

KEYWORD: Criminal Conduct

DIGEST: Applicant, a retired police officer, was convicted of attempting to carry a dangerous weapon on an aircraft. Although he pled guilty to the offense, he insists he would not have taken the weapon on the aircraft if he had successfully navigated through security. Applicant failed to mitigate criminal conduct security concerns. Clearance is denied.

CASENO: 03-14712.h1

DATE: 07/14/2005

DATE: July 14, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-14712

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a retired police officer, was convicted of attempting to carry a dangerous weapon on an aircraft. Although he pled guilty to the offense, he insists he would not have taken the weapon on the aircraft if he had successfully navigated through security. Applicant failed to mitigate criminal conduct security concerns. 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 1 September 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 11 September 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 27 April 2005. On 14 June 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 22 June 2005.

FINDINGS OF FACT

Applicant is a 48-year-old procurement technician for a defense contractor. He has been married 25 years and has two adult children, both living at home. In 2000, after 20 years on a city police force in State 1, he retired and moved to State 2. Applicant was granted an interim clearance on 3 July 2002.⁽²⁾

On 18 December 2001, Applicant was scheduled to fly from State 2 to State 3 in order to pickup a truck he had purchased on the internet. When he got dressed that morning, he had placed a Delta Dart in his boot. The Delta Dart is a weapon that is eight and one-half inches long and one-half inch in diameter and is made of a "super tough material that,

when combined with the Dart's sharp point and triangular cross section, accounts for its phenomenal piercing power and allowed it to be driven by hand right through a ½" thick piece of leather." Ex. 7. Applicant knew that it was wrong for him to carry the weapon on an aircraft. Ex. 2 at 2. At the airport, Applicant saw signs stating it was a crime to have a weapon in his possession. Applicant walked through the magnetometer at the airport without incident. He was chosen for random screening and asked to remove his boots. After the scanner completed checking the first boot, Applicant told her she wouldn't be happy with what she was going to find in the second boot. In the boot, the screener found the dart. Ex. 4 at 24.

Applicant was arrested by the local police and detained at a U.S. Marshal's facility for two days. On 20 December 2001, he was arraigned on a charge of attempting to carry a dangerous weapon on board an aircraft, pled not guilty, and was released on his own recognizance. His first trial ended in a hung jury. On 10 July 2002, Applicant entered into a plea agreement with the federal prosecutor. Ex. 3. In exchange for his plea of guilty, Applicant received a sentence that included probation for three years, deferred for a period of one year from the date of the offense, 100 hours of community service, and being prohibited from flying on commercial airline transportation and carrying or possessing any concealed weapons on his person or in his property. *Id.* at 2-3. After Applicant completed the terms of the plea agreement, the court dismissed the indictment with prejudice and vacated the sentence on 19 December 2002. Ex. A. There is no evidence that before or after this offense Applicant was ever arrested or charged with any other criminal offense.

Attempting to carry a dangerous weapon on an aircraft is a violation of 49 U.S.C. § 46505(b)(1), a Class C felony. A conviction for this offense carries a maximum sentence of a fine of \$250,000 and a prison term of 10 years. Ex. 3 at 1.

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 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

In the SOR, DOHA alleged Applicant was convicted of attempting to carry a dangerous weapon on an aircraft, a felony. SOR ¶ 1.a. Applicant admitted the allegation in his Answer. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

Applicant knew he was prohibited from boarding an aircraft with a weapon, but claims not to have known the consequences of his action-that he would be committing a crime by doing so-at the time he put the dart in his boot. He suggests he made a cost-benefit analysis by weighing "the known wrongdoing against what [he] believed was a risk of some sort of bad event occurring given that it was the holiday season and we were just on the wake of 9/11." Tr. 38. He insists he did not know it was criminal until he saw the signs at the security checkpoint in the airport, and that he could not dispose of the weapon or leave the security line without arousing suspicions and creating alarm. Tr. 26-29. Applicant also asserts that, once he saw the signs against carrying weapons through security, he abandoned his intent to carry the dart on the airplane and would have disposed of it once he got through security and prior to boarding the aircraft. *Id.*

I find incredible Applicant's testimony that he, a police veteran of 20 years, did not know it was a crime to carry a weapon on an airplane, especially after 9/11. He further failed to convince me that he intended to dispose of the weapon if he had made it through airport security without incident.

The Government's evidence and Applicant's admissions constitute evidence of potentially disqualifying conditions under Guideline J. Applicant committed a single serious crime-attempting to carry a dangerous weapon on an aircraft. DC E2.A10.1.2.1. Mitigating conditions that might apply to Applicant's case include that the criminal behavior was not recent (MC E2.A10.1.3.1), the crime was an isolated event (MC E2.A10.1.3.2), and there is clear evidence of successful rehabilitation (MC E2.A10.1.3.6).

Although it has been over three years since Applicant was arrested, I find the incident was recent. It was his arrest and subsequent conviction that caused DISCO to review his security clearance. Although it has taken more than three years since his arrest to process this case, I am unwilling to conclude the incident was not recent. Therefore, MC E2.A10.1.3.1 does not apply.

Applicant's criminal offense was isolated-there is no evidence of any other offenses either before or after this incident. MC E2.A10.1.3.2 applies.

There is no likelihood Applicant will commit such an offense in the future. He appears to be intelligent and he clearly recognizes his error in attempting to carry a dangerous weapon on board the aircraft. But the real issue here is whether Applicant is reliable, trustworthy, and has good judgment. What is most troubling to me is Applicant's apparent willingness to take responsibility for his actions while at the same time trying to rationalize his conduct as being innocent-he would not have taken the dart on the airplane even if he had successfully navigated security. He knew he was prohibited from carrying a weapon through airport security, yet he decided, on a cost-benefit analysis, that it was worth the risk. He considered himself above the rules established to promote the safety of all air travelers. Under the circumstances, I am unable to conclude Applicant has shown clear evidence of rehabilitation. MC E2.A10.1.3.6 does not apply.

After considering all of the evidence, the disqualifying and mitigating conditions, and the adjudicative process factors, I find against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a: Against 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, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).
2. DISCO had received notification of Applicant's arrest on 26 December 2001.