

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant, a 38-year-old employee of a defense contractor, mitigated allegations of criminal conduct arising from a series of offenses while in the Army in the 1980's and thereafter in the mid-1990's leading to a conviction on a drug charge resulting in incarceration for seven months in 1997. Since then he has substantially improved his conduct with no criminal record other than one minor traffic offense. He has demonstrated his rehabilitation for ten years. He mitigated a personal conduct allegation concerning failure to list a 1993 security clearance revocation at Question 32 on his security clearance application (SF 86) of July 8, 2004, by establishing that he was unaware of the revocation since he had left the Army three months before the revocation and was not notified of it. Clearance is granted.

CASENO: 05-06890.h1

DATE: 06/14/2007

DATE: June 14, 2007

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In Re:)	
)	
-----)	ISCR Case No. 05-06890
SSN: -----)	
)	
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 38-year-old employee of a defense contractor, mitigated allegations of criminal conduct arising from a series of offenses while in the Army in the 1980's and thereafter in the mid-1990's leading to a conviction on a drug charge resulting in incarceration for seven months in 1997. Since then he has substantially improved his conduct with no criminal record other than one minor traffic offense. He has demonstrated his rehabilitation for ten years. He mitigated a personal conduct allegation concerning failure to list a 1993 security clearance revocation at Question 32 on his security clearance application (SF 86) of July 8, 2004, by establishing that he was unaware of the revocation since he had left the Army three months before the revocation and was not notified of it. Clearance is granted.

STATEMENT OF CASE

_____On December 11, 2006, 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 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.

On January 19, 2006, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on March 26, 2007. A notice of hearing was issued on April 11, 2007, for a hearing on April 24, 2007, and held that day. The government offered 17 exhibits and all were admitted into evidence. Applicant offered none at the hearing, but the record was left open for 30 days. Applicant submitted one additional exhibit with six attachments that was admitted in evidence without objection. Applicant testified on his own behalf. The transcript was received on May 2, 2007.

FINDINGS OF FACT

_____Applicant admitted the specific facts of the two SOR allegations but provided explanatory information. After a complete review of the record, I make the following findings of fact:

Applicant is a 38-year-old employee of a defense contractor who works as network analyst for hourly wages. Between 1986 and December 1992 he was on active duty in the Army when he held a security clearance. During his military service he was charged with a number of offenses relating to drugs and alcohol in 1988, 1989, and 1991 (SOR ¶ 2.a., b., c., and d.) As a result of this conduct the Army Central Personnel Security Clearance Facility (facility) sent him for a psychological evaluation for the purpose of determining eligibility for holding a security clearance. This was done by a letter dated May 17, 1992, to the commander of his organization. The evaluation was made on July 21, 1992, and signed by a licensed psychologist in the psychiatry department. It recommended alcohol rehabilitation treatment on an outpatient basis and noted that Applicant was

unaware of the reason for the evaluation. (Exh. 14).

A Letter of Intent (LOI) to revoke his security clearance was sent by the facility on October 19, 1992, through his commander (Exh. 15). During the period from the time of his evaluation in July 1992 until he was honorably discharged as an E-4 in December 1992, he was attempting to get an early discharge to attend a trade school and was not at any fixed assignment on the base. The facility did not receive a response to the LOI, so a final revocation letter was sent to the commander on March 2, 1993, after Applicant had left the service (Exh. 16) and moved to his home three months earlier. He was not advised of this action because he had left his mother's address for forwarding. When he arrived home, he discovered that she had moved to a new address but he did not file a new address with the Army.

In his application for a security clearance (SF 86) filed July 8, 2004, Applicant did not report at Question 32 that his security clearance has been revoked by the Army on March 2, 1993, since he did not receive the LOI or the revocation documents.

After leaving the Army, Applicant had a series of drug offenses in 1994, 1995, and 1996 (SOR ¶ 2.e., f., and g.). The last two involved a probation violation and several drug charges. These were consolidated, and he pled guilty to one of the charges. He was sentenced to four years imprisonment, but served only seven months between September 1996 and April 1997 (Exh. 2). The incarceration was a wake-up call for Applicant. After his release he changed his life, enrolled in Alcoholics Anonymous and Narcotics Anonymous, and has not used alcohol or drugs for ten years. His only legal infraction in the past ten years has been one speeding ticket in 2000.

Applicant is well regarded by his employer (Exh. A 1-4) for his technical and management skills, and his work ethic. He was married in 1997 and has three children ages 18, 13 and 7 for whom he is responsible. He has owned his own home since May 2000. He has an associate degree in information technology management.

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:

Applicant’s failure to report the revocation of his security clearance in 1993 prompted the allegations of security concerns under the revised Adjudicative Guideline E (Personal Conduct). Such conduct 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 (AG ¶ 15). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts in a personnel security interview could raise a security concern and be disqualifying. (AG ¶ 16 a). The circumstances of the revocation action after he had left the service, the statement of the psychologist (Exh. 14) that Applicant was unaware of the reason for his evaluation, and his credible testimony that he did not receive notice of the LOI or the revocation, and was unaware of the action taken until receipt of the SOR warrants a determination in his favor on this allegation.

Under Guideline J, Criminal Conduct, a security concern arises when there is a history of criminal activity that creates doubt about a person’s judgment, reliability, and trustworthiness (AG ¶ 30). Conditions that could raise a security concern and may be disqualifying include allegations or admission of criminal conduct, regardless of whether the person was formally charged, prosecuted or convicted (AG ¶ 31 c), or a single serious offense or multiple lesser offenses (AG ¶ 31 a). The criminal conduct of Applicant during his Army service and the period up to and including his incarceration ending in 1997 was sufficient to warrant the allegation under this guideline. The allegations could be mitigated if so much time has elapsed since the criminal behavior occurred that it unlikely to recur. (AG ¶ 32 a), or there is clear evidence of successful rehabilitation (AG ¶ 32 d). The fact that all the offenses are now ten years old or older and there has been evidence of successful rehabilitation over the past ten years warrants application of both mitigating conditions.

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. Applicant led a troubled life with several arrests and charges both during his military service and the period thereafter which led finally to his incarceration. He has changed his conduct over the past ten years and now holds a responsible position with family obligations which he fulfilling.

After considering all the evidence in its totality, including the whole person of Applicant, I conclude a security clearance should be granted.

FORMAL FINDINGS

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

_____ Paragraph 1. Guideline E: FOR APPLICANT

 Subparagraph 1.a.: For Applicant

_____ Subparagraph 1.b.: For Applicant

_____ Paragraph 2. Guideline J: FOR APPLICANT

 Subparagraph 2.a.: For Applicant

 Subparagraph 2.b.: For Applicant

 Subparagraph 2.c.: For Applicant

 Subparagraph 2.d.: For Applicant

 Subparagraph 2.e.: For Applicant

 Subparagraph 2.f.: For Applicant

_____ Subparagraph 2.g.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is granted.

Charles D. Ablard
Administrative Judge