

DATE: June 10, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-17270

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a senior electronics technician for a defense contractor. On his security clearance application, Applicant answered "NO" to the question concerning his use of illegal drugs. Applicant subsequently admitted to repeated use of cocaine over an 18 month period in the late 1990s. He has not informed his family of his use of the illegal substance. Applicant has not mitigated security concerns for personal and criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On October 25, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on November 11, 2004. The SOR alleges security concerns under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) of the Directive.

Applicant answered the SOR in writing on December 8, 2004. He admitted all of the allegations under both Guidelines, but changed the dates for one of the allegations. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on February 23, 2005. Applicant received a complete file of relevant material (FORM) on arch 1, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due April 9, 2005, but he had not responded or provided additional information as of May 5, 2005. The case was assigned to me on May 11, 2005.

RULING ON PROCEDURE

The government in the FORM moved to delete allegation 1.c. and the reference to allegation 1.c. in allegation 1.b. in the SOR. Allegation 1.c. in the SOR concerns falsification of an August 20, 2002, security clearance application concerning his use of illegal drugs. The government conceded it does not have sufficient evidence to support this allegation. Pursuant to Section E3.1.17 of Enclosure 3 of the Directive, the motion is granted and allegation 1.c. is deleted as well as the reference to allegation 1.c. in allegation 1.b. of the SOR.

FINDINGS OF FACT

Applicant is a 37-year-old senior electronics technician for a defense contractor. He graduated from a technical school with an associate's degree in electronics. He is married with three teenage children. He was granted a security clearance in 1991.⁽¹⁾

Applicant submitted a security clearance application on April 26, 2000. He responded "NO" to question 27 asking whether since the age of 16 or in the last seven years he had illegally used any controlled substance. Applicant answered "NO" to question 28 asking if he had used any controlled substance while in a sensitive position such as while possessing a security clearance.⁽²⁾

Applicant was arrested in May, 1987, while a high school student, for possession of a controlled substance, and possession, sale, or manufacture of a dangerous weapon. The weapons charge was dismissed, and Applicant pled guilty to the possession of a controlled substance charge. He was placed in a drug diversion program. Upon successful completion of the program in February 1988, the drug related charge was dismissed.

Applicant admitted repeatedly using cocaine starting in June 1997 until December 1998. Applicant used the illegal substance because he had marital problems. His brother also used drugs and died of a heroin overdose. Applicant has not informed any member of his family, except his brother-in-law, a fellow drug user, of his use of a controlled substance.⁽³⁾

In his April 2003 statement to security investigators, Applicant listed the date of his last use of cocaine as December 1998.⁽⁴⁾ In his December 2004 answer to the SOR, he amended the date for his last use of cocaine to December 1997.⁽⁵⁾ Applicant admitted steady and repeated use of cocaine during the time he used the illegal substance. He stated he stopped using cocaine when his six-year-old son saw him under the influence of cocaine. I find that Applicant used cocaine to at least the date he originally cited, December 1998. Applicant's statement that he abruptly stopped using the drug after six months of intense use merely because he was observed under the influence of the drug by his son is not reasonable and credible.

Applicant was scared when completing the security clearance application and did not know how to handle his drug use on the security clearance application. He admitted to falsifying the information concerning drug use.⁽⁶⁾

POLICIES

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."⁽⁷⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽⁸⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽⁹⁾ An administrative judge should consider: (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 applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (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 of recurrence.⁽¹⁰⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽¹¹⁾ 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽¹²⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽¹³⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁴⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."⁽¹⁵⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁶⁾

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

Guideline -J Criminal Conduct: A security concern exists when a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

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 carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.⁽¹⁷⁾

The government has established its case under Guideline E. Applicant's use of cocaine, false answers to questions 27 and 28 on his security clearance application, and not revealing his conduct to his family brings the matter under Personal Conduct Disqualifying Conditions E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from an personal security questionnaire, personal history statement, or similar form used to conduct investigations, . . . determine security clearance eligibility or trustworthiness*); and 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 a person's personal, professional, or community standing or render the person susceptible to blackmail*). Applicant answered on his security clearance application that he did not use illegal drugs or controlled substances. Applicant later admitted using cocaine, a controlled substance, and using the illegal substance while possessing a security clearance. He admits he has not informed his immediate family, i.e. mother, sisters, and wife, of his use of the drug, leaving him vulnerable to coercion, exploitation, or duress. I conclude Applicant used cocaine while possessing a security clearance, deliberately falsified his security clearance application, and has concealed his personal conduct making him vulnerable to coercion, duress, or exploitation. The disqualifying conditions have been established.

I have considered for Applicant's case Personal Conduct Mitigating Conditions E2.A5.1.3.3 (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*); and E2.A5.1.3.5 (*the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). Applicant corrected the falsification but only after being confronted by security agents. He has not taken steps to reduce his vulnerability because he has not told his family about his actions. He stated that he would tell them if threatened with blackmail.⁽¹⁸⁾ A statement of intent of future action does not mitigate the security concerns. I conclude Applicant has not mitigated security concerns raised by his personal conduct in falsifying his security clearance application.

The government has established its case under Guideline J. Applicant's arrest in 1987 for possession of a controlled substance and his falsification on the security clearance application brings the matter under Criminal Conduct Disqualifying Conditions E2.A10.1.2.2 (*allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*). A materially false, fictitious, or fraudulent statement on a security clearance application is a federal criminal offense.⁽¹⁹⁾ Applicant admitted to the criminal offenses of false statement in violation of federal criminal law, and being arrested for possession of a controlled substance. Both offenses are serious crimes. I conclude the above disqualifying conditions have been established.

I have considered Criminal Conduct Mitigating Conditions E2.A10.1.3.1 (*the criminal behavior was not recent*); E2.A10.1.3.2 (*the crime was an isolated incident*); E2.A10.1.3.5 (*acquittal*); and E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*). Applicant's underlying criminal behavior is his use of illegal drugs. Even though the 1987 charge of possession of a controlled substance was eventually dismissed, it is not an acquittal since the dismissal was only a procedural matter after Applicant fulfilled a court ordered rehabilitation requirement. While the criminal behavior of possession of a controlled substance over 18 years ago does not seem to be recent, the criminal behavior of use of illegal drugs in 1997 and 1998 makes the 1987 offense recent for purposes of determining that the 1987 behavior was not mitigated. His false answers to two questions on the 2000 security clearance application are recent events and not isolated since it involves the denial of his repeated use of an illegal substance just two years before. While Applicant states he has not used cocaine since 1998, he used it within seven years in 2000 and while holding a security clearance. His answers are fraudulent, thus a criminal offense and a security concern. He has not received counseling or assistance with his drug problems. He states he will not use illegal drugs again, but his statement alone is not evidence of successful rehabilitation. While Applicant has admitted he provided false information on the security clearance application, he still contests the date of the termination of drug use even though he provided the date used in the SOR. Applicant has not established that his change of date is accurate, so his credibility is still an issue. Since his credibility is still at issue, he has not presented clear evidence of his rehabilitation to provide accurate information. I conclude Applicant has not mitigated security concerns for the criminal offense of providing false answers on a security application.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegation set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Deleted

Subparagraph 1.d.: Against Applicant

Paragraph 2, Guideline J: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

DECISION

In light of all of the circumstances in 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.

Thomas M. Crean

Administrative Judge

1. FORM, Item 4 (Security clearance application, dated Apr. 26, 2000).
2. *Id.*
3. FORM, Item 5 (Applicant's statement, dated Apr. 11, 2003), at 5/6.
4. *Id.*, at 5.
5. Applicant's answer to the SOR (Letter, dated Dec. 8, 2004).
6. *Id.*

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

8. Directive ¶ E2.2.1.

9. *Id.*

10. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

11. *See* Exec. Or. 10865 § 7.

12. Directive ¶ E3.1.14.

13. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

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

15. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

16. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

17. Allegation 1.c. was deleted on motion by the government.

18. FORM, Item 5 (Applicant's statement, dated, Apr. 11, 2003), at 6.

19. 18 U.S.C. ¶ 101 (a).