

DATE: October 19, 2006

In re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 06-07657

DECISION OF ADMINISTRATIVE JUDGE

MARC E. CURRY

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of criminal infractions generates a trustworthiness concern. The infractions were minor in nature, and occurred more than two years ago when he was an immature youth. He is now a mature, law-abiding citizen who is focused on raising his daughter, working, and earning a bachelor's degree. Eligibility to occupy a sensitive position is granted.

STATEMENT OF THE CASE

On April 25, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; Department of Defense Regulation 5200.2-R., *Personnel Security Program*, dated January 1987, as amended and modified (the Regulation); and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended and modified (Directive).

The SOR detailed reasons under Guideline J (criminal considerations), why DOHA could not make a preliminary affirmative finding that it was clearly consistent with the interest of national security to grant or continue Applicant's eligibility for occupying an Information Systems Position, designated ADP-II, to support a contract with the Department of Defense, and recommended a referral to an administrative judge to determine whether such eligibility should be granted, continued, denied, or revoked. Applicant answered the SOR on May 30, 2006, and requested an administrative determination in lieu of a hearing.

Department Counsel mailed the government's file of relevant material (FORM) to Applicant on July 10, 2006. He received it on July 17, 2006, and was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. On August 3, 2006, he submitted additional evidence to Department Counsel who did not object. The case was assigned to me on August 14, 2006.

RULING ON PROCEDURE

Department Counsel's FORM included a motion to amend subparagraph 1.b. to conform to Applicant's answer by replacing the allegations of "(1) Threats of Physical Harm, and (2) Blocked Subject from Leaving," with "Disorderly Conduct." The motion is hereby granted. Subparagraph 1.b., as amended, reads, as follows:

You were arrested on about June 2, 2003 in Lake Mills, Wisconsin, and charged with Disorderly Conduct. You were sentenced to six months in the First Offenders Program and required to complete a counseling program.

FINDINGS OF FACT

I have incorporated the admissions of SOR subparagraphs 1.a. and 1.c. into the findings of fact. After a thorough review and consideration of the evidence in the record, I make the following additional findings of fact.

Applicant is a 24-year-old single father who is raising his five-year-old daughter. He graduated from high school in 2001, and enrolled in college in 2003 where he is currently working toward a degree in liberal arts.

Applicant works for his employer as a claims processor. He is "a respectable employee who follows instructions very well and communicates effectively."⁽¹⁾

On July 6, 2001, shortly after finishing high school, Applicant was arrested and cited with underage drinking. He pled no contest on August 14, 2001, and was fined \$212.

Approximately two years later, on June 2, 2003, Applicant was arrested and charged with disorderly conduct after a heated argument with his girlfriend prompted her to call the police. The following October, the court deferred prosecution and ordered him to attend a six-month first offender program, which included meeting with a counselor once per month. Applicant completed the program successfully, whereupon the charge was dismissed.⁽²⁾

In February 2004, Applicant was issued a citation for disorderly conduct after a late-night disturbance at a bar. Later, the citation was reduced to "Loud Noise Violation" and he was fined \$100.

POLICIES

The adjudicative guidelines set out in the Regulation apply to ADP trustworthiness determinations. Department of Defense contractor personnel are afforded the right to the procedures contained in the Directive before any final unfavorable determination may be made.⁽³⁾

An administrative judge need not view the adjudicative guidelines as inflexible rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Positions designated as ADP I and ADP II are classified as "sensitive positions."⁽⁴⁾ "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security."⁽⁵⁾ Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."⁽⁶⁾ Each eligibility determination must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation. An administrative judge should consider: 1) the nature and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable 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 the participation; (6) the absence or presence 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.⁽⁷⁾

The following adjudicative guideline is raised:

Criminal Conduct: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions pertaining to this adjudicative guideline that could raise a security or trustworthiness concern and may be disqualifying, as well as those which could mitigate security or trustworthiness concerns, are set forth in the conclusions below.

Since the protection of national security (and sensitive information) is the paramount consideration, the final decision in each case must be reached by applying the standard that the determination of an applicant's eligibility for occupying an Information Systems Position is "clearly consistent with the national interest."⁽⁸⁾ In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The government is responsible for presenting witnesses and other evidence to establish facts in the SOR that have been controverted.⁽⁹⁾ The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable trustworthiness determination.⁽¹⁰⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹¹⁾ These same burdens of proof apply to trustworthiness determinations for ADP positions.

CONCLUSIONS

Criminal Conduct

Applicant's arrest and citations generate trustworthiness concerns under Criminal Conduct Disqualifying Condition (CC DC) 1 (*Any conduct, regardless of whether the person was formally charged*), and CC DC 2. (*A single serious crime or multiple lesser offenses*).

His most recent offense occurred more than two and a half years ago when he was 21-years- old. Criminal Conduct Mitigating Condition (CC MC) 1 (*The behavior was not recent*) applies. Applicant has demonstrated maturity by balancing his responsibilities as a single father with work and college attendance. The minor nature of the criminal infractions, and Applicant's demonstrated maturity, in conjunction with the amount of time that has elapsed since his last criminal infraction renders the likelihood of a recurrence of criminal behavior highly unlikely. CC MC 4 (*The factors leading to the violation are not likely to recur*), and CC MC 5 (*There is clear evidence of successful rehabilitation*) applies.

Whole-Person Concept

The same factual analysis that triggers the application of CC MC 1, CC MC 4, and CC MC 5 compels me to reach a favorable evaluation of Applicant's conduct utilizing the whole person concept factors. In doing so, I have placed particular emphasis on the minor nature of the infractions, the amount of time that has elapsed since the most recent infraction, Applicant's youth and immaturity at the time of the conduct, and the presence of rehabilitation.⁽¹²⁾ Applicant has mitigated the trustworthiness concerns.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1., Guideline J: FOR THE APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for occupying an Information Systems Position designated ADP-II. Eligibility is granted.

Marc E. Curry

Administrative Judge

1. Supervisor's Reference Letter, dated July 26, 2006, as included in Applicant's Response to Department Counsel's File of Relevant Materials, at 2.
2. Item 7, Affidavit of Applicant, dated April 4, 2005, at 2; Item 9, Extract of Offense, generated on July 6, 2006, at 2.
3. Regulation ¶C8.2.1.
4. Regulation ¶¶ C3.1.2.1.1.7 and C3.1.2.1.2.3.
5. Regulation ¶ C6.1.1.1.
6. Appendix 8 at 132.
7. *Id.*
8. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
9. Directive ¶E3.1.14.
10. Directive ¶E3.1.15.
11. Directive ¶E2.2.2.
12. *See* note 6, *supra*.