

KEYWORD: Security Violations; Personal Conduct

DIGEST: Applicant is 55 years old and has worked as a manager for a defense contractor since 1986. He provided false and misleading information to his employer in 2002 regarding his involvement in protecting classified material. Applicant has mitigated the security violations concerns. He has not mitigated the personal conduct security concerns. Clearance is denied.

CASENO: 04-01654.h1

DATE: 06/30/2007

DATE: June 30, 2007

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| In re: |) | |
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| ----- |) | |
| SSN: ----- |) | ISCR Case: 04-01654 |
| |) | |
| Applicant for Security Clearance |) | |
| |) | |

**DECISION OF ADMINISTRATIVE JUDGE
JACQUELINE T. WILLIAMS**

APPEARANCES

FOR GOVERNMENT

Francisco Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 55 years old and has worked as a manager for a defense contractor since 1986. He provided false and misleading information to his employer in 2002 regarding his involvement

in protecting classified material. Applicant has mitigated the security violations concerns. He has not mitigated the personal conduct security concerns. Clearance is denied.

STATEMENT OF THE CASE

On August 23, 2002, Applicant executed a Security Clearance Application (SF 86).¹ On February 14, 2005, the Defense Office of Hearings and Appeals (DOHA) declined to grant a security clearance and issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline K (Security Violations) and Guideline E (Personal Conduct) 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 a clearance should be granted or revoked.

In a document, dated February 28, 2005, Applicant responded to the SOR allegations and requested a hearing. The case was assigned to me on March 1, 2007. A Notice of Hearing was issued on March 5, 2007, scheduling the hearing for March 21, 2007. The hearing was conducted as scheduled. At the hearing, the Government offered 13 exhibits, Exs. 1-13. Applicant offered two exhibits, Exs. A and B. All exhibits were admitted into the record without objection. The transcript (Tr.) was received on March 30, 2007.

FINDINGS OF FACT

Applicant admitted the allegations under subparagraphs 1.a, 1.c, 2.a, and 2.b. Applicant's admissions to the allegations in the SOR are incorporated herein. He denied the allegation in subparagraph 1.b. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 55 years old and has been working for a defense contractor since 1986.² In 1974, he graduated from the Air Force Academy. He retired from the Air Force as a major in July 1986. He had security clearances in the past.³ He has a master's degree in electrical engineering and a doctorate's degree in satellite communications and information theory.⁴ He was married in 1979 and has three adult children.

On two separate occasions in 1980, while employed at a U.S. Air Force base, Applicant failed to protect classified information when he took Secret documents to his residence. He did not

¹Ex. 5 (Security Clearance Application, dated August 23, 2002).

²Tr. 63.

³Tr. 90.

⁴Tr. 63-64.

have authority to take the documents to his home. His home was not an authorized location to safeguard classified material. He revealed these facts in 1983 during a polygraph examination.⁵

In 1998, while employed by a defense contractor, Applicant and some other employees packed approximately 25 cardboard boxes of his belongings to be moved. An unmarked envelope containing classified documents was inadvertently packed.⁶ Applicant discovered the classified documents in a box in March 2001. He took the documents home and stored them there until July 2001, in an attempt to conceal when the security violation occurred. In a letter dated February 11, 2002 to his superior, he relayed some of the details of what occurred. In a letter dated March 19, 2002, he admitted that the earlier letter was incorrect and he corrected the inaccuracy.⁷

One witness testified on behalf of the Government. The witness and Applicant work for the same employer. This witness was the security investigator for Applicant's case.⁸ His report indicated Applicant's security violation was a "reportable incident," because there was the potential for compromise of classified information. The witness concluded Applicant took classified material to his home for a period of three months. Applicant indicated no one had seen the documents, but that point could not be proved beyond a reasonable doubt.⁹ A security violation report was generated after the investigation and sent to the director of the organization.¹⁰ The director found that Applicant's security breach was a major violation, since there was a chance that classified information could have been compromised. As a result of his security violations, he was disciplined by being placed on a two-week suspension from work without pay from April 20, 2002 to May 3, 2002. A copy of the security violation memorandum of disciplinary action was permanently placed in his personnel record. He was placed on probation for six months.

Three character witnesses testified at the hearing. The first witness worked with Applicant in 1995. He supervised Applicant from 1996 until 2004.¹¹ On discovering his security violations, he suspended him for two weeks without pay.¹² He continued to trust Applicant despite his infraction.¹³

⁵Tr. 68; *see also*, Ex. 7 (Statement, signed on February 26, 1987).

⁶Ex. 8 (Investigative Report, dated March 29, 2002) at 1.

⁷Tr. 77-78; *see also*, Ex. 8, attachment 2.

⁸Tr. 15-26; Ex. 8 (Investigative Report, dated March 29, 2002) at 1; Ex. 9 (Security Violation Report, dated March 29, 2002).

⁹Tr. 20.

¹⁰Tr. 21.

¹¹Tr. 28.

¹²Tr. 29.

¹³Tr. 33.

He has supervised over 750 people during his 37- year-career and would place Applicant in the top 2 percent of those he supervised.¹⁴ He endorses Applicant for a security clearance.¹⁵

The second witness is a retired U.S. Navy captain currently working with Applicant.¹⁶ They met in 1992 at work. He was Applicant's supervisor for three years, until 1995.¹⁷ Since 1999, they became reacquainted on various projects at Applicant's current job.¹⁸ Although he was not aware of the specific 2002 incident regarding the document, he testified that he has never had a question about the integrity or loyalty of Applicant.¹⁹ This witness recommended that Applicant retain a security clearance.²⁰

The third witness has known Applicant for at least 20 years. Their friendship began at church, continued through rearing their children, and community events.²¹ This witness retired in 2001 from a government agency as an analyst after 27 years.²² He believes Applicant is trustworthy and believes he should be granted a security clearance. He vouches for Applicant's character.²³

Two character witnesses submitted affidavits. His current manager since 2006, holds a top secret clearance, and has worked with Applicant since the early 1990s. She knew about his security violation because he directly reported to her. She stated:

I was frankly surprised, since it did not fit with any of my experience with [Applicant]. I have had several discussions with him about this violation, and I truly believe that he has learned his lesson. I recommend that [Applicant] retain his DoD clearances.²⁴

The other witness has known and interacted with Applicant often at work for the past five years. She too heartedly endorses Applicant for maintaining his security clearance.²⁵

¹⁴Tr. 35.

¹⁵Tr. 33-34.

¹⁶Tr. 41.

¹⁷*Id.*

¹⁸Tr. 42.

¹⁹Tr. 43.

²⁰Tr. 43-44.

²¹Tr. 49.

²²Tr. 50.

²³Tr. 52.

²⁴Ex. A (Character letter, dated March 19, 2007).

²⁵Ex. B (Character letter, dated March 20, 2007).

Applicant assists in training new managers at work. He includes a session on ethical behavior based on his security infractions.²⁶ He testified: “Having made a mistake, I kind a [sic] speak with passion on the subject of integrity and honesty, and I think I’ve been highly effective in getting people to think about these things.”²⁷

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person’s eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.²⁸ The Government has the burden of proving controverted facts.²⁹ The burden of proof is something less than a preponderance of evidence.³⁰ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.³¹ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³²

²⁶Tr. 59.

²⁷Tr. 60.

²⁸ISCR Case No. 96-0277 (July 11, 1997) at 2.

²⁹ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.

³⁰*Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³¹ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.

³²ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.

No one has a right to a security clearance³³ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³⁴ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁵ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.³⁶ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Security Violations

Security violations is always a concern because noncompliance with security regulations raises doubt about an individual’s trustworthiness, willingness, and ability to safeguard classified information.

On two occasions in 1980, without authority, Applicant failed to properly protect classified information. He took Secret documents to his residence, which was not an authorized location to store classified material. In 1998, classified documents in his possession were inadvertently packed. He discovered them in his office in March 2001. He took those documents to his home and stored them there until July 2001. He revealed his security violations in 2002. Thus, Security Violations Disqualifying Condition E2.A11.1.2.2 (*violations that are deliberate or multiple or due to negligence*) applies. The Government has established a *prima facie* case for disqualification under Guideline K, security violations.

Various factors can mitigate security violations security concerns. The two incidents in 1980 of failure to properly protect classified information properly can be mitigated by time as they took place over 27 years ago. In 1998, he inadvertently packed classified documents in a cardboard box and discovered them in March 2001. Upon discovering the documents in 2001, he took them to his home to prevent discovery of his infraction. In February 2002, he self-reported part of what he had done. In March 2002, he self-reported the entire incident. This incident took place over five years ago. There have been no lapses in protecting classified documents since 2002, demonstrating his positive attitude concerning his security responsibilities. Thus, Security Violations Mitigating Conditions (SV MC) E2.A11.1.3.1 (*were inadvertent*), SV MC E2.A11.3.3 (*were isolated or infrequent*), and SV MC E2.A11.1.3.4 (*demonstrated a positive attitude towards the discharge of security responsibilities*) apply. Thus, Applicant has mitigated the security violations security concerns. Accordingly, allegations 1.a through 1.c of the SOR are concluded for Applicant.

³³*Egan*, 484 U.S. at 531.

³⁴*Id.*

³⁵*Id.*; Directive, Enclosure 2, ¶ E2.2.2.

³⁶Executive Order 10865 § 7.

Personal Conduct

Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified information.

Applicant deliberately provided false and misleading information to his employer in 2002 regarding his discovery of classified documents in his office in March 2001 and taking them home until July 2001 in an attempt to conceal the security violations. He self-reported the incident in February 2002 but only told part of the story. In March 2002, he made a full disclosure of his infractions. Almost a year had passed before Applicant decided to report his unethical behavior, and then he provided false or misleading information before providing the correct information. Consequently, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material 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*) and PC DC E2.A5.1.2.5 (*a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*) apply.

Various factors can mitigate personal conduct security concerns. Honesty is critical to a position of trust in protecting classified information. The security violation incidents that occurred in the 1980s are mitigated by time. Applicant did self-report the security violations that took place in 2001. Thus, Personal Conduct Mitigating Condition E2.A5.1.3.3 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) applies. However, the 2001 incident is not completely mitigated due to Applicant deliberately providing false and misleading information to his employer in 2002. Accordingly, allegation 2.a of the SOR is concluded for Applicant. Allegation 2.b of the SOR is concluded against Applicant.

I have considered all the evidence in the case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant appeared remorseful at the hearing. He credibly testified that he is sorry for his transgressions in not protecting classified documents under his control. Based on the totality of his mishandling of classified documents, Applicant learned little from his 1980s mishaps. If he truly understood the ramifications of his behavior in the 1980s regarding protection of classified documents, the subsequent failures to protect classified documents in 2001 and 2002 would not have occurred. For the reasons stated, I conclude Applicant is not suitable for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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| Paragraph 1. Guideline K (Security Violations): | FOR APPLICANT |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | For Applicant |
| Paragraph 2. Guideline E (Personal Conduct): | AGAINST APPLICANT |
| Subparagraph 2.a: | For Applicant |
| Subparagraph 2.b: | Against Applicant |

DECISION

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

Jacqueline T. Williams
Administrative Judge