

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant, a 60-year-old engineer who has held a security clearance for 40 years and who has worked for several defense contractors, mitigated security concerns arising from his termination from his former employment for misuse of a company credit card while purchasing tools and other equipment for installation kits for use by teams of his engineering staff. His explanation and rationale for his actions was sufficient to explain and provide a correct analysis of the concerns expressed in a human resources staff report that led to his termination. Clearance is granted.

CASENO: 06-13808.h1

DATE: 05/03/2007

DATE: May 3, 2007

In Re:	)	
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-----	)	ISCR Case No. 06-13808
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

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

**APPEARANCES**

**FOR GOVERNMENT**

Melvin H. Howry, Esq., Department Counsel

**FOR APPLICANT**

Alan V. Edmunds, Esq.

**SYNOPSIS**

Applicant, a 60-year-old engineer who has held a security clearance for 40 years and who has worked for several defense contractors, mitigated security concerns arising from his termination from his former employment for misuse of a company credit card while purchasing tools and other equipment for installation kits for use by teams of his engineering staff. His explanation and rationale for his actions was sufficient to explain and provide a correct analysis of the concerns expressed in a human resources staff report that led to his termination. Clearance is granted.

### **STATEMENT OF CASE**

\_\_\_\_\_ On June 27, 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 July 12, 2006, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to another judge on October 13, 2006, and re-assigned to me on January 9, 2007. A notice of hearing was issued on January 24, 2007, for a hearing on February 27, 2007, and held that day. The government offered four exhibits and Applicant offered 16 at the hearing. All were admitted into evidence. The record was left open for 30 days and on February 28, 2007, Applicant submitted one additional exhibit that was admitted in evidence without objection. One witness testified for the government. Applicant and four witness testified on behalf of Applicant. The transcript was received on March 9, 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 60-year-old employee of a major defense contractor who worked as a lead engineer from 1990 until 2004. He was suspended without pay on April 22, 2004, and terminated on April 30, 2004, after an investigation by the company of misuse of a corporate credit card resulting in a report to the “file” dated April 26, 2004 (Exh. 2 pages 5-7). He had been promoted one month earlier to an annual salary of \$105,000. He did not contest the termination as he was advised by his then counsel that as an “at will” employee he had no rights.

Since his discharge he has worked for two other major defense contractors as an engineer. He was hired at the first company a year after his termination in April 2005 at the same salary as he had at the first company. When he left the second company in September 2006 when the contract

he worked on was completed, he had been proposed for a \$3,000 per annum raise and was rated as an excellent employee with a long list of accomplishments. He has worked for his present employer for less than a year. He served on active duty in the Navy for 22 years and retired as a Lt. Commander. He has held a clearance for over 40 years with no security violations. He holds a B.S. and Masters degree in electrical engineering and graduated summa cum laude.

The allegations in the SOR center around Applicant's misuse of a company credit card, his discharge from employment, and his statements to the investigator from the Office of Personnel Management (OPM) for this proceeding. Applicant's work for his former employer concerned providing engineering installation services with a team of several staff members on Navy ships. The installers were required by the company to provide their own tools for their work. Applicant and others objected to this on the basis that their tools were getting stolen and broken. In 2003 the policy was changed and the company agreed to provide the tools to the employees. His job assignment at that time was assistant program manager and materiel procurer (Tr. 103). Applicant was directed to assemble tools for three large tool boxes each of them for installation teams of one to five persons who would use them on assignments. The tools would not be used in the shops or the labs so that they would be fully stocked and ready for use by the teams on installation assignments (Tr. 114). He bought these items commercially using a corporate credit card (P card) he was authorized to use except for personal items and travel. Usually the purchases were made on weekends when he was traveling on company business.

The other option available to him and preferred by his company was to acquire them through the on-line procurement system of the company (Ariba) but it was inflexible and time consuming so often not used by other managers in similar situations (Tr. 60-63). The system was discontinued by the company soon after this investigation concluded (Tr. 85-88). In addition to the tools for his team, he occasionally bought items for other employees for corporate use when those employees did not have a P card and needed items sooner than the on-line system could provide.

Some of the tools were specific to the work Applicant and his teams were performing such as hard hats, wiring, and label-making equipment for mil spec identification. Many others used for company work were not unique to it such as screwdrivers hammers and pliers. Others were items that someone might find strange but had specific applicability to his team assignments such as:

1. Steel toed shoes: Required for use on one installation (Post hearing submission Exh. Q).
2. Golf shirts with company logo: Used by teams while aboard ship.
3. Garden hose 50 foot: Purchased for staff member and remained in company office unused.
4. Antennas for walkie talkies: For communication aboard ship when cell phones inoperable.
5. Travel guides to Canada: Purchased in anticipation of staff assignments in Canada.
6. Static guard carpet cleaner: Used to eliminate static at workplace aboard ships.

The company investigation of Applicant was done by a generalist in the human resources division (Exh. 2, p. 4) who was not familiar with the products purchased but interviewed others in the company over several days. These were discussed in her three-page report dated April 26, 2004. Two of these were supervisors of Applicant (page 3) who did not question the items purchased for

this “extremely fast turnaround program” but did question some the quantities of some items purchased in that they might have, in their opinion, exceeded requirements for the program. The company investigator was concerned that Applicant did not use Ariba, as was one of the supervisors.

Applicant asserted during the company investigation and to the OPM investigator, who testified as a government witness at the hearing, that he purchased only for government use and that all the products bought remained with the company. The one exception was a mistaken purchase of an impact wrench that was for his personal use and he reimbursed the company for it (Exh. P). With that one exception all other items he purchased were the property of the company and, as such, remain in the possession of the company.

In his statement to the OPM investigator (Exh. 3), Applicant gave a detailed analysis of the items purchased, why they were purchased and in what volume. He continued to assert that he did not misuse the credit card and that all the purchases were for the benefit of the company and his team of engineers. The investigator found the Applicant in his interview to be candid and straightforward (Tr. 31-32). He did not independently investigate specific allegations as that was not his assignment. However, he was sufficiently concerned with the allegations that he sought the investigative files from the company but was unable to get them. He was told by the company investigator that they were not available since they were either in storage or had been lost (Tr. 47-53). Thus, he was unable to check the statements made in the company report against statements made to the investigator.

Applicant was well regarded by his former company based on his performance evaluations (Exhs. K-N). In addition to the four witnesses who testified for him and also submitted statements on his behalf, five others submitted statements (Exhs. A-I). All spoke and wrote of his reputation for honesty and integrity as well as his work performance skills. One described his attention to detail and “can do” attitude (Exh. E). Another described him as one of the most capable systems engineers he had ever known. He had an excellent reputation at his last employer and was considered one of their best engineers (Tr. 77-80). He has worked too brief a period for his present employer to be evaluated but they support his effort to obtain a security clearance.

Applicant has been married for 29 years and has three grown children. His principal activity outside of work and family is helping with off road racing competitions.

## **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 discharge from his employer of 14 years and the reasons assigned to the termination prompted the allegations of security concerns under Guideline E (Personal Conduct). It is also alleged that his continued denial of the allegations to the OPM investigator was a falsification of material facts. 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 (E2.A5.1.1.). 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. (E2.A5.1.2.2.)

After analyzing testimony of Applicant, his witnesses, the OPM investigator, the investigative report which was the basis on which the company terminated him, and the statement Applicant gave to the OPM investigator, I find that the conclusion of the company investigator was unfounded and unsubstantiated. While the practices followed by Applicant might not have been in strict keeping with the preferred company purchasing practices then in effect, he had a rational explanation for all of the issues the company investigator evaluated. The report of the OPM investigator provided a thorough analysis of Applicant’s actions and rationale for them. The unavailability of a complete file impeded Applicant and the OPM investigator. I find the available evidence does not raise a potentially disqualifying condition under Guideline E.

Guideline J (Criminal Conduct) is alleged on the basis that the statement to the OPM investigator was false and is a violation of 18 U.S.C. §1001. I conclude that the evidence does not support the allegation since the statement was not false.

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 has had a successful career both in the Navy and in industry. He had 22 years of active duty and is now retired from the Navy. He has successfully held a security clearance for 40 years. There is nothing in his background or the facts of this matter to suggest that he is vulnerable to pressures which might raise a security concern. Even if he did not strictly follow the preferred acquisition process, the nature and seriousness of the conduct is not sufficient to justify the loss of his clearance. Applying the precepts of the whole person analysis, I conclude that Applicant meets the security guidelines.

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

\_\_\_\_\_ Subparagraph 1.c.: For Applicant

\_\_\_\_\_ Paragraph 2. Guideline J: FOR APPLICANT

                    Subparagraph 2.a.: 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