

KEYWORD: Criminal Conduct

DIGEST: Applicant was arrested several times between 1983 and 2003. He admits the underlying criminal conduct for those arrests. Applicant does not accept that he has an alcohol problem. Although he no longer consumes alcohol, he failed to mitigate the criminal conduct security concerns raised by his lengthy criminal history. Clearance is denied.

CASENO: 03-25509.h1

DATE: 09/23/2005

DATE: September 23, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25509

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was arrested several times between 1983 and 2003. He admits the underlying criminal conduct for those arrests. Applicant does not accept that he has an alcohol problem. Although he no longer consumes alcohol, he failed to mitigate the criminal conduct security concerns raised by his lengthy criminal history. 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 14 January 2005, 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 1 February 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 23 May 2005. On 22 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 30 June 2005.

FINDINGS OF FACT

Applicant is a 44-year-old engineering technician for a defense contractor. His supervisors find him to have a strong work ethic. They report that he completes all tasks in a timely manner and has not displayed any conduct that would lead them to consider him to be a threat to national security. Ex. C, D.

Applicant was married to M from 1979-83. They had two children. In February 1983, Applicant was arrested and charged with battery of his wife. He had been separated from her. When he returned to the house to retrieve his checkbook there was an altercation. He grabbed her by the neck and pushed her back against the door. Tr. 21. He was placed in a diversion program. Ex. 7. That same month, he was arrested for driving under the influence of alcohol (DUI). He was convicted of the offense, and ordered to complete community service and pay a fine. After his divorce,

he eventually was awarded custody of both children.

In March 1984, Applicant was arrested and charged with petty theft. He shoplifted a tool from a department store. In December 1984, he was convicted of the 1983 battery charge for which he had been placed in a diversion program. He was given a suspended sentence with probation for three years and a fine. Ex. 7.

In September 1984, he married S. They had two children. In January 1997 he separated from S, who convinced court to issue a permanent restraining order against him. She claimed he pointed a gun at her. Applicant denies he did so. They were divorced in February 1998. Applicant eventually won custody of both children of this marriage.

After he separated from his wife, Applicant saw a mental health counselor because he was distressed about losing his kids. The counselor recommended he go to Alcoholics Anonymous (AA). Applicant attended AA almost nightly for a year, but never got a sponsor. Tr. 28; Ex. 5 at 6. He did not consume alcohol between 1997 and 1999.

In 1999, Applicant married again and resumed consuming alcoholic beverages. He admits he "typically drank with friends and at social get-togethers, such as barbecues, about once every five months. At most, I might drink a six pack of beer and two shots of tequila during the course of the day." Ex. 5 at 5. On 30 June 2003 he and his wife were out drinking. They were both drunk. When they returned home, his wife began chasing his son around the yard. Applicant interceded and took her to the master bedroom where he struck her with his open hand. When police arrived, Applicant admitted striking his wife about five times. Police observed a bright red mark on her face. Applicant was charged with third degree assault-knowingly or recklessly causing bodily injury to another person. He pled guilty to the charge. He was sentenced to 180 days in jail, suspended, and probation for 24 months. Applicant reported regularly to his probation officer and completed the 36-week domestic violence counseling treatment program. He complied with all terms of his probation and demonstrated appropriate behavior and a positive attitude towards his probation and sentence. Ex. E. His probation was successfully completed on 15 June 2005. Ex. H.

Applicant hasn't had an alcoholic drink since that incident in 2003-it was a term of his probation-and his wife stopped drinking in 2004. In October 2003, he hadn't decided whether he would abstain from using alcohol after his probation was completed. Ex. 5 at 5. At the hearing, Applicant insisted he intends to abstain from consuming alcoholic beverages in the future.

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 charged and convicted of a February 1983 battery (¶ 1.a), convicted of a February 1983 DUI (¶ 1.b), arrested in arch 1984 for petty theft (¶ 1.c), was issued a permanent restraining order in January 1997 (¶ 1.d), and was convicted of a third degree assault by knowingly or recklessly causing bodily injury to another in June 2003 (¶ 1.d). Applicant admitted each of the allegations with explanation. 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 admitted criminal conduct (DC E.A10.1.2.2) consisting of multiple lesser offenses (DC E2.A10.1.2.2).

The allegation in ¶ 1.d of the SOR is unartfully drawn. Being issued a permanent restraining order is not criminal conduct. Nevertheless, I conclude the allegation was sufficient to put Applicant on notice of the underlying criminal conduct that was the basis for the order-he pointed a gun at his wife. Although Applicant denies he pointed a gun at his wife, I find his denial unpersuasive.

Applicant asserts there is clear evidence of successful rehabilitation as he has stopped consuming alcohol and he completed the domestic violence counseling and treatment program. *See* MC E2.A10.1.3.6. But the first step toward rehabilitation is acknowledging there is a problem. Applicant refuses to do so. Applicant does have a alcohol problem as demonstrated by the two alcohol-related criminal offenses of which he was convicted and the advice of the mental health counselor that he attend AA.

Applicant insists he is better able to communicate after completing the court-ordered domestic violence counseling and treatment program. His wife confirms his improvement in interpersonal skills. But that improvement came while he was on probation and his probation ended only a month before the hearing. Under the circumstances, I am unable to conclude he has mitigated the security concerns raised by his conduct. Applicant needs to show he can maintain his sobriety and his good conduct for a period when he is not on probation and under the supervision of a court.

None of the other mitigating conditions apply. 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

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: 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).