

DATE: September 17, 2004

In Re:

Applicant for Security Clearance

ISCR Case No. 03-11755

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Edward Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 35-year-old diver/welder has a long history of (1) personal misconduct, including 14 vehicle-related violations (1989 to December 2002) and falsification of three answers on his June 2001 security clearance application; (2) seven acts of criminal conduct from 1989 to 2000; and (3) 19 examples of financial misconduct from 1995 to the present. No mitigation has been established. Clearance is denied.

STATEMENT OF THE CASE

On January 23, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On April 14, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing by a DOHA Administrative Judge. The matter was assigned to me for resolution on May 24, 2004. A Notice of Hearing was issued on May 27, 2004, and the hearing was conducted on June 8, 2004. At the hearing, the Government did not call any witnesses but submitted seven documents, which were marked for identification as Government's Exhibits (GX) 1 - 7. Applicant testified and offered one exhibit, which was marked as Applicant's Exhibit (AX) A. The transcript was received at DOHA on June 17, 2004.

FINDINGS OF FACT

Applicant is a 35-year-old diver/welder analyst for a defense contractor who is seeking a security clearance for Applicant in connection with his employment. The SOR contains four allegations under Guideline E (Personal Conduct). In his response to the SOR, Applicant *admits* allegations 1.a. - 1.l., 1.n., and denies 1.m., 1.o, 1.p., 1.q., 1.r., 1.s. and 1.b., all with explanations. As to the remaining allegations, he admits some and denies others and admits *and* denies parts of several others. The admissions are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence in the case file, I make the following Findings of Fact as to the status, past and present, of each SOR allegation:

Guideline E (Personal Conduct)

1.a. - **32 Your Investigation Record - Clearance Actions** - To your knowledge, have you ever had a clearance or access authorization denied, suspended, or revoked, or have you ever been debarred from Government employment? (Note: An administrative downgrade or termination is not a revocation) to which Applicant answered "No," whereas his Secret security clearance was revoked on or about September 21, 1989, after he received a Field Grade Article 15 of the Uniform Code of Military Justice on or about June 21, 1988, for failure to obey an order or regulation, and Forgery, due to his involvement in Black Marketing and utilizing false forged government documents.

Guideline J (Criminal Conduct)

2.a. - The information set forth in SOR 1.a., above, which constitutes a violation under Federal law, specifically 18 U.S.C. 1001, a felony.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual'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 or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an applicant for a security clearance, in his or her private life or connected to work, may be involved in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within

specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the

Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended,

at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Applicant is a 35-year-old (born in 1968) diver/welder employed by a defense contractor. He first received a security clearance in 1998, while working at a nuclear facility (GX 1 at Question 32). This case is unusual in the number of allegations contained in the SOR, all of which are supported by the totality of the record. From 1989 (age 21) to 2002, Applicant has been arrested and/or charged on separate occasions with 28 separate offenses.

Guideline E (Personal Conduct) - The concerns expressed in the Directive's guidelines for personal conduct are essentially that personal misconduct may raise questions about the judgment, reliability, and trustworthiness of someone seeking access to the nation's secrets.

While he has apparently never served any time on the vehicle-related offenses, he has paid more than \$8,000 in fines and had his driver's license suspended on several occasions. He nonetheless continues to drive unlicensed and uninsured and has received additional tickets in State B in the six months just prior to the hearing (Tr at 28). He continues to drive without a license in order to "make a life for myself, put food on the table, buy some property, and raise a family" (*Id.*). It may be that Applicant thinks himself unlucky to keep being detected and arrested by the police, but his statements suggest a lack of understanding of his sole responsibility for the difficult position in which he finds himself.

The following Disqualifying Conditions (DC) are applicable: DC 1 - reliable unfavorable information provided by associates, . . . neighbors, and other acquaintances; DC 2 - the deliberate omission, concealment, or falsification of relevant and material information from any personnel security questionnaire; and DC 5 - a pattern of dishonesty or rule violations. The record does not establish that any of the parallel Mitigating Conditions (MC) are applicable, particularly since the falsifications are still "recent" (MC 2), and the correct information was provided only after being confronted by the DSS agent (MC 3).

Guideline J (Criminal Conduct) - The SOR cites six non-vehicle-related arrests and charges between 1997 and 2000. A second area of criminal activity relates to his falsification of answers to Questions 24 (alcohol/drug related arrests), 26 (police records - other offenses), and 38 (financial delinquencies- 180 days), on his June 21, 1989 SF 86. Applicant has not provided any explanation that comes anywhere near being an acceptable excuse.

Applicant's 28 separate criminal and/or vehicle-related violations over a period of perhaps 13 years, establishes that the exercise of poor judgment, unreliability, and untrustworthiness has been a fundamental part of his life rather than an aberration. Only the kind words of several friends and associates suggest the occasional exercise of good judgment but, overall, mature judgment seems generally to be absent from the major choices he continues to make.

Disqualifying Conditions 1 (any criminal conduct) and DC 2 (a single serious crime or multiple lesser offenses) are clearly applicable, but none of the possible mitigating conditions have been established. The criminal behavior is still recent (MC 1), was not an isolated incident (MC 2) and there is no clear evidence of successful rehabilitation. Not enough time has elapsed to allow a reasonable conclusion that we are not simply in a time period between offenses. Indeed, as to the violations cited in SOR 2.c. (1997) and 2.f. (2000), warrants for his arrest were issued and have not yet been resolved by Applicant.

Guideline F (Financial Considerations)

I have considered Applicant's explanations for all of the financial problems addressed by the SOR, primarily in his April

2003 sworn statement to DSS (GX 4) and his hearing testimony. The core explanation is that his job problems made him borrow more money even though he was unable to repay his existing delinquent debts. He denies some debts but has not provided any support for his denials. He also promises to begin making payments, but nothing in the record suggests he has actually done so. Applicant claims that the education loans cited in SOR 3.r and 3.s. are for his diving training and that he is now making payments on these loans. The debts are derived from the credit report (GX 7) of March 2003, but nothing in the record supports his claims of payment.

Applicant's testimony describes his youth and hard financial times. The combination of low earnings and large fines caused by his continuing irresponsible driving habits put him in a financial bind he has never been able to escape, at least in part, because he kept adding newer debts to the previously owing but unpaid amounts (Tr at 27). Even when his driver's license was suspended, he had to continue driving to get to work. He continued to drive, was arrested for a variety of violations, and his lack of a license and insurance was discovered again and again. His explanations are understandable on some level but cannot be accepted as an excuse. Although he claims to have begun the process of paying off his court imposed obligations, he has not documented anything. Considering his long and sad history, his promises of reform and rehabilitation lack credibility and are unsupported by action.

Disqualifying Conditions 1 (a history of not meeting financial obligations) and DC 3 (inability or unwillingness to satisfy debts) are applicable, but none of the possible mitigating conditions have been established by the record. The debts are still recent (MC 1), they are not isolated (MC 2), and there is no evidence that Applicant has initiated a good-faith effort to repay his overdue creditors or otherwise resolve debts (MC 6).

I have considered Applicant's statements and all of the positive statements by other individuals. I conclude, however, that too much personal, criminal, and financial misconduct has occurred over too long a period of time to allow a present finding of eligibility. Viewing the totality of the evidence, I cannot conclude that Applicant has demonstrated the integrity, good judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Subparagraph 1.k. Against the Applicant

Subparagraph 1.l. Against the Applicant

Subparagraph l.m. Against the Applicant

Subparagraph 1.n. Against the Applicant

Subparagraph l.o. Against the Applicant

Subparagraph 1.p. Against the Applicant

Subparagraph l.q. Against the Applicant

Subparagraph 1.r. Against the Applicant

Subparagraph l.s. Against the Applicant

Guideline J (Criminal Conduct) Against the Applicant

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c Against the Applicant

Subparagraph 2.d. Against the Applicant

Subparagraph 2.e. Against the Applicant

Subparagraph 2.f. Against the Applicant

Subparagraph 2.g. Against the Applicant

Guideline F (Financial Considerations) Against the Applicant

Subparagraph 3.a.(1) - 3.a.(10) Against the Applicant

Subparagraph 3.b. Against the Applicant

Subparagraph 3.c. Against the Applicant

Subparagraph 3.d. Against the Applicant

Subparagraph 3.e. Against the Applicant

Subparagraph 3.f. Against the Applicant

Subparagraph 3.g. Against the Applicant

Subparagraph 3.h. Against the Applicant

Subparagraph 3.i. Against the Applicant

Subparagraph 3.j. Against the Applicant

Subparagraph 3.k. Against the Applicant

Subparagraph 3.l. Against the Applicant

Subparagraph 3.m Against the Applicant

Subparagraph 3.n. Against the Applicant

Subparagraph 3.o. Against the Applicant

Subparagraph 3.p. Against the Applicant

Subparagraph 3.q. Against the Applicant

Subparagraph 3.r. Against the Applicant

Subparagraph 3.s. 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.

Barry M. Sax

Administrative Judge