex-wife called the police. Applicant, who had been drinking alcohol, was arrested. The charge was dismissed.

In April 1998, police stopped Applicant for driving erratically. He was arrested for driving under the influence of alcohol after refusing to participate in field sobriety tests. He took a breath test that showed a blood-alcohol content of 0.109. He refused the second breath test. Applicant was permitted to plead guilty to two traffic offenses and paid a fine.

In November 1999, Applicant and a girlfriend had an argument that led to police being called to his home. They had been living together until shortly before the incident. Applicant had been drinking with friends just prior to the incident. Police arrested and charged him with domestic violence/assault. Applicant was convicted of the offense and fined.

Applicant completed an Electronic Personnel Security Questionnaire (EPSQ) worksheet. Module 24 asked if he had ever been "charged with or convicted of any offense(s) ⁽²⁾ to alcohol or drugs," "regardless of whether the record in your case has been 'sealed' or otherwise stricken from the record." Applicant answered "no." Module 26 asked Applicant if, in the previous seven years, he had been arrested for, charged with, or convicted of any offense(s) not listed" in other modules "regardless of whether the record in your case has been sealed or otherwise stricken from the record." Applicant answered "no," listed a domestic violence incident, but noted the date of the offense as "unk."

Human resources personnel input the information on the worksheet into the computer to produce an electronic security clearance application (SCA). The SCA was printed out and given to Applicant to review and sign. Apparently because Applicant answered "no" to module 26 on the worksheet and failed to list the date of his domestic violence offense, the human resources personnel input the answer "no" to question 26. Applicant signed a printout of the electronic SCA on 6 May 2002, certifying that his statements were "true, complete, and correct" to the best of his knowledge and belief, and acknowledging that a "knowing and willful false statement" could be punished under 18 U.S.C. § 1001. Ex. 1 at 8.

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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant was indebted to a creditor on seven accounts totaling over \$21,000 (¶ 1.a). Applicant admitted this indebtedness. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government's evidence and Applicant's admissions establish potentially disqualifying conditions under Guideline F. Applicant has a history of not meeting his financial obligations (DC E2.A6.1.2.1) and was unable or unwilling to satisfy his debts (DC E2.A6.1.2.3). His \$21,000 debt resulted from educational loans that he failed to pay in a timely manner. Nevertheless, Applicant is now in good standing on the loans, does not have any credit cards, and appears to be coping with his current bills and expenses. Applicant has made a good-faith effort to resolve his debts. MC E2.A6.1.3.6. Under all the circumstances, I conclude Applicant mitigated the financial considerations security concern. I find for Applicant on ¶ 1.

Guideline J--Criminal Conduct

In the SOR, DOHA alleged Applicant was arrested and charged with domestic violence/assault in April 1997 (¶ 2.a) and January 1998 (¶ 2.b); was arrested and charged with simple assault in November 1999 (¶ 2.c); was arrested and charged with DUI in April 1998 (¶ 2.d); and was arrested and charged with DUI and underage drinking in September 1991 (¶ 2.e). 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 establish potentially disqualifying conditions under Guideline J. Applicant has a history of criminal behavior and has been involved in multiple lesser offenses. DC E2.A10.1.2.2. But the offenses were not recent. MC E2.A10.1.3.1. The Government has not alleged, and there is no evidence to support a finding that, Applicant committed any criminal conduct in more than five years. Under all the circumstances, I find for Applicant on ¶ 2.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts on his SCA by denying he had been charged with or convicted of any alcohol-related offenses (¶ 3.a) or been arrested for, charged with, or convicted of any offenses not listed in answer to other questions (¶ 3.b). Applicant denied the allegations. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government's evidence established potentially disqualifying conditions under Guideline E. Applicant failed to report his alcohol-related arrests and conviction in answer to question 24 and his other arrests in answer to question 26 on his EPSQ worksheet or in his SCA. The deliberate omission of relevant and material facts from any SCA is disqualifying. DC E2.A5.1.2.2. An applicant's criminal history is relevant and material to a determination of his security worthiness.

Applicant claims he did not report his 1991 arrest for DUI because he forgot and he should not have been arrested. He asserts he was being harassed by a policeman. He claims he did not list his 1998 DUI arrest because he was not drunk and was told by the court that it would be removed from his record. He asserts he did not believe he had to list the domestic assaults of which he was not convicted.

If Applicant did not list his arrests, charges, or convictions over the previous seven years elsewhere on his SCA, he had to list them in answer to question 26. On the EPSQ worksheet, he listed only the sole domestic violence offense of which he was convicted. I have no doubt Applicant fully understood the questions-that he was to list all alcohol-related offenses for which he had ever been charged or convicted (question 24) and any offenses not listed elsewhere of which he had been arrested, charged, or convicted in the previous seven years. Except for the November 1999 conviction, Applicant deliberately failed to list these offenses. He applied his own rules and standards for answering the questions. Unless he was convicted or he personally believed he was guilty of the offense, he would not list it. This demonstrates

Applicant's unreliability and unwillingness to comply with rules and regulations that are the focus of personal conduct security concerns. I find against Applicant on ¶ 3.

Guideline G-Alcohol Consumption

In the SOR, DOHA alleged Applicant was arrested for DUI in April 1998 (¶ 4.a) and charged with DUI and underage drinking in 1991 (¶ 4.b); and was intoxicated when he was arrested for domestic violence/assault in April 1997 (¶ 4.c), for domestic violence/assault in January 1998 (¶ 4.d), and for simple assault in November 1999 (¶ 4.e). Applicant denied the general allegation of excessive alcohol consumption, but failed to address each specific allegation in ¶ 4 of the SOR. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. Directive ¶ E2.A7.1.1.

The Government's evidence and Applicant's admissions establish potentially disqualifying conditions under Guideline G. Applicant was involved in alcohol-related incidents away from work-the DUI and the domestic affrays. DC E2.A7.1.2.1. But the incidents occurred a number of years ago (more than five years ago) and there is no indication of a recent problem. MC E2.A7.1.3.2. Under all the circumstances, I find for Applicant on ¶ 4.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Paragraph 4. Guideline G: FOR APPLICANT

Subparagraph 4.a: For Applicant

Subparagraph 4.b: For Applicant

Subparagraph 4.c: For Applicant

Subparagraph 4.d: For Applicant

Subparagraph 4.e: For 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

1. As required by Exec. Or. 10865 (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended and modified (Directive).
2. Ex. 5 at 23. It appears the word "related" is missing from the module. The question should read "any offense(s) *related* to alcohol or drugs."