

KEYWORD: Criminal Conduct

DIGEST: Applicant has a lengthy history of criminal activity between 1985 and 1994. He mitigated security concerns raised by his criminal conduct. Clearance is granted.

CASENO: 04-05473.h1

DATE: 03/16/2006

DATE: March 16, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-05473

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Ray T. Blank Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a lengthy history of criminal activity between 1985 and 1994. He mitigated security concerns raised by his criminal conduct. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2. 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 11 October 2005, detailing the basis for its decision-security concerns raised under Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 20 and 22 October 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on 28 November 2005. On 9 February 2006, 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 24 February 2006.

FINDINGS OF FACT

Applicant is a 44-year-old senior systems analyst for a defense contractor. He has excellent work evaluations. He is attending college and, because of his excellent academic achievement, he was placed on the Dean's list.

In June 1985, when he was 24 years old, Applicant was arrested for driving under the influence of alcohol (DUI). He had been at a bar and consumed eight or nine beers in a three hour period. When police tried to pull him over, Applicant initially refused and led police on a high speed chase. When he was stopped, he failed field sobriety tests and his breathalyzer result was .14%. He pled guilty to DUI and failing to obey a police officer. He was sentenced to from 48 hours to one year in jail. He was accepted into an alcohol impairment program and was paroled after serving 48 hours in jail.

In December 1989, when he was 28 years old, Applicant was arrested for first degree rape, statutory rape, corruption of minors, furnishing alcoholic beverages to minors, and forgery. Applicant had furnished alcohol to two girls, one was 15 and the other 13 years old. He had sex with the younger of the two girls. The forgery account arose from Applicant cashing a state check that was made out to a person with his name, but a different address. He pled guilty to furnishing intoxicating liquor to minors and nolo contendere to statutory rape and forgery. Item 6 at 3. The court convicted him of these offenses and sentenced him to jail for between 6 and 23 months plus probation for 2 years. Conditions of his probation prohibited him from being alone with minors without the written consent of his parole officer. Applicant was found to be eligible for a work release program and served 5 months in that program.

In May 1992, Applicant was found in possession of a fictitious driver's license. The license had his picture but a fraudulent name. He intended to use the fictitious license if he was stopped by police and given a citation. Applicant's parole officer threatened to revoke his parole if he did not turn in all fictitious licenses and refrain from obtaining any additional ones.

In September of that year, Applicant was arrested for harassment. He followed his girlfriend to a trailer park where she spent the night with another man. He advised his parole officer that he got into a shoving match with his girlfriend over this issue. He was able to resolve this issue and eventually married the girlfriend. In fact, he was released from probation early despite this incident.

In June 1993, Applicant was arrested for disorderly conduct-he went behind a building to urinate and someone reported him to the police. He was convicted of the offense and fined. He was arrested in March 1994 for criminal mischief for damaging the apartment in which he had lived. He pled guilty to the offense and was fined.

He married his girlfriend in December 1993, but they divorced in May 2004. Since he divorced his first wife, he has not been involved in any criminal conduct. He married again in February 2001. He has a 13-year-old son and stepsons who are 14 and 17 years old.

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 arrested in June 1985 and later convicted of DUI, failing to obey an authorized person directing traffic, making an unauthorized turn, and failing to properly signal (¶ 1.a); was convicted of statutory rape, furnishing liquor to minors, and forgery, after a December 1989 arrest (¶ 1.b); was cited in May 1992 for possession of multiple fictitious driver's licenses (¶ 1.c); was charged in September 1992 with harassment (¶ 1.d); was convicted of hazardous/physically offensive conduct after a June 1993 arrest (¶ 1.e); and was convicted of criminal mischief after a March 1994 arrest (¶ 1.f). In his answer, 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 established potentially disqualifying conditions under Guideline J-allegations or admissions of criminal conduct (DC E2.A10.1.2.1) consisting of multiple lesser offenses (DC E2.A10.1.2.2). An applicant may mitigate such potentially disqualifying conditions by establishing that the criminal behavior was not recent (MC E2.A10.1.3.1), the factors leading to the violation are not likely to recur (MC E2.A10.1.3.4), and there is clear evidence of successful rehabilitation (MC E2.A10.1.3.6).

Applicant established the applicability of each of these mitigating conditions. He has not been involved in criminal activity in almost 12 years. There is no doubt that Applicant took significantly longer to mature than would be expected. Nevertheless, he finally accepted responsibility for his actions 12 years ago and has become a stable, successful, law-abiding citizen. I find for Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline J: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

James A. Young

Administrative Judge