

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant falsified a March 2006 security clearance application by omitting a 2002 drug conviction. He failed to mitigate the falsification at the hearing. Clearance is denied.

CASENO: 06-26538

DATE: 07/30/07

DATE: July 30, 2007

In re:)	
)	
)	
-----)	ISCR Case No. 06-26538
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
MARC E. CURRY**

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

____ Applicant falsified a March 2006 security clearance application by omitting a 2002 drug conviction. He failed to mitigate the falsification at the hearing. Clearance is denied.

STATEMENT OF THE CASE

On February 7, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) explaining why it was not clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended.

Applicant answered the SOR on March 13, 2007. He admitted Paragraph 1, denied Paragraph 2, and requested a hearing.

The case was assigned to me on April 12, 2007. DOHA issued a notice of hearing on April 17, 2007, scheduling it for May 18, 2007. During the hearing, I received seven government exhibits, one Applicant exhibit, and Applicant's testimony. The transcript was received on May 31, 2007.

FINDINGS OF FACT

_____The SOR admission is incorporated into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 33-year-old single man with a five-year-old child. He attended college for two years after finishing high school, but later dropped out. In 2001, he took a job with a landscaping company. After five years of mowing lawns, he decided to apply for a more challenging job, and to finish earning his college degree.

After interviews with several companies, Applicant was hired by his current employer. He assembles radar systems, and is working toward an associate's degree in engineering, in addition to various information technology certifications.

One evening in February 1997, Applicant was smoking marijuana behind a shopping center with some friends. Later, the police stopped and searched him. Upon discovering marijuana residue on a pack of cigarettes, they arrested and charged him with possession of a controlled dangerous substance, and possession of a controlled dangerous substance (paraphernalia).¹ He was found guilty of the first charge, sentenced to 30 days in jail, suspended, ordered to perform community service, and fined \$75.00.² The paraphernalia charge was *nolle prossed*.

One evening in March 2002, Applicant was sitting in the passenger seat of a friend's car, while returning home from a party. After a routine stop, the police discovered marijuana in the glove compartment.³ Applicant was then arrested and charged with possession of controlled dangerous

¹Exhibit 4, State Criminal Record Index System regarding Applicant, dated April 1, 2006

²*Id.*; Answer, dated March 13, 2007, at 1.

³Tr. 52.

substances (marijuana), and possession of a controlled dangerous substance (paraphernalia). He was found guilty of the marijuana charge, and the paraphernalia charge was *nolle prossed*.⁴

Applicant completed a security clearance application in March 2006.⁵ He answered “No” in response to Question 23d (**Your Police Record** *Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been ‘sealed’ or otherwise stricken from the court record*). He testified that he did not list the 1997 charge because he thought it was no longer on his record, and he did not list the 2002 charge because he thought it had been dismissed.⁶

A few days after executing the security clearance application, Applicant checked his criminal record using an online state records website, and discovered both charges.⁷ Approximately two weeks later, he met with his company’s facility security officer (FSO), and told her that he should have listed the 1997 charge on the application.⁸

Applicant initially testified that he did not disclose the 2002 charge to the FSO, at the time he disclosed the 1997 one.⁹ Later, he testified that he did disclose the 2002 charge.¹⁰ A memo his FSO prepared noting that he disclosed the 1997 charge, does not reference the 2002 charge.¹¹ I find that he did not disclose the 2002 charge when he met with the FSO after completing the security clearance application.

In response to Question 28b (**Your Financial Delinquencies** *Are you currently over 90 days delinquent on any debt(s)*), Applicant did not disclose a medical bill (subparagraph 1.c.(2)), a phone bill (subparagraph 1.c.(3)), a satellite television bill (1.c.(4)) and a credit card bill (subparagraph 1.c.(5)). All were 90 or more days delinquent when he completed the application.

SOR subparagraph 1.c.(1) identifies a delinquent amount, that Applicant allegedly should have disclosed in response to Question 28b, but does not identify a specific creditor, referring to it instead as “a medical provider.”

⁴See note 1.

⁵Exhibit 1, Electronic Questionnaires for Investigative Processing, dated March 21, 2006.

⁶Tr. 25, 54.

⁷Tr. 66.

⁸Tr. 71; Exhibit 2, Memorandum of FSO, dated April 17, 2006.

⁹Tr. 72.

¹⁰Tr. 99.

¹¹Exhibit 2, dated April 17, 2006.

Subparagraph 1.c.(2) stems from treatment he received in 1992 after being hit by a car. He was a teenager living with his mother at the time.¹² He was unaware of any outstanding bills from the injury.¹³

Applicant made a lump sum payment to the phone company approximately five years ago. He thought that this had settled the bill in its entirety.¹⁴

Applicant thought he had paid the satellite television delinquency before completing the application.¹⁵ With respect to the credit card, he knew he was delinquent, but did not know it was more than 90 days delinquent.¹⁶ Applicant answered “Yes” to Question 27a requiring him to disclose whether he had ever been 180 days delinquent on a debt.

In response to Question 27d (**Your Financial Record** *In the last 7 years, have you had any judgments against you that have not been paid?*), Applicant did not list a 1999 judgment. He listed it, however, in response to Question 27a (**Your Financial Record** *In the last 7 years, have you had your wages garnished or had your property repossessed for any reason?*).

POLICIES

The adjudicative guidelines, as revised December 29, 2005, and implemented September 1, 2006, apply to the analysis of this case. In addition to brief introductory explanations for each guideline, they are divided into those that may be considered in deciding whether to deny or revoke an individual’s eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual’s eligibility for access to classified information (mitigating conditions).

Because the entire process is a scrutiny of a number of variables known as the “whole person concept,” all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guidelines are raised:

¹²Tr. 38.

¹³Tr. 36.

¹⁴Tr. 39.

¹⁵Tr. 42.

¹⁶*Id.*

Guideline E - Personal Conduct: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Guideline J - Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

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

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."¹⁷ In reaching this decision, I have drawn only those conclusions that are based on the evidence contained in the record.

The Government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting 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 security decision.

CONCLUSIONS

Personal Conduct

Subparagraph 1.c.(1), alleging that Applicant falsified the SOR by failing to disclose "a medical provider" is overbroad because it does not identify a specific creditor. Although an SOR does not have to satisfy the strict requirements of a criminal indictment, it must still place an applicant on adequate notice of the allegations so that he may have a reasonable opportunity to respond and prepare a defense.¹⁸ Subparagraph 1.c.(1) does not meet this minimum threshold, therefore, I conclude that it is not justiciable.

Applicant's security clearance application omissions raise the issue of whether Personal Conduct Disqualifying Condition 16(a): *deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*, applies. His explanations for not listing the debts that were 90 or more days overdue were credible in light of the financial information he disclosed elsewhere on the application.

¹⁷See generally, Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

¹⁸ISCR Case No. 03-07826 (App. Board June 17, 2005 at 3).

Applicant did not list a 1999 judgment in response to Question 27d, but listed it in response to 27b. PC DC 16(a) does not apply to his answers in the finance section of the security clearance application.

Conversely, Applicant's explanation for failing to list the drug charges was not credible. He had a responsibility to list the charges regardless of whether either still appeared on any state database. PC DC 16(a) applies to these omissions. Moreover, Applicant was found guilty of at least one drug-related charge in both 1997 and 2002. Consequently, his assertion that he thought *nolle prosequed* or dismissed charges did not have to be listed was incongruous with the facts.

Within two weeks after completing the application, Applicant contacted his company's FSO to disclose the 1997 drug charge. Personal Conduct Mitigating Condition (PC MC) 17(a): *the individual made prompt good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*, applies. This contention was confirmed by the FSO's memorandum.

The memorandum, however, does not reference the 2002 drug charge, and his contention that he also informed the FSO about it is supported by no other record evidence. Also, it is contradicted by an earlier contention that he did not inform the FSO of the 2002 drug charge. PC MC 17 (a) does not apply to his omission of the 2002 drug charge. Applicant has failed to mitigate the personal conduct security concern.

Criminal Conduct

For the reasons set forth above, Applicant has failed to mitigate the criminal conduct security concern.

Whole Person Concept

Applicant displayed admirable initiative in attempting to better himself by leaving his lawn-mowing job to work in a more challenging position, and in returning to college. This favorable attribute is outweighed by the dishonesty displayed in falsifying his security clearance application. Evaluating this case in light of the whole-person concept, I conclude he has not mitigated the security concerns. Clearance is denied.

FORMAL FINDINGS

Paragraph 1 – Guideline E:	AGAINST APPLICANT
Subparagraph 1.a.(1):	For Applicant
Subparagraph 1.a.(2):	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.(1):	For Applicant
Subparagraph 1.c.(2):	For Applicant
Subparagraph 1.c.(3):	For Applicant
Subparagraph 1.c.(4):	For Applicant

Subparagraph 1.c.(5):
Subparagraph 1.d.:

For Applicant
For Applicant

Paragraph 2 – Guideline J:

AGAINST APPLICANT

Subparagraph 1.a.:

Against Applicant

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. Clearance is denied.

Marc E. Curry
Administrative Judge