

KEYWORD: Criminal Conduct; Personal Conduct

DIGEST: Applicant was arrested four times between 1998 and 2004. Three of them were drug-related, and the last one occurred approximately one month after he met with an investigative agent to discuss the earlier ones. Clearance is denied.

CASENO: 05-03887.h1

DATE: 06/30/2007

DATE: June 30, 2007

_____)	
In re:)	
)	
-----)	ISCR Case No. 05-03887
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 was arrested four times between 1998 and 2004. Three of them were drug-related, and the last one occurred approximately one month after he met with an investigative agent to discuss the earlier ones. Clearance is denied.

STATEMENT OF THE CASE

On November 16, 2006, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it was clearly consistent with the national interest to grant or continue his 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. (Directive). Applicant answered the SOR on March 19, 2007, and requested a hearing.

The case was assigned to me on April 11, 2007. DOHA issued a notice of hearing on April 17, 2007, scheduling it for May 17, 2007. The hearing was held as scheduled. During the hearing, I received four government exhibits, and Applicant's testimony. DOHA received the transcript on May 31, 2007.

FINDINGS OF FACT

_____Applicant admitted all of the SOR allegations except subparagraph 1.e and 2.a. I have incorporated these admissions into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 28-year-old single father with four pre-adolescent children. He has a high school education. Since 2000, he has worked as a material coordinator for a defense contractor.

In 1998, Applicant worked in a department store. Late one night at the end of his shift, a security guard checked his tote bag, and discovered some light bulbs for which he had not paid. Applicant was then arrested and charged with theft. The case was later nolle prossed.

On December 30, 2003, the police stopped Applicant and searched him. Although the search revealed no illegal contraband, one of the police officers alleged that he saw him throw contraband to the ground upon being stopped. They searched the surrounding area and found 17 vials of cocaine in the grass.¹ Subsequently, he was arrested and charged with possession of controlled dangerous substances.² At the hearing, the court deferred judgment, and placed him on probation for one year.³

¹Answer, dated March 19, 2007, at 1.

²Exhibit 4, Criminal Systems Report, at 2.

³*Id.*

On July 10, 2004, while walking down the street late at night in a high crime area, Applicant was stopped and searched by the police. There is no record evidence of what precipitated the police to stop him. Nevertheless, they found two vials of cocaine near him, and charged him with possession of controlled dangerous substances. On October 20, 2004, the court placed the case on its inactive, “stet” docket.⁴

Applicant completed a security clearance application (SF 86) on July 23, 2004.⁵ In response to Question 24 (*Your Police Record - Alcohol/Drug Offenses 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 record*), he disclosed the July 2004 charge, which was pending at the time, but not the December 2003 charge. At the hearing, Applicant testified that he omitted the earlier charge because it did not result in a judgment.⁶ Applicant disclosed the other two charges on the SF -86, and described them in detail.⁷

At some point between July and December 2004, Applicant decided to supplement his income by selling drugs.⁸ In December 2004, approximately one month after executing a signed, sworn statement to an investigative agent, he was stopped by the police. At the time of the stop, he was driving his car, and the stop was precipitated by a non-functioning brake light. The police found ten vials of cocaine in a compartment on the driver’s side door of the car.⁹ Subsequently, Applicant was charged with possession of controlled dangerous substances. Later, the court placed the charge on its inactive, stet docket.¹⁰

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).

An administrative judge need not view the adjudicative guidelines as inflexible rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2.,

⁴Exhibit 4 at 5.

⁵Exhibit 1, SF 86, dated July 23, 2004.

⁶Exhibit 2, Signed, Sworn Statement, dated November 23, 2004.

⁷See Applicant’s Responses to Questions 24 and Question 20 (**Your Employment Record**) of the SF 86.

⁸Tr. 76.

⁹Tr. 28.

¹⁰Exhibit 4 at 1.

Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching impartial, common sense decisions.

Because the entire process is a conscientious 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:

Guideline J - Criminal Conduct: 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.

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.

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.”¹¹ In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The government is responsible for producing 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

¹¹See Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

Criminal Conduct

Applicant was arrested four times between 1998 and 2004. At the time of the most recent arrest, he was dealing drugs. Criminal Conduct Disqualifying Condition (CC DC) 31 (a): *a single serious crime or multiple lesser offenses*, and CC DC 31 (c): *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted*, apply.

I have considered all of the mitigating conditions, and conclude none apply. Applicant's most recent arrest occurred six months after the security clearance investigative process began, and one month after an agent had questioned him about his previous three arrests. Although his omission of one of the arrests from the SF 86 does not constitute a felony falsification,¹² he has not mitigated the criminal conduct security concern.

Personal Conduct

Applicant's omission of the December 2003 drug arrest from his SF 86 raises the issue of whether Personal Conduct Disqualifying Condition (PC DC) 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. He disclosed his other charges on the SF 86. One of them occurred less than two weeks before he completed it. Moreover, he described them with lengthy narratives. Considering these facts, in conjunction with Applicant's education level, I conclude that he did not intend to falsify the SF 86, by omitting the December 2003 arrest. Consequently, there are no personal conduct concerns related to falsification of the SF 86 as alleged in SOR subparagraphs 1.e and 2.a.

Whole Person Concept

Applicant has not been arrested or charged with criminal conduct in more than two and a half years. The last charge, however, occurred while the security clearance investigative process was pending. I was particularly troubled by his nonchalant rationale for his decision to commit the crime leading to the arrest.¹³ Consequently, considering the frequency of the conduct, and the absence of rehabilitation, not enough time has elapsed to conclude that Applicant no longer poses a security risk.

FORMAL FINDINGS

¹²Refer to the Personal Conduct section of the Conclusions, *infra*.

¹³Applicant stated he decided to deal drugs because his employer had cut his opportunities to work overtime. Also, he sought to emulate his cousin who always appeared to have money (Tr. 74).

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:

Paragraph 1–Guideline J:	Against Applicant
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2–Guideline J	For Applicant
Subparagraph 2.a:	For 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