

KEYWORD: Security Violations; Personal Conduct; Criminal Conduct

DIGEST: Applicant is a 51-year-old employee of a defense contractor. Applicant had a successful Naval career until 1988, when his dereliction of duty and altering of a ship's log led to his nonjudicial punishment (NJP). Classified documents were utilized as part of Applicant's NJP. Applicant took a copy of the classified documents home in 1989, and stored them in his personal residence until 2001, when he revealed his possession of the documents in an interview in conjunction with a government polygraph. Applicant has not mitigated the security concerns based on his security violations, personal conduct, and criminal conduct. Clearance is denied.

CASENO: 05-14135.h1

DATE: 06/26/2007

DATE: June 26, 2007

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In re:)	
)	
-----)	ISCR Case No. 05-14135
SSN: -----)	
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Joyce E. Peters, Esq.

SYNOPSIS

Applicant is a 51-year-old employee of a defense contractor. Applicant had a successful Naval career until 1988, when his dereliction of duty and altering of a ship's log led to his nonjudicial punishment (NJP). Classified documents were utilized as part of Applicant's NJP. Applicant took a copy of the classified documents home in 1989, and stored them in his personal residence until 2001, when he revealed his possession of the documents in an interview in conjunction with a government polygraph. Applicant has not mitigated the security concerns based on his security violations, personal conduct, and criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On March 21, 2006, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline K (Security Violations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on June 1, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on March 28, 2007. A Notice of Hearing was issued on April 4, 2007, scheduling the hearing for May 3, 2007. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on May 16, 2007.

RULINGS ON PROCEDURE AND EVIDENCE

The Government offered six exhibits that were marked as Government Exhibits (GE) 1 through 6, and admitted without objections. The list of Government exhibits was marked as Hearing Exhibit (HE) I.

Department Counsel requested administrative notice be taken of 18 U.S.C. § 641 (HE II); 18 U.S.C. § 793 (HE III); and provisions of Department of Defense Directive 5220.22-M (HE IV). There was no objection and administrative notice is taken of HE II to IV.

Applicant testified and offered two exhibits that were marked Applicant Exhibits (AE) A and B, and admitted without objections.

The Government made a verbal motion to amend the Statement of Reasons by deleting the word and figures “May 7, 2001” on the second line of SOR ¶ 1.a, and substituting “July 6, 2001.” There was no objection, and the motion was granted.

FINDINGS OF FACT

Applicant’s admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 51-year-old employee of a defense contractor. He is married with two adult stepchildren. Applicant was commissioned in the United States Navy upon graduation from a service academy. After commissioning, he was selected to attend a prestigious university, and obtained a

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive).

Master of Science degree. Applicant was promoted several times in the Navy. In 1988, he was a Lieutenant Commander (O-4).²

Applicant was the Engineer Officer for a U.S. Navy nuclear submarine from 1986 to 1988. As the Engineer Officer, Applicant was responsible for all aspects of the operation of the nuclear reactor and the engineering plant.³

On October 23, 1988, the submarine was preparing to get underway. Applicant received a telephone call from the Engineering Duty Officer who discovered a problem with a valve in the engineering plant. Navy records state that a problem of this magnitude warranted the immediate relief of the Engineering Duty Officer and the Engineering Duty Petty Officer who were involved in the incident, and to immediately conduct a formal critique to inquire into the circumstances surrounding the incident. Applicant did not direct that the above actions be taken. Applicant came aboard the submarine later that evening. He reviewed the engineering log the next day. The log from the day before read, "valve found open." Applicant changed the log to read, "valve found one turn open." The problem was not brought to the attention of the Executive Officer or the Commanding Officer until a senior enlisted person in the engineering department reported to the Executive Officer on November 4, 1988, that a significant problem had occurred.⁴

As a result of his actions in October 1988, Applicant received nonjudicial punishment (NJP) on February 2, 1989, and was found to have committed violations of Article 92 of the Uniform Code of Military Justice (UCMJ), dereliction in the performance of his duties, and Article 134 of the UCMJ, willfully and unlawfully altering a public record, as follows:

That on or about 23 October 1988, he willfully failed to take appropriate corrective action upon learning of a significant problem in the engineering plant and that he willfully failed to report this problem.

That on 24 October 1988 he willfully and unlawfully modified a 23 October 1988 entry in the Engineering Log.⁵

Applicant was awarded a punitive letter of admonition. The punitive letter of admonition was issued on February 7, 1989, and included:

The nature of your violations of the UCMJ are indicative of your profound failure to be forthright and honest in the performance of your duties. The tenets of mature leadership, unquestionable integrity, and sound moral character are the very fundamentals upon which the Navy's Officer Corps is founded. Your actions clearly diminished the command climate within your ship and the respect which an officer

²Tr. at 20-22; GE 1; AE A.

³Tr. at 25-26, 66; Applicant's response to SOR at 3; AE A.

⁴GE 3, 4.

⁵GE 3 at 1.

must instill in his subordinates. I cannot tolerate such conduct by a commissioned officer and will not tolerate your specific conduct in this matter.⁶

Applicant appealed his NJP on February 21, 1989. The appeal was denied. Applicant's appeal was classified as "CONFIDENTIAL," and not included in the report of nonjudicial punishment, in order to keep the report unclassified.⁷

Applicant's Commanding Officer submitted a request to the Naval Military Personnel Command on February 6, 1989, that Applicant be detached for cause from the submarine based upon misconduct and unsatisfactory performance resulting from the events that led to his NJP. The Commanding Officer wrote:

[Applicant] was derelict in the performance of his duties as Engineer Officer in [submarine name] from 23 October 1988 through 4 November 1988 when he willfully failed to report a significant problem which occurred in the engineering plant on 23 October 1988 to the Executive Officer or Commanding Officer. [Applicant] was provided sufficient information to determine that a significant problem had occurred on 23 October 1988 and 24 October 1988. The problem was not brought to the attention of the Executive Officer or Commanding Officer until a senior enlisted person in the engineering department reported to the Executive Officer on 4 November 1988 that a significant problem had occurred.⁸

Applicant provided a statement in response to the request for detachment for cause on February 15, 1989, writing:

The statements contained in this letter are patently false. From the day I relieved until the day I was relieved as Engineering Officer, [submarine name], I was 100 per cent devoted to carrying out my duties and responsibilities as Engineer and to upholding the highest tenets of the Naval Nuclear Power program. I did nothing to violate those tenets or abdicate those responsibilities.⁹

Applicant's Commanding Officer forwarded an endorsement to Applicant's statement in response to the request for detachment for cause on February 28, 1989, writing, "not concurring with [Applicant's] statement. The statements in the basic letter are accurate."¹⁰

Applicant submitted a statement on May 3, 1989, concerning the punitive letter of admonition he received from his NJP. He wrote:

⁶GE 3.

⁷*Id.*

⁸GE 4 at 6.

⁹*Id.* at 5.

¹⁰*Id.* at 4.

I made absolutely no effort to cover up, conceal, or lessen the severity of any problems within the engineering plant while serving as Engineer Officer, [submarine name]. I did not foster an attitude or condone a climate which would tolerate, for a single instant, such actions. The implication that as Engineer Officer, responsible for upholding the highest tenets of integrity and leadership in the nuclear navy, I willfully disregarded those principles for one day out of an outstanding career as a safe, reliable, aggressive submariner and naval nuclear engineer is implicitly contradictory and unfathomable. In a manner entirely uncharacteristic of someone attempting to withhold information or deny culpability I zealously pursued the prosecution of fact and the notification of others concerning the problem which ultimately resulted in [letter of admonition].

[Submarine name]'s Commanding Officer felt the allegations raised by the problem were groundless. He found no basis for questioning my integrity or for charging dereliction, much less willful dereliction, following his in-depth scrutinization of the key events.¹¹

The detachment for cause request was approved by the Naval Military Personnel Command on October 13, 1989.¹²

Applicant resigned his commission in the Navy in October 1989. He has worked for the same defense contractor since he left the Navy, and has held a security clearance since then. Applicant received security training on an annual basis while in the Navy. He also received annual security training from his current employer.¹³ Applicant moved in October 1989, to the same geographic area in which he currently lives and works. He moved to his current residence in about May 1990.¹⁴

Applicant submitted a personnel security questionnaire on August 9, 1990. Question 17.a asked:

Have you ever been arrested, charged, cited, or held by Federal, state, or local law enforcement or juvenile authorities [section missing] whether the citation was dropped or dismissed, or you were found not guilty? (Include all courts-martial or non-judicia[l] [section missing] while in military service. You may exclude minor traffic violations for which a fine of \$100 or less was imp[osed] [section missing].¹⁵

¹¹GE 3.

¹²GE 4 at 1.

¹³Tr. at 30, 45, 121.

¹⁴GE 1 at 1; GE 2 at 1. Applicant's security clearance application of March 11, 2002, states that he moved to his current address in May 1989. I find the personnel security questionnaire of August 9, 1990, which lists the above information to be more accurate. It was closer to the move. Additionally, while in the Navy, Applicant worked in a different geographic location than after he resigned his commission.

¹⁵GE 2 at 3. A small part of the document was cut off when photocopied, as indicated by the words in brackets.

Applicant answered “No” to this question.¹⁶

In 2001, Applicant was investigated for access to Sensitive Compartmented Information (SCI). The investigation process involved polygraphs and interviews in conjunction with the polygraph. Applicant was interviewed on May 7, 2001. A signed statement was not taken. The report of the security representative/polygrapher who interviewed Applicant, states:

SUBJECT was relieved for cause while serving in the Navy. HE was serving aboard the [submarine name] in 1989 when HE was the Engineer of the boat. HIS crew was going through the procedures of lighting off the power plant when they left a valve open instead of closing it. No damage was done but because two other boat crews had done the same thing after a message had been sent cautioning crews to be careful the Navy took punitive action against the Engineer of the Boat, SUBJECT. HE was not aboard the boat when the incident occurred, but as HE was Chief Engineer HE received non-judicial punishment of a Letter of Reprimand and relieved of HIS position. HE resigned his commission shortly thereafter. HE denied any other punitive action taken against HIM. (capitals in original)¹⁷

Applicant had another interview on July 5, 2001. The Report of Interview (ROI) from May 7, 2001, was reviewed with Applicant, and he verified it as being accurate and correct. There was no signed statement on this occasion either. The ROI of the July 5, 2001 interview states:

SUBJECT received non-judicial punishment and was relieved of HIS position in October 1989, after one of HIS crewmembers failed to properly secure a high-pressure valve that was part of the nuclear power plant. SUBJECT advised HE was punished because HE was in charge of the crewmember that failed to follow the standard operating procedure. SUBJECT advised that during his non-judicial punishment hearing HE took several notes and made several photocopies of the procedures for operating a naval nuclear power plant. SUBJECT advised that the information that was contained in HIS notes and photocopies was classified. SUBJECT advised that since his hand written notes did not go through a classification officer, HE believes the classification of the notes and photocopies are “CONFIDENTIAL”. SUBJECT advised that the notes and photocopies that HE had during the hearing measured approximately one inch thick. SUBJECT took the documents to HIS personal residence subsequent to HIS non-judicial punishment hearing and currently has them stored in a box in HIS closet. SUBJECT advised that he was disgruntle[d] with the U.S. Navy, for punishing HIM for a mistake that HE personally did not make. SUBJECT advised that HE resigned HIS commission with the U.S. Navy after they relieved HIM of HIS command. SUBJECT advised that HE kept the classified documents at HIS residence because HE had a personal vendetta against the U.S. Navy. SUBJECT denied providing the classified documentation to anyone or compromising the information in any fashion. SUBJECT denied committing any acts

¹⁶*Id.* This information is not considered for disqualifying purposes, but may be considered in assessing Applicant’s credibility, when analyzing the “whole person,” and the potential application of mitigating conditions.

¹⁷GE 5.

to hurt the U.S. Navy or the U.S. Government . . . SUBJECT advised at the end of the interview, HE knew it was a violation of the law to have classified information at HIS residence. (capitals in original)¹⁸

On about July 6, 2001, Special Agents of the FBI and the Naval Criminal Investigative Service (NCIS) went to Applicant's house. Applicant granted them permission to search and they seized the documents that Applicant discussed with the interviewer the day before.¹⁹ There was no documentary evidence presented from the FBI, NCIS, or other government agency, that the documents seized from Applicant's house were classified. Applicant testified that he did not receive anything from any agency informing him whether the documents contained classified information.²⁰

On September 30, 2002, a Notification of Denial of Access to Sensitive Compartmented Information (SCI) was issued against Applicant based upon the information contained in the ROI of July 5, 2001.²¹ On December 13, 2002, the decision to deny SCI access became final as Applicant "chose not to appeal the denial decision."²²

Applicant submitted a response to the Statement of Reasons on June 1, 2006. In his response, he described the events leading to his NJP:

During routine preparations for starting the ship's propulsion reactor prior to leaving port, the onboard engineering duty section made a procedural error that temporarily rendered one of several reactor control systems ineffective for several minutes - in short, following a system test, an air system vent valve was left open instead of being shut. The duty section discovered the error a short time later and corrected it.

According to policies in place at the time, such a procedural error required an investigation and a report to higher authority. The error was not properly reported to me, as the Chief Engineer, or the ship's Commanding Officer. Several days later, upon learning of the events, I initiated an investigation and upon return to port informed the ship's parent squadron engineering staff.

As Chief Engineer I was responsible for every aspect of the operation of the ship's nuclear reactor and its engineering plant. As such during the subsequent investigation I was held and accepted full responsib[ility] for the incident.²³

¹⁸*Id.*

¹⁹Tr. at 54-56, 111; Applicant's response to SOR.

²⁰Tr. at 111.

²¹GE 5.

²²GE 6.

²³Applicant's response to SOR at 2-3.

In his response to the SOR, Applicant discussed the interview with the polygrapher in July 2001, and the search of his residence the following day. He stated that in 1989, the squadron staff provided him with “what was referred to as [his] copy of the investigating officer’s report.”²⁴ He wrote that during his discussion with the polygrapher:

I commented that I probably had a copy of the investigating officer’s report. At this point I also realized and volunteered that the procedural steps outlined in the report concerning the incident might have been classified “confidential - formerly restricted data” although I did not recall exactly what was in the copy of the report the Navy had given me. In general, however, it is my recollection now that information concerning nearly all aspects of operating a naval nuclear power plant would have been classified or restricted in 1989. The following day, an agent from the FBI and an agent from the Naval Criminal Investigative Service, visited my home, where we searched through the file boxes and located the investigative report sealed in the same box it had been for the last eleven or twelve years. I then voluntarily gave the agents my copy of the incident report.²⁵

Applicant also wrote in his response to the SOR:

[D]uring each security clearance investigation and each periodic update to my TOP SECRET security clearance, I have fully disclosed the reactor incident, the non-judicial punishment I received in 1989 from the Navy resulting from the incident, and the command climate and events surrounding the incident.²⁶

Applicant repeated the above in his testimony at his hearing.²⁷ As addressed above, this was not a true statement as Applicant did not report the NJP on his 1990 personnel security questionnaire.

Applicant provided contradictory or inaccurate explanations about the incidents at his hearing. He testified that he was contacted by the Executive Officer three to four days after he changed the log, vice the approximately 11 days indicated in the Navy records.²⁸

Applicant testified he received the telephone call about “what I thought at the time was a simple valve alignment.”²⁹ He testified that when he read the log the next day, he noted an entry that indicated a valve had been open. He remembered the telephone call that stated a valve had been

²⁴*Id.* at 3.

²⁵*Id.*

²⁶*Id.* at 1.

²⁷Tr. at 104.

²⁸Tr. at 34, 101; GE 4 at 6.

²⁹Tr. at 33.

partially open, so he changed the log.³⁰ Applicant was later asked by Department Counsel as it relates to the safety of the plant, if there was a distinction between a valve on a high pressure system being one turn open or fully open, to which Applicant responded, “[p]robably not on a large ship.”³¹ Applicant testified that when he found out the truth about the valve, he realized that a significant event had occurred. Applicant later testified that the information he initially received from the duty officer was not sufficient to initiate an investigation.³² He testified that after he conducted his investigation, he recommended to the Commanding Officer that the incident be reported, but the CO did not report it, which Applicant felt was improper:

I felt that the guidelines at the time clearly said that this incident should be reported to higher authority. That’s part of how the Navy nuclear program operates. These sort of incidents, no matter how small, get reported. They get aggregated and become lessons learned for the entire fleet. That’s how the navy nuclear program operates; by self reporting.³³

Applicant never fully explained if as he first testified, that from a safety standpoint, there was no distinction between a valve one turn open and fully open, why the partially open valve did not constitute “a significant event,” which would have triggered an investigation. He also did not adequately address why it was appropriate for him to change a log entry made by another officer.

Applicant denied having a “vendetta” against the Navy, and he denied telling the polygrapher that he did. He denied telling the polygrapher that he was storing classified documents. He denied taking any notes during his NJP. He stated there were no notes among the files that were seized. He testified he did not deliberately transport and store classified information at his residence.³⁴

Applicant testified that immediately prior or right after the NJP, he received a copy of a series of documents that were used at his hearing. Although the response to the SOR clearly states it was a copy of the investigating officer’s report, Applicant testified that he did not remember exactly what documentation he received, or what was seized in July 2001.³⁵

In the response to the SOR, Applicant stated that it was his recollection that information concerning nearly all aspects of operating a naval nuclear power plant would have been classified or restricted in 1989. At the hearing, he was asked if just about everything relating to the maintenance and operation of a nuclear power submarine is classified, to which he responded, “I

³⁰Tr. at 34.

³¹Tr. at 65.

³²Tr. at 101.

³³Tr. at 35.

³⁴Tr. at 39, 52-56, 75, 87, 94-95, 109.

³⁵Tr. at 40, 74, 86.

don't know if that is a fact or not."³⁶ He was asked if the technical manuals and procedure manuals for the nuclear reactor had at least a confidential classification, to which he responded, "I don't know exactly."³⁷ He eventually admitted they were "probably" confidential.³⁸ He further testified:

I have no reason to believe what I was provided at the time [w]as classified. It was not described as classified. It was not marked as classified. I didn't even know to this day whether it was classified or not.³⁹

After considering all the evidence, I find that Applicant did have classified documents in his possession from about February 1989 to July 2001. I further find that Applicant knew the documents were classified when he first bought them to his residence. I find there was no disclosure or compromise of the classified documents. I also find that Applicant transported the classified documents when he moved in October 1989, and again when he moved in May 1990.

I find Applicant intentionally falsified his personnel security questionnaire in 1990, when he failed to list his NJP. I find Applicant misrepresented or minimized his actions aboard the submarine when he was questioned by the polygraphers in May and July 2001, in his response to the SOR, and at his hearing. I further find that Applicant provided false testimony at his hearing when he denied intentionally taking home and storing classified documents.⁴⁰

Prior to the incidents leading to his NJP, Applicant's Navy record was superb. In addition to his outstanding fitness reports, Applicant was awarded two Navy Achievement Medals and three Navy Commendation Medals. His Commanding Officer recommended him for assignment as Executive Officer and eventual command of a submarine, and for accelerated promotion to Commander.⁴¹ His performance evaluations since he joined his current company in 1989, have also been excellent.⁴² A supervisor from his company testified that Applicant is an excellent manager, extremely technically competent, with very good judgment, reliability, and trustworthiness. He stated Applicant complies with all internal corporate regulations and security regulations, and recommends Applicant maintain his security clearance. An executive with his company testified Applicant is reliable with good judgment. Applicant has not had any security incidents involving his employer.⁴³ Neither of Applicant's character witnesses had complete knowledge of the events leading to Applicant's NJP, or of his security infractions.

³⁶Tr. at 77.

³⁷Tr. at 78.

³⁸Tr. at 80.

³⁹Tr. at 82.

⁴⁰This information is not considered for disqualifying purposes, but may be considered in assessing Applicant's credibility, when analyzing the "whole person," and the potential application of mitigating conditions.

⁴¹Tr. at 29; AE A.

⁴²AE B.

⁴³Tr. at 117-118, 122, 127, 144-145.

POLICIES

“[N]o one has a ‘right’ to a security clearance.”⁴⁴ 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.”⁴⁵ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁴⁶ An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.⁴⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁴⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. 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.⁴⁹

The Directive sets forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each 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 adjudicative process factors listed in ¶ 6.3 and ¶ E2.2.1 of the Directive.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline K: Security Violations

⁴⁴*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴⁵*Id.* at 527.

⁴⁶Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

⁴⁷ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

⁴⁸*Id.*; Directive, ¶ E2.2.2.

⁴⁹Exec. Or. 10865 § 7.

Noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information.

Based on all the evidence, I find Security Violations Disqualifying Condition (SV DC) E2.A11.1.2.2 (*Violations that are deliberate or multiple or due to negligence*) applies. Applicant brought classified documents to his residence in 1989, without authorization, and maintained them until July 2001.

Security violations are one of the strongest possible reasons for denying or revoking access to classified information, as they raise very serious questions about an applicant's suitability for access to classified information. Once it is established that Applicant has committed a security violation, he has a very heavy burden of demonstrating that he should be entrusted with classified information. Because security violations strike at the very heart of the industrial security program, an Administrative Judge must give any claims of reform and rehabilitation strict scrutiny. In many security clearance cases, applicants are denied a clearance for having an indicator of a risk that they might commit a security violation (e.g., alcohol abuse, delinquent debts or drug use). Security violation cases reveal more than simply an indicator of risk.⁵⁰ The frequency and duration of the security violations are also aggravating factors.⁵¹

The Security Violations Mitigating Conditions (SV MC) that could mitigate security concerns include actions that: SV MC E2.A11.1.3.1 (*Were inadvertent*); SV MC E2.A11.1.3.2 (*Were isolated or infrequent*); SV MC E2.A11.1.3.3 (*Were due to improper or inadequate training*); and SV MC E2.A11.1.3.4 (*Demonstrate a positive attitude towards the discharge of security responsibilities*).

Applicant intentionally transported and maintained classified documents without authorization. SV MC E2.A11.1.3.1 does not apply. Applicant transported the classified documents to his residence in about February 1989. He transported them again when he moved in October 1989, and again when he moved in May 1990. He kept them at his current residence until they were seized in July 2001. Because he transported them several times and kept them for more than twelve years, I cannot give Applicant the total benefit of SV MC E2.A11.1.3.2. There was no evidence of improper or inadequate training. SV MC E2.A11.1.3.3 does not apply.

Applicant has not been involved in any security incidents with his employer. They believe he possesses a positive attitude towards the discharge of his security responsibilities. SV MC E2.A11.1.3.4 partially applies.

Guideline E: Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

⁵⁰ISCR Case No. 03-26888 (App. Bd. Oct. 5, 2006).

⁵¹ISCR Case No. 97-0435 at 5 (App. Bd. July 14, 1998).

I have considered the Personal Conduct Disqualifying Conditions (PC DC), including PC DC E2.A5.1.2.1 (*Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*), PC DC E2.A5.1.2.4 (*Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation, or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*), and PC DC E2.A5.1.2.5 (*A pattern of dishonesty or rules violations, including violation of any written or recorded agreement made between the individual and the agency*). I conclude the above disqualifying conditions apply to the incidents which led to Applicant's NJP, and to his security violations.

I have considered all the Personal Conduct Mitigating Conditions (PC MC), especially PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). The passage of time has lessened Applicant's vulnerability to coercion, exploitation, or duress. I also find Applicant significantly reduced his vulnerability to coercion, exploitation, or duress when he informed the polygrapher that he possessed classified material, and it was seized the next day. PC MC E2.A5.1.3.5 is established.

Guideline J: Criminal Conduct

A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness.

Applicant transported classified documents to his residence without authorization in 1989. He moved them later in 1989, and again in 1990. He kept them at his residence until federal agents seized them in July 2001. Applicant's actions constitute a violation of 18 U.S.C. § 793(f):

Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody . . . , or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer- - - Shall be fined under this title or imprisoned not more than ten years, or both.

Applicant was a military officer in 1989, and subject to the UCMJ, when he transported the classified materials without authorization. I find his actions regarding the classified materials also constituted a violation of Article 133 of the UCMJ, conduct unbecoming an officer and a gentleman.

I am not satisfied that Applicant violated 18 U.S.C. § 641, which criminalizes embezzlement and theft of U.S. Government property. There is insufficient evidence that Applicant stole the classified documents, as opposed to simply making a photocopy, or having them handed to him.

Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*), and CC

DC E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*) both apply to Applicant's violations of 18 U.S.C. § 793(f) and Article 133 of the UCMJ.

I have considered all the mitigating conditions and especially considered Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*The criminal behavior was not recent*), CC MC E2.A10.1.3.2 (*The crime was an isolated incident*), and CC MC E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*). The gravamen of 18 U.S.C. § 793(f) is Applicant's actions in 1989, when he transported the classified documents. I find CC MC E2.A10.1.3.1 is applicable. While the crime occurred in 1989, Applicant maintained the fruits of the crime, the classified documents, without authorization until July 2001. When determining whether Applicant's criminal act was an isolated incident, I also considered Applicant's violations of the UCMJ which led to his NJP, which are criminal acts. I also considered Applicant's intentional falsifications to the U.S. Government, as addressed above. Under these circumstances, I conclude the crime was not an isolated incident, and there is no clear evidence of successful rehabilitation. CC MC E2.A10.1.3.2 and CC MC E2.A10.1.3.6 do not apply.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive. I have also considered all the evidence, and every finding of fact and conclusion discussed above.

Applicant had an outstanding record in the Navy until he committed the misconduct which led to his nonjudicial punishment. Applicant's dereliction of duty no longer serves as a major concern. His altering of the log is a greater concern, as it directly relates to Applicant's honesty, judgment, and truthfulness, and is part of a larger pattern. Applicant compounded his lack of judgment by taking home classified documents, transporting them twice, and storing them until July 2001. I considered the reports of Applicant's interview by the polygraphers. Since the interviewers or other authenticating witnesses did not testify, I had to look to the four corners of the documents, and compare the reports with the other evidence in the case, and with Applicant's testimony. Applicant denied the statements in the report that he was disgruntled with the Navy and that he had a vendetta against the Navy. Having reviewed all the evidence, and particularly Applicant's own statements in GE 3 and 4, I am convinced that in 1989, Applicant was disgruntled with the Navy, and he did not feel he received fair treatment. I believe this was the motivation for his taking home the classified documents.

Applicant has not been arrested or charged with anything since his 1989 NJP. He has been as successful in his post-Navy career as he was in the Navy prior to his NJP. He is a well respected senior level employee of a defense contractor. I take this all into consideration under the whole person. I also considered that Applicant falsified a security questionnaire in 1990, and provided false information in his response to the SOR, and in his testimony at his hearing. When all the evidence is considered, I find Applicant to be a person who is willing to bend or break the rules when he feels it is in his best interest, be it altering a log, taking home and storing classified materials, submitting

a falsified security questionnaire, or providing false or misleading statements in response to the SOR and in his testimony at his hearing.

I have weighed the disqualifying and mitigating conditions and evaluated all the evidence in the context of the whole person. Applicant committed a twelve-year-long security violation. Having committed a security violation, Applicant has a very heavy burden of demonstrating that he should be entrusted with classified information. I am required to give any claims of reform and rehabilitation strict scrutiny. I conclude Applicant has established several mitigating conditions, but they were insufficient to overcome the overriding security concerns. Applicant has not mitigated the security concerns based on his security violations, personal conduct, and criminal conduct.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline K: AGAINST APPLICANT

 Subparagraph 1.a: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

 Subparagraph 2.a: Against Applicant

 Subparagraph 2.b: Against Applicant

 Subparagraph 2.c: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

 Subparagraph 3.a: 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 continue a security clearance for Applicant. Clearance is denied.

Edward W. Loughran
Administrative Judge