

KEYWORD: Criminal Conduct

DIGEST: The Government failed to establish a *prima facie* case. Clearance is granted.

CASENO: 06-25150.h1

DATE: 09/26/2007

DATE: September 26, 2007

_____)	
In Re:)	
)	
-----)	ISCR Case No. 06-25150
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
JOSEPH TESTAN**

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Government failed to establish a *prima facie* case. Clearance is granted.

STATEMENT OF THE CASE

On January 10, 2007, 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, as amended, 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.

Applicant responded to the SOR in writing on February 10, 2007, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel (DC) submitted the Government's written case (FORM) on or about June 4, 2007. Applicant did not file a response to the FORM. The case was assigned to me on September 25, 2007.

FINDINGS OF FACT

Applicant is a 26 year old employee of a defense contractor.

In March 2000, applicant was arrested and charged with Battery - Family Violence. The charge was dismissed.

In May 2006, applicant was arrested and charged with (1) Fighting With Hands, Fists, and (2) Disorderly Conduct. He was fined about \$400.00. He paid the fine.

In the Argument section of the FORM, DC states facts about the two incidents that are not in evidence; namely, that the first incident involved applicant punching his brother, and that the second incident involved applicant "willingly [striking] a stranger over a parking space dispute." Not only is there is no evidence in the record that would shed any light on what happened on the dates in question, with respect to the second incident, there is no evidence concerning the actual charge applicant was convicted of.

CONCLUSIONS

The evidence establishes that applicant was arrested and charged on two occasions with violent criminal acts. With respect to the first incident, the charge was dismissed. Since there is no credible evidence in the record concerning what occurred on the day in question, there is no reasonable basis upon which to conclude applicant engaged in criminal conduct.¹ I therefore conclude that this incident has no security significance. With respect to the second incident, the evidence establishes that applicant was arrested and charged with two crimes, that he was convicted of one or more crimes that may include Fighting With Hands, Fists and/or Disorderly Conduct, and that he was fined about \$400.00. Since I cannot determine from the evidence what crime he was

¹The fact that an applicant has been arrested, standing alone, does not prove that the applicant engaged in criminal conduct. ISCR Case No. 01-12452 (App. Bd. January 27, 2003).

convicted of, I cannot determine if it was a “serious crime.” Accordingly, there is no reasonable basis to apply Disqualifying Condition 31a. (*a single serious crime or multiple lesser offenses*), or any of the other Disqualifying Conditions under Guideline J. Based on the foregoing, I conclude that the Government failed to establish a *prima facie* case.

FORMAL FINDINGS

GUIDELINE J: FOR THE APPLICANT

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for applicant.

Joseph Testan
Administrative Judge