

DATE: April 30, 1997

In RE:

SSN: -----

Applicant for security clearance

ISCR OSD Case No. 96-0695

DETERMINATION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Teresa A. Kolb, Esq.

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF CASE

On January 2, 1997, 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, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked. The SOR is attached. Applicant filed his Answer to the SOR on January 6, 1997.

Applicant elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the File of Relevant Material (FORM) on March 5, 1997. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received a copy on March 14, 1997. Applicant's reply was received on April 5, 1997. The case was received by the undersigned for resolution on April 15, 1997.

FINDINGS OF FACT

The Following Findings of Fact is based on the documentation. The SOR alleges personal conduct (Criterion E). Applicant's admissions to all factual allegations shall be incorporated in the Findings of Fact. The record reflects ten domestic dispute complaints and three restraining orders filed between November 11, 1994 and at least April 3, 1996.⁽¹⁾ In his Answer, Applicant believed the restraining order set forth in subparagraph 11 was dismissed.⁽²⁾

Applicant is 43 years old and employed as a ----- for a defense contractor. He seeks a secret level clearance.

Applicant admits all factual allegations of the SOR. In November 1994, the adverse conduct began with a charge of domestic dispute.⁽³⁾ The domestic problems continued when Applicant violated a restraining order in April 1996 by trespassing on the plaintiff's property.

Applicant defends all charges by citing the lack of physical force.⁽⁴⁾ Considering all the facts and circumstances of this case, I find Applicant's lack of physical force argument unpersuasive. Even though Applicant did not use physical force in these altercations, there was some reason (other than disobeying her household rules) which convinced his former girlfriend to repeatedly file the criminal charges and the three restraining orders. The most persuasive reason (sufficiently supported by Items 5 through 10) is that she decided she did not want him around the house anymore, and he refused to accept her decision. His obstinateness reflects questionable judgment within the ambit of Criterion E.

POLICIES

Enclosure 2 of the Directive sets forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

Personal Conduct (Criterion E)

Factors Against Clearance:

1. reliable, unfavorable information provided by associates, employers, coworkers, neighbors, or other acquaintances.

Factors for Clearance:

None.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 behavioral changes; (7) the motivation for the conduct; and, (8) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish all the factual allegations under Criterion E (personal conduct) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, objective or direct evidence is

not required.

Then, the applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

The Government has presented sufficient evidence under Criterion E indicating questionable judgment by Applicant. The presence of 10 domestic complaints in approximately one and one-half years establishes the major part of the Government's case. The fact that three restraining orders were ultimately filed to keep Applicant away, indicates the problems were much more serious than simple disagreements, as described by Applicant. Finally, Applicant's refusal to stay away from his former girlfriend's house is aggravated by his refusal to honor a lawful restraining order on April 3, 1996 when he trespassed on her property.

Mitigating factor #1 under Criterion E applies when the evidence establishes the adverse information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability. Mitigating factor #1 is inapplicable to the facts of this case because Items 5 through 10 show the charges and restraining orders were filed against him, and, are substantiated by Applicant. ⁽⁵⁾

Second, the 10 charges in one and one-half years establish poor judgment and Applicant's unwillingness to accept he was no longer wanted by the woman he had lived with 90% of the last 10 years. Although he refers to her as his ex-girlfriend in his Response to the FORM, Applicant has offered no evidence to demonstrate he has learned anything by his adverse conduct. Nor has he presented any evidence supporting his contention that the most recent restraining order has in fact been dismissed.

Considering the exhibition of poor judgment between November 1994 and April 1996, coupled with the fact Applicant was 40 years of age when the conduct began, and the absence of any supporting evidence in rehabilitation, it is too early to conclude with complete confidence that Applicant's past conduct will not recur in the future.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (personal judgment): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.
- j. Against the Applicant.

k. Against the Applicant.

l. Against the Applicant.

m. Against the Applicant.

Factual reasons for the foregoing findings are set forth in FINDINGS OF FACT and CONCLUSIONS above.

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.

Paul J. Mason

Administrative Judge

1. See, Items 5 through 10.

2. However, he offered no evidence to support his claim.

3. A complaint, charge or similar accusatory device does not constitute proof of the allegations contained in the complaint or charge. In addition, there is no evidence Applicant was ever found guilty of any of the allegations of domestic dispute. But, Applicant conceded the allegations were at least the result of arguments he had with his girlfriend, especially when he did not follow her rules. See, Applicant's Response to the File of Relevant Information (FORM). Over a period of 10 years, one or two documented domestic abuse charges resulting in no further action might be overlooked as the product of a misunderstanding between two people who have been living together 90 % of the time. See, Applicant's Answer. However, 10 charges and three restraining orders in approximately one and one-half years, involving the same kind of behavior, even though the behavior involved only arguments and not physical abuse, establishes a pattern of conduct that raises clear doubt about Applicant's judgment, and the long-term consequences this questionable judgment may have on his obligations and responsibilities in safeguarding classified information in all places and at all times.

4. The attached letter (although notarized and signed by his girlfriend) to Applicant's Answer is entitled to very little weight because the attachment appears to be in Applicant's handwriting and was prepared in anticipation of the security clearance adjudication. However, her explanation for filing the complaints only reinforces the ultimate finding typifying Applicant's questionable judgment in refusing to realize she did not want to continue the relationship with him.

5. The other mitigating factors under Criterion E are inapplicable as well because there has been no falsification of a government documents or refusal to cooperate with the security investigation.