

KEYWORD: Security Violations; Personal Conduct

DIGEST: Applicant, a 66-year-old employee of a defense contractor who has held a security clearance for 44 years, mitigated security concerns over allegations of security violations under Guideline K over the past 34 years through an analysis of the specifics of the incidents as well as passage of time since the earliest in 1973. He also mitigated personal conduct allegations relating to inconsistent statements to investigators in 1973 and 2002 by establishing that the inconsistencies were not deliberate. Clearance is granted.

CASENO: 02-24763.h1

DATE: 07/30/2007

DATE: July 30, 2007

In Re:)	
)	
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SSN: -----)	ISCR Case No. 02-24763
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

_____ Applicant, a 66-year-old employee of a defense contractor who has held a security clearance for 44 years, mitigated security concerns over allegations of security violations under Guideline K over the past 34 years through an analysis of the specifics of the incidents as well as passage of time since the earliest in 1973. He also mitigated personal conduct allegations relating to inconsistent statements to investigators in 1973 and 2002 by establishing that the inconsistencies were not deliberate. Clearance is granted.

STATEMENT OF CASE

_____ On July 7, 2005, the Defense 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 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.

On August 24, 2005, Applicant responded to the allegations with ten documents appended to his answer and requested a hearing. The matter was assigned to me on February 12, 2007. A notice of hearing was issued on May 8, 2007, for a hearing held on May 31, 2007. Eleven government exhibits and one Applicant exhibit were admitted into evidence in addition to those appended to his answer. Applicant testified on his own behalf. The record was left open for 30 days for additional material from Applicant and seven documents were received and admitted into evidence without objection. The transcript was received on June 14, 2007.

FINDINGS OF FACT

_____ Applicant admitted, with explanation, five of the allegations under Guideline K Security Violations and denied three others. He denied three allegations under Guideline E Personal Conduct. After a complete review of the evidence in the record and upon due consideration of the entire record, I make the following findings of fact:

_____ Applicant is a 66-year-old employee of a major defense contractor who has held a security clearance for 44 years. He was a Navy employee for 36 years before retiring in 2000 to take his present employment. During the last 34 years allegations have been made of eight security violations. The following is an analysis of those incidents and allegations:

1. SOR 1.a. b. and c. These three allegations relate to one incident in 1973 when Applicant removed classified documents from his government office, failed to properly protect it at his home, and lost some of those documents near his home when he left a zipper case containing the documents on top of his car as he was leaving to pick up a co-worker to go to an airport for a one-day trip. The case fell off the car and was picked up by a neighbor who worked in

the same government office. He reported finding the case to the local police who contacted the Navy.

When Applicant reached the airport he realized the case was missing. He called another neighbor to see if he could find it but could not. When Applicant came home that night, he attempted to find the case without success but by that time the Navy investigators had retrieved it from the police. He advised his supervisor when he returned to work the following day and was called by the security office before he could contact them. He was interviewed by security officers on the day after he advised his supervisor. No punishment or reprimand was given and the matter stayed in the file a few years and then was dropped. This incident also prompted the allegation in SOR 2 c.(Tr. 41-48 and Exh. 6 and 10).

2. SOR 1.d. In the 36 years between 1964 and 2000, Applicant on three to five occasions, or once every seven to ten years, failed to lock his classified storage container and/or left classified material on his desk at his government office overnight. No government evidence was produced on this allegation and the information was voluntarily provided by Applicant in an interview.

3. SOR 1.e. This incident involved an email sent by Applicant in 1997 while a government employee that included some classified data which he did not know was classified. He did not originate the email but received it from another person and forwarded it to a third person. He received a call from that person asking if some of the information in it might be classified. Applicant asked the originator who determined that some of it was classified. There was no report on the incident and the information on this allegation came to light when Applicant revealed it in an interview (Tr. 58).

4. SOR 1.f. This incident occurred in 2001 when he was employed by his present employer. He marked some working papers that were unclassified with some classified numbers thus creating a classified document if taken in context (Tr. 64). The matter was dealt with by the company by giving Applicant an extensive briefing on what constitutes working papers.

5. SOR 1.g. This incident occurred in May 2002 when he left his office for only a minute to talk to a colleague without securing his classified storage container in violation of company rules and in violation of the NISPOM. He was charged with a security violation, the combination of the container was changed, and access to it was denied for two weeks and he was given refresher training. A year later he received a reprimand (Tr. 35).

6. SOR 1 h. This allegation relates to alleged conduct during a one year period between May 2002 and April 2003 when he left classified material unsecured in his office which had not been approved for storage of such approximately two to three times per week when prohibited by company rules and the NISPOM. A practice was developed after the May 2002 incident to permit Applicant to lock his office door rather than placing documents in the locked safe. This was approved by the facility manager and the security officer. However, when superior officials in the company learned of the new procedure several months later both of the officers were reprimanded along with Applicant (Exh. A 8). He did not request this new procedure but it was initiated by the security officer (Tr. 116). After the new procedure stopped, Applicant has followed stricter requirements that were placed in effect.

7. SOR 2.b. In addition to the above specific allegations under Guideline K, this allegation is under Guideline E and relates to an email he received in 2001 from another employee allegedly containing classified material and he forwarded it to another employee and was cited for a security violation. The originator of the email stated that there was no classified material in it (Exh. A 6).

As a result of the incidents with his employer from 2001 to 2003 Applicant was denied a secure safe in his office. He has voluntarily declined access to an office secure safe but goes to the FSO or to a colleague to obtain documents needed for his work (Tr. 79). Since 2003, Applicant has had no security violations.

In addition to the above SOR allegations, an allegation under Guideline E (SOR 2.b.) relates to a statement provided to a government investigator in 2002 (Exh. 6) wherein, relating to the 1973 incident almost 30 years earlier, he stated that he reported the incident “to security” at his government employment when he realized the documents were missing. The government alleges that this was untrue and that it was not reported until he was confronted by Navy investigators a day after the loss as he stated in his hand-written statement submitted in 1973 (Exh. 10).

Applicant is highly regarded as an extremely hard worker who is a valuable asset to the highly technical programs on which he works. When he retired from federal service in 2000 he received the highest award given in his field. He is regarded as reliable and trustworthy by his supervisor and colleagues. He holds a BS degree in electronics engineering with some post-graduate studies but no graduate degree. He is regarded as someone who follows security procedures and understands their requirements (Exhs.C 2-7). He expressed concern and regret about the number of security violations that have occurred during his career and has taken steps to insure they do not recur. None have occurred during the last four years.

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, 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:

Applicant has had a number of security violations and other incidents which prompted security concerns under Guideline K (Security Violations) since noncompliance raises doubt about an individual’s trustworthiness, willingness, and ability to safeguard classified information. (E2.A11.1.2.) Conditions that could raise a security concern and may be disqualifying include unauthorized disclosure of classified information (E2.A11.2.1.), and violations that are deliberate or multiple or due to negligence (E2.A11.2.2.).

There are several mitigating conditions that might be applicable include violations that were inadvertent (E2.A11.1.3.1.), or isolated or infrequent (E2.A11.1.3.2.), or that an individual’s actions demonstrate a positive attitude towards the discharge of security responsibilities (E2.A11.1.3.3.).

An objective analysis of the security incidents alleged in the SOR leads to the conclusion that there is less than meets the eye from what a cursory review might indicate since they stretch over a 44-year career. The 1973 incident which resulted in three SOR allegations probably was the most significant and egregious, although it was also the oldest since it happened almost 35 years ago. However, the incident apparently had a salutary effect in sensitizing him to security requirements in that there were only 3-5 incidents over the 36 year period of his government service between 1964 and 2000. These involved leaving classified material on his desk in his Navy office. One of these was the 1997 email incident (SOR 1.e.) which I would characterize as inadvertent. The others during that period are over such an extended period that I consider them isolated and infrequent.

The most recent incidents occurred in 2001, 2002, and 2003 and, while three in number over a three year period, appear to be of minimal significance due to the circumstances of the violations. The first involved the working papers that he annotated with some classified numbers and appropriate action was taken to remedy the problem in the form of briefings. The second involved failure to secure his storage container for classified documents for a few minutes. This resulted in appropriate action and his supervisors then changed some procedures to permit some leeway to allow him to leave material on his desk if the office door was locked. He followed the new requirements but the supervisors were then disciplined for making the change in violation of company security policy and requirements. Applicant was also cited for violations of security requirements when he followed a procedure that had been approved by his supervisors. Since that time he has declined access to a classified safe while still working on classified material.

The government cited ISCR Case No.00-0030 Appeal Board (September 20, 2001), as a seminal case involving a claim that an applicant should not be punished when his superiors were not. Here the superiors and Applicant were all punished. Applicant continues to work on classified

material but has taken appropriate steps to insure that new violations will not occur. Combined with the regrets for his lapses and a showing of renewed understanding about importance of protecting classified information I conclude that his positive actions provide mitigation. (See also ISCR Case No.04-08749 (July 23, 2007).

The allegation under Personal Conduct (SOR 2 c) relating to his inconsistent statements given in 1973 and 2002 raised security concerns under Guideline E (Personal Conduct). The concern is that conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. (E2.A5.1.1.) The conditions that could raise concerns includes deliberately providing false or misleading information concerning relevant and material matters to an investigator in connection with a security determination (E2.A5.1.2.3.).

The inconsistencies in Applicant's statements related to the actions taken when the 1973 security breach occurred, raised the question of his truthfulness. The statement he made contemporaneously with the event where he carefully detailed the events is certainly more credible than the 2002 statement where he was being interviewed about all of the incidents and rather off-handedly said he had notified security when he learned the documents were missing.

However, the lapsed time of 30 years could well diminish his memory as to if, what, and when he notified authorities. At the hearing, he reviewed the 1973 interview, found that it refreshed his memory, and was accurate. I conclude that the inconsistency was not deliberate as required by the guideline. In view of my findings as to SOR 1, I conclude that the cross-allegations (SOR 2.a. and b.) under Guideline E are also mitigated.

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. Based on that analysis, I conclude that the reputation of Applicant, the age of the earlier the security violations, his record of work stability, his efforts to remedy against any possibility of further violations, and the unlikelihood of a recurrence, justifies application of the whole person analysis.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude it is clearly consistent with the national interest to grant a security clearance to him.

FORMAL FINDINGS

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

Paragraph 1. Guideline K: FOR APPLICANT

Subparagraph 1.a.: For Applicant
Subparagraph 1.b.: For Applicant
Subparagraph 1.c.: For Applicant
Subparagraph 1.d.: For Applicant
Subparagraph 1.e.: For Applicant
Subparagraph 1.f.: For Applicant
Subparagraph 1.g.: For Applicant
Subparagraph 1.h.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 1.a.: For Applicant
Subparagraph 1.b.: For Applicant
Subparagraph 1.c.: For Applicant

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Charles D. Ablard
Administrative Judge