

KEYWORD: Personal Conduct

DIGEST: This 40-year-old security guard, who knowingly falsified three answers on his security clearance application (SF 86), has a history of financial problems that continue to exist. In addition, he was terminated from his employment in 2001 because he failed a random drug test. Mitigation has not been established. Clearance is denied.

CASENO: 06-17538.h1

DATE: 02/28/2007

DATE: February 28, 2007

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| In Re: |) | |
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| |) | ISCR Case No. 06-17538 |
| |) | |
| Applicant for Security Clearance |) | |
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**DECISION OF ADMINISTRATIVE JUDGE
BARRY M. SAX**

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Esquire , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 40-year-old security guard, who knowingly falsified three answers on his security clearance application (SF 86), has a history of financial problems that continue to exist. In

addition, he was terminated from his employment in 2001 because he failed a random drug test. Mitigation has not been established. Clearance is denied.

STATEMENT OF THE CASE

On August 29, 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 security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On September 18, 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 basis of the written record; i.e., without a hearing. A File of Relevant Materials (FORM) was issued on November 13, 2006, in which Applicant was informed that any response had to be submitted within 30 days of receipt. No response was submitted. The case was referred to me for determination on December 28, 2006.

FINDINGS OF FACT

Applicant is a 40-year-old employee of a defense contractor. The February 24, 2005 SOR contains four (4) allegations under Guideline E (Personal Conduct). Applicant denies all four allegations.

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

Guideline E (Personal Conduct)

Applicant falsified material facts on his security clearance application (SF 86), dated May 26, 2005, in his response to the following questions:

1.a. - Question “**21. Your Police Record - Felony Offenses** Have you ever been charged with or convicted of any felony offense [with a single exception not applicable here],” to which he answered “No”, and intentionally failed to disclose that he was arrested

on October 22, 1988, and charged with attempted murder, a felony; possession of a controlled substance, a felony; and carrying a concealed weapon, a gross misdemeanor.

1.b. - Question “**22. Your Police Record - Firearms/Explosives Offenses** [Such offenses must be reported regardless of whether the record in the case has been “sealed” or otherwise stricken from the court record.] Have you ever been charged with or convicted of any felony offense [with a single exception not applicable here],” to which he answered “No”, and intentionally failed to disclose that he was arrested on October 22, 1988, and charged with attempted murder, a felony; possession of a controlled substance, a felony; and carrying a concealed weapon, a misdemeanor.

1.c. - Question “**24. Your Police Record - Alcohol/Drug Offenses** Have you ever been charged with or convicted of any felony offense [with a single exception not applicable here],” to which he answered “No”, and intentionally failed to disclose that he was arrested on October 22, 1988, and charged with attempted murder, a felony; possession of a controlled substance, a felony; and carrying a concealed weapon, a misdemeanor.

1.d. - Applicant was terminated from his job with Company A on or about November 1, 2001, for violating company policy concerning company policy regarding drug use after he failed a random urinalysis test. The test results indicated a positive result for methamphetamines and amphetamines. I find the test results to have been valid.

POLICIES

Each adjudicative decision must also include an assessment of six generic factors relevant the conduct, to include (1) Nature and seriousness of the conduct and surrounding circumstances; (2). Frequency and recency of the conduct; (3). Age of the applicant; (4). Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved; (5). Absence or presence of rehabilitation; and (6) Probability that the circumstances or conduct will continue or recur in the future. 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 security clearance for the Applicant.

A person seeking access to classified information 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 information is clearly consistent with the interests of national security will be resolved in favor of the nation’s security.”

CONCLUSIONS

Applicant is forty years old. The SCA he completed was signed on May 26, 2006 (Item 4), the SOR was issued on August 29, 2006, and the FORM was issued on November 13, 2006. Applicant responded to the SOR on September 18, 2006, but did not respond to the FORM, which placed Applicant on specific notice about the Government’s concerns. His most recent statements are thus those that appear in his response to the SOR and the attachments thereto.

Having carefully considered all of the available information in the case file, I conclude that Applicant’s answers to Questions 21, 22, and 24 are all incorrect and inconsistent with the documented criminal history, and with his submitted documents, specifically Item 3 at pages 10, 13, 14, 15, and 29. His discussion and evaluation of these documents, in the cover page to his submission (Item 3 at 1) is not supported by the bulk of the evidence of record. Rather, I conclude, his documents taken together are fairly construed as supportive of the Government’s position and adverse to that of Applicant. The language of Questions 21, 22, and 24 are clearly and succinctly stated. Applicant’s explanations for why he answered “No,” as stated by Department Counsel in the FORM, are both inconsistent and illogical. He had been “arrested” on the charges alleged in the SOR and he knew it (Item 3 at 13, 14, 15).

I note in Applicant’s sworn statement to an agent of the Defense Security Service (DSS) on October 24, 2004 (Item 3), his admission that he was arrested on October 22, 1988 on the charges alleged in 1.a., 1.b., and 1.c. Also in Item 3, Applicant admitted that he was terminated from his employment, as alleged in 1.d., because of a random drug test result that was positive for methamphetamines and amphetamines. Applicant denies he knowing he had taken any such drugs, although he admits taking two “Yellow Jackets,” which he describes as “over the counter dietary supplements that works as a stimulant.” He does not deny he was terminated and offers no evidence that the drug tests might have been incorrect. In such a case, Applicant clearly should have answered “Yes” and added an explanation, rather than “No” with no explanation.

PERSONAL CONDUCT: *The Concern*: 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.

Disqualifying Conditions; (2). The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire [SF 86], 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; (3) Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

Mitigating Conditions: None that are supported by the record; e.g., (2). The falsification was not an isolated incident, remains recent, and the individual did not subsequently provide correct information voluntarily; and (3). The individual did not make a prompt, good-faith efforts to correct the falsifications before being confronted with the facts.

The record evidence establishes that Applicant knew and had reason to know that his answers were false. Overall, looking at Applicant in the context of the whole person concept, he has simply not come close to overcoming the evidence supporting the Government's concerns, as stated in the SOR. It is basic to the security clearance adjudication process that the ultimate burden of proof is on the Applicant to demonstrate that he is eligible for a security clearance. The record compels the conclusion that he has simply not demonstrated he possesses the good judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

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

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| <i>Guideline E (Personal Conduct)</i> | Against the Applicant |
| Subparagraph 1.a. | Against the Applicant |
| Subparagraph 1.b. | Against the Applicant |
| Subparagraph 1.c. | Against the Applicant |
| Subparagraph 1.d. | Against the 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 Applicant's access to classified information.

**BARRY M. SAX
ADMINISTRATIVE JUDGE**