

DATE: June 29, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06167

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Nichole Ligon Noel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's demonstrated poor judgement and unreliability disqualifies for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 23 August 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of personal conduct.⁽¹⁾ Applicant answered the SOR on 30 August 2004 and requested a hearing. DOHA assigned the case to me 19 November 2004 and I convened a hearing on 12 January 2005. DOHA received the transcript on 21 January 2005.

FINDINGS OF FACT

Applicant admitted the Guideline E allegations; accordingly, I incorporate his admissions as findings of fact. He is a 41-year-old computer technician employed by a defense contractor since March 2002, seeking reinstatement of the clearance he held in the Army until approximately May 1998.

In August 1997, Applicant deliberately cut the automobile brake lines of his 8-months-pregnant paramour.⁽²⁾ Applicant was quickly charged with adultery, destruction of private property (by cutting the brake lines), and aggravated assault (GE 3) and tried by general court-martial. Pursuant to a pre-trial agreement, Applicant pleaded to adultery and destruction of private property; the aggravated assault charge was dismissed. Applicant's pleas were provident, and he was found guilty by judge alone. Applicant elected to be sentenced by members (the military equivalent of a jury), but procedural irregularities ultimately caused Applicant to receive no sentence for his crimes. However, he did receive an other-than-honorable discharge in lieu of court-martial (GE 7).

Applicant cut his paramour's brake lines because he wanted her to leave him alone. He claims he only wanted to scare her, not hurt her. However, he acknowledged that he was concerned about his Army career and his security clearance if the Army found out about his adultery. At hearing, Applicant acknowledged his past poor judgment and pleaded the

passage of time since his crime. He did not otherwise present evidence of extenuation, mitigation, or rehabilitation.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline E (Personal Conduct).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽³⁾

CONCLUSIONS

The Government established a Guideline E case and Applicant did not mitigate the security concerns. Although the crime occurred over seven years ago, Applicant's misconduct was egregious and demonstrates extraordinarily poor judgement and unreliability inconsistent with access to classified information. Only a technical error by the government kept Applicant from leaving the Army with a court-awarded bad conduct discharge. Applicant pleads the passage of time and a desire for a second chance as a basis for receiving his clearance, but neither substitutes for actual evidence of extenuation, mitigation, or rehabilitation, which Applicant failed to provide. I resolve Guideline E against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph 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 Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).

2. Applicant and his paramour met at an office function in December 1996 and had a brief sexual affair between December 1996 and January 1997, when she discovered she was pregnant. However, paternity was an issue, as she was sexually active at that time with an ex-boyfriend. By August 1997, the paramour was pressing Applicant to participate in a paternity test, and he was resisting. The paramour's efforts to contact Applicant, lead to his wife's discovery of both the affair and the pregnancy. Ironically, the wife was also pregnant at the time.

3. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).