

KEYWORD: Personal Conduct

DIGEST: Applicant, a 55-year-old employee of a government contractor and private investigator, failed to mitigate personal conduct security concerns arising from his failure to give accurate information and testimony to the FBI, a grand jury, Congressional investigators, and a Committee of Congress in 1996. He only provided the full and correct information before an Independent Counsel in 1999 after a grant of immunity. Clearance is denied.

CASENO: 02-19515.h1

DATE: 08/31/2007

DATE: August 31, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 02-19515
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Emilio Jaksetic, Esq. , Department Counsel

**FOR APPLICANT**

Leslie McAdoo, Esq.

**SYNOPSIS**

Applicant, a 55-year-old employee of a government contractor and private investigator, failed

to mitigate personal conduct security concerns arising from his failure to give accurate information and testimony to the FBI, a grand jury, Congressional investigators, and a Committee of Congress in 1996. He only provided the full and correct information before an Independent Counsel in 1999 after a grant of immunity. Clearance is denied.

### **STATEMENT OF THE CASE**

On January 30, 2006, the Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, received February 10, 2006, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on February 7, 2007. A Notice of Hearing was issued April 20, 2007 for a hearing held on June 14, 2007. The Government introduced five exhibits, and Applicant introduced 18. All were accepted into evidence. Applicant testified on his own behalf. The transcript was received on June 26, 2007.

### **FINDINGS OF FACT**

\_\_\_\_\_ Applicant in his answer denied all of the allegations in SOR ¶ 1.a. and 1.b. and admitted the allegation in ¶ 2.b. relating to personal conduct security concerns. At the hearing he amended his answer to admit the three specific allegations in SOR ¶ 1.b. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 55-year-old government contractor and private investigator. He was on active duty with the Air Force from 1961-65 and retired from the Air Force Reserve in 2002. He was a civil servant with the Army criminal investigative division beginning in 1968 and retired in 2001. In August of 1993 he was detailed to the White House to evaluate the suitability of applicants for White House employment. He stayed six months in the position and then went back to his Army job.

During Applicant's period of assignment to the White House concerns arose in Congress and the media relating to the obtaining of files from the FBI of individuals not working at the White House which possibly were being reviewed by other persons at the White House for derogatory information. As a result of these concerns, investigations were begun as to how the requests were made, and the representations to the FBI as to the status of the persons whose files were requested. Applicant was interviewed by the FBI concerning his work on files. On June 11, 1996, he testified before a grand jury and on June 18, 1996, he gave a deposition under oath before staff members of

a committee of Congress. On June 26, 1996, he testified under oath before a committee of the House of Representatives.

Three years later Applicant received a grant of immunity from the Independent Counsel who was investigating the Madison Guaranty Savings and Loan Association. One aspect of that investigation related to the matters about which he had testified three years earlier before the grand jury and Congress. He testified before the Independent Counsel on September 11, 1999. After the grant of immunity by the Independent Counsel, Applicant testified truthfully and corrected the false/inaccurate statements he made three years earlier to the other investigative authorities.

The Independent Counsel stated in his final report that Applicant had given untruthful answers in his earlier testimonies under oath and knew, or should have known, that they were not accurate (Exh. 3 pp. 8, 60, 75, and 89). However, the report concluded that, although his testimony was false and misleading, there was insufficient evidence to meet the “beyond a reasonable doubt” standard for a criminal prosecution (Exh. 3 p. 6). Applicant through counsel filed a rebuttal to the Final Report emphasizing certain points in his favor and errors of others that led to some of the problems associated with the investigation (Exh. 4 Attachment 5).

Applicant admitted at the hearing in this matter that he gave false or inaccurate answers as to the performance of his duties in the White House, both before the grand jury and to the Congressional staff and the committee of congress in its investigation (Tr. pp. 55, 62 and 64).

The allegation in SOR ¶ 1.c. concerns Applicant’s testimony concerning how he obtained his own FBI investigative file while working in the White House. After obtaining the file he filed a lawsuit in 1994 for defamation against two women who had given adverse information about him to the FBI. He believed that this information had been the cause of his being denied a promotion in the White House. In a deposition in that litigation he stated that he found the file when it fell on the floor (Tr. 104). In his answer to the SOR in response to the allegation, he stated that he obtained it from an FBI agent. In his testimony about the matter at the hearing in this proceeding he said he was not truthful because of a desire to protect the FBI agent in question. He also testified in one of the Congressional inquiries that he was in his supervisor’s office when the supervisor was called out and some files fell off the desk. When he picked them up he saw his own file and read the pertinent portion of it relating to his accusers (Exh. 5). This testimony was at variance with both his testimony at the civil trial against his accusers and the answer to the SOR. Applicant dropped the case against his accusers, and he was assessed sanctions and required to pay the legal fees of the two defendants. I find his testimony to be not reliable.

During the various investigations, Applicant believed that the concern of the investigators related to the President and others in the White House and not to the work he was doing. Thus, he gave “broad brush” answers that affected his truthfulness (Tr. 100). Since his return to private life in 2001, he now gives depositions that require complete accuracy and he has come to realize the importance of giving full, candid, and precise answers to questions (Tr. 109).

Applicant is highly regarded by lawyers and judges for whom he has been engaged as an investigator (Exhs. A, B, I-P). He has received numerous awards over many years for his military and civilian service to the country (Exh. C-H).

## 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. An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, ¶ E2.2.1. Security clearances are granted only when “it is clearly consistent with the national interest to do so.” Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

\_\_\_\_\_ Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” Directive, ¶ E2.2.2. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

The Government established each of the allegations under Guideline E Personal Conduct alleged in the SOR. These alleged false statements raise issues that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information. (E2.A5.1.1.) The specific condition applicable to this case is deliberately providing false or misleading information concerning relevant and material matters to an investigator, or other official representative could raise a security concern and be disqualifying (E2.A5.1.2.3.).

The conclusions reached in the Final Report of the Independent Counsel state clearly that Applicant presented false testimony to the grand jury and the Congress about matters that he knew were not correct or had reason to question their accuracy. (Exh. 3 pp. 1-15, 60, 79-81, 89-90). Although the report also concludes that the government could not prove beyond a reasonable doubt that the statements he made were knowingly false and thus no indictments should be issued, that decision was based on the application of criminal justice standards to which this agency is not bound in making security clearance determinations.

Mitigating conditions (MC) under Guideline E that might be applicable include that the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts (E2.A5.1.3.3.), and if the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. (E2.A5.1.3.2) While Applicant is not likely to be confronted with anything similar to the situation that prevailed in 1996 at the White House, he corrected the information given to the FBI, a grand jury, and to investigators and a committee of Congress only three years later after receiving a grant of immunity from the Independent Counsel. While time has passed, the offenses were not minor and do cast doubts on Applicant's trustworthiness, reliability, and good judgment. His lack of trustworthiness is compounded by the variant answers Applicant provided over the years extending to this proceeding relating to his actions in obtaining his own FBI file and then taking legal action against persons who gave adverse statements about him.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

In evaluating his behavior in terms of the "whole person concept", an applicant may mitigate security concerns by demonstrating the factors leading to the violation are not likely to recur (§ 9), the nature and extent of the conduct (§ 1), and there is evidence of rehabilitation and other permanent behavioral changes (§ 6). Although the situations that gave rise to this proceeding may not be likely to recur, the SOR allegations all relate to problems of trustworthiness and the requirement to fully and frankly answer questions of authorized investigative bodies. In his present career such situations are likely to recur.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I decline to grant a security clearance.

### **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline E:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.i:	Against Applicant
Subparagraph 1.b.ii:	Against Applicant
Subparagraph 1.b.iii:	Against Applicant
Subparagraph 1.c.:	Against Applicant

## **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard  
Administrative Judge