

KEYWORD: Criminal Conduct; Drugs; Personal Conduct

DIGEST: This 46-year-employee has a history of criminal conduct (1988-2004), drug involvement (1978-2004), and poor personal conduct, related to his falsifying his answer to a drug-related question in his 2004 Questionnaire for Positions of Trust. No mitigation has been established as to any concern. A trustworthiness determination is denied.

CASENO: 06-14104.h1

DATE: 05/17/2007

DATE: May 17, 2007

In Re:	)	
	)	
	)	
-----	)	ADP Case No. 06-14104
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

This 46-year-employee has a history of criminal conduct (1988-2004), drug involvement (1978-2004), and poor personal conduct, related to his falsifying his answer to a drug-related question in his 2004 Questionnaire for Positions of Trust. No mitigation has been established as to

any concern. A trustworthiness determination is denied.

### **STATEMENT OF THE CASE**

On August 31, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a trustworthiness determination for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a trustworthiness determination should be granted, denied or revoked.

On October 3, 2006, and October 27, 2006, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record; i.e., without a hearing. On February 27, Department Counsel issued a File of Relevant Material (FORM). Applicant was instructed to submit any response within 30 days after receipt of the FORM. Any response was due by April 11, 2007, but none was received. This matter was assigned to me on April 30, 2007.

### **FINDINGS OF FACT**

Applicant is a 46-year-old employee of a defense contractor. The August 31, 2006 SOR contains eleven (11) allegations under Guideline J (Criminal Conduct); four (4) allegations under Guideline H (Drugs); and one allegation under Guideline E (Personal Conduct). Applicant admits all allegations under all three Guidelines. All specific admissions are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

#### ***Guideline J (Criminal Conduct)***

Applicant was arrested on the following dates for the charges alleged:

1.a. May 28, 1988 - ten (10) counts of Fraudulent Check. He was found guilty and fined \$38.00.

1.b. September 12, 2002 - five (5) counts of Fraudulent Check.

1.c. September 14, 2002 - Fraudulent Check Uttered. He was found guilty and fined \$91.00.

1.d. September 29, 2002 - Uttering a Fraudulent Check. He was found guilty and fined \$91.00.

1.e. October 1, 2002 - Uttering a Fraudulent Check. He was found guilty and fined \$91.00.

1.f. October 7, 2002 - Fraudulent Check Uttered. He was found guilty and fined \$91.00.

1.g. March 17, 2003 - Fraudulent Check Uttered.

1.h. April 23, 2003 - five (5) counts of Uttering a Fraudulent Check. He was found guilty and fined \$66.00 on each count

1.i. July 22, 2003 - four (4) counts of Fraudulent Check. He was found guilty and fined \$93.00 on each count.

1.j. June 23, 2003 - ten (10) counts of Fraudulent Check.

1.k. the information set forth in paragraph 3, below, alleging a falsification on his Questionnaire for Public Trust Position, which constitutes a violation of Title 10, Section 1001, of the United States Code.

#### ***Guideline H (Drugs)***

2.a. Applicant used cocaine, with varying frequency, from approximately 1993 to at least 2004.

2.b. Applicant used marijuana, with varying frequency, from approximately 1978 to at least 2003.

2.c. Applicant attended inpatient treatment at a Behavioral Health Center in approximately January 2003. He was diagnosed with Polysubstance Abuse. He used cocaine in 2004, after completion of this treatment.

2.d. Applicant attended inpatient treatment at the same Center in approximately October 2003. He was diagnosed with a relapse in cocaine and alcohol abuse and depression suicidal threats. He was diagnosed with Polysubstance Abuse. His prognosis for continued abstinence abuse from drugs was "poor." He used cocaine in 2004, after completion of this treatment.

#### ***Guideline E (Personal Conduct)***

3.a. Applicant falsified material facts on his Questionnaire for Public Trust Positions (SF 85P), executed by Applicant on August 31, 2004, and reaffirmed on October 18, 2004, when in response to Question "21 Illegal Drugs - In the last year [have you used] . . . , " Applicant answered "Yes," but cited only a one-time use of marijuana in 2003, and omitted any mention of his cocaine use, as cited in paragraph 2.a., above.

## POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant to the conduct, to include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other pertinent 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, on page 19 of Enclosure 2). I have considered all six factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a trustworthiness determination for the Applicant.

A person seeking an ADP I, II, or III position enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified [or ADP] information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

## CONCLUSIONS

Applicant is 46 years old. In his response to the SOR, he admits all allegations except for 1.k., which he neither admits or denies. I find that 1.k. is independently established by the Government's evidence (Government's Exhibits (GX) 2, 3, 4, and 5). None of Applicant's answers are accompanied by any explanation in mitigation or extenuation. In addition, he did not submit any response to the FORM. The lack of any additional evidence and/or explanations means that the record consists entirely of the Government's exhibits, many of which are documents submitted by Applicant himself during the trustworthiness investigation.

### Guideline J (Criminal Conduct)

The record clearly establishes a pattern of issuing bad checks, specifically 39 fraudulent checks on approximately 10 occasions between May 25, 1988 and June 23, 2003. The FBI Criminal History Report (GX 5) cites only Fraudulent Check arrests in 1988 and twice in 2003. Applicant's

SF 85P cites only “bad checks” in 2003 (GX 4). Applicant’s explanations for his bad checks appear only in his sworn statement of April 2005 (GX 6). He states that he began “mismanaging” his money in 1998 because of his drug problem with cocaine (*Id.*, at page 1). He discusses his substance abuse treatment up through 2004, but since he used cocaine again in 2004, he cannot claim that the treatment was demonstrably successful. In addition, nothing he says comes close to mitigating the impact of (1) his issuance of so many bad checks over a period that began in 1998 and continued until the recent past and 92) his 2004 falsification of his SF 85P.

The last allegation under Guideline J pertains to the falsification by Applicant of his answer to Question 21 on his 2004 SF 85P. He admitted that he intentionally falsified his answer because he did not “want to look bad” (GX 6). This is not an acceptable excuse.

#### Disqualifying/Mitigating Conditions (DC)

DC (a) (a single serious crime or multiple lesser offenses) and DC © allegations or admissions of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted) apply, but none of the parallel mitigating conditions are shown by the record.

I conclude that Applicant’s history of bad checks (1998-July 2003) and his intentional falsification in 2004 show that he lacks the good judgment, reliability, and trustworthiness required of anyone seeking access to ADP information.

#### ***Guideline H (Drugs)***

The record clearly shows a 26-year history of drug use (cocaine and marijuana) that began in 1978, when Applicant was about 17, and continued until at least 2003 for marijuana and 2004 for cocaine. His drug use continued until just eight or so months before he completed his SF 85P. Under these circumstances, His drug use is considered to be still recent. The poor prognosis on his substance abuse treatment reports does not allow any level of confidence that Applicant will be able to refrain from his old habits.

#### Disqualifying/Mitigating Conditions

DC (a) (any drug abuse), DC © illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia, and DC (f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional, are all applicable, but no parallel mitigating conditions are shown by the record.

#### ***Guideline E (Personal Conduct)***

As discussed above, Applicant’s falsification of his answer to Question 25 on his 2004 SF 85P was both deliberate and done with the intent to deceive the Department of Defense.

#### Disqualifying/Mitigating Conditions.

DC (a) deliberate omission, concealment, or falsification of material facts from any

personnel; security questionnaire, . . . . or [to] award fiduciary responsibilities and DC © credible adverse information which, when considered as a whole, supports a whole person analysis of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information, are applicable. No parallel mitigating circumstances are established by the record.

Taken separately and as a whole, the evidence compels the conclusion that Applicant has not demonstrated that he currently possesses the judgment, reliability, and trustworthiness required of anyone seeking access to classified information and material.

**FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

***Guideline J (Criminal Conduct)***

Subparagraph 1.a.	Against the Applicant
Subparagraph 1.b.	Against the Applicant
Subparagraph 1.c.	Against the Applicant
Subparagraph 1.d.	Against the Applicant
Subparagraph 1.e.	Against the Applicant
Subparagraph 1.f.	Against the Applicant
Subparagraph 1.g.	Against the Applicant
Subparagraph 1.h.	Against the Applicant
Subparagraph 1.i.	Against the Applicant
Subparagraph 1.j.	Against the Applicant
Subparagraph 1.k.	Against the Applicant

***Guideline H (Drugs)***

Subparagraph 2.a.	Against the Applicant
Subparagraph 2.b.	Against the Applicant
Subparagraph 2.c.	Against the Applicant
Subparagraph 2.d.	Against the Applicant

***Guideline E (Personal Conduct)***

Subparagraph 3.a.	Against the Applicant
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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 trustworthiness determination for Applicant.

**BARRY M. SAX  
ADMINISTRATIVE JUDGE**

