

DATE: November 5, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-19827

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant was less than candid when he answered question 21 on his May 2001 Security Clearance Application (SCA). He was also convicted of a felony 24 years ago, and sentenced to five years of confinement. His fairly recent falsification, coupled with his past felony conviction, are clearly of present security significance. Clearance is denied.

STATEMENT OF THE CASE

On June 2, 2002, 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, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on or about July 8, 2002.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on August 21, 2002. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on September 9, 2002, and Applicant's undated reply was received soon thereafter. The case was received by the undersigned for resolution on October 28, 2002. The issues raised here are whether the Applicant's past criminal conduct and related personal conduct militate against the granting of a security clearance.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the File of Relevant Material and Applicant's Response. The Applicant is 48 years of age, and employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline J - Criminal Conduct & Guideline E - Personal conduct

1.a., 1.b. and 2.a. On October 10, 1977, the Applicant was arrested for, and in January of 1978, subsequently pled guilty to Burglary of a Building, a felony (Item 5 at page 2). In April of 1978, he was sentenced to five years confinement for the felony conviction (*id*).

In answering question 21 on his May 2001 SCA, the Applicant denied that he had "ever been charged with or convicted of any felony offense" (Item 4 at page 4). In his unsworn answer to the SOR, and again in his undated unsworn reply to the FORM, the Applicant avers that he thought he only had to go back seven years in answering the question (Item 2 at page 7, and Reply). These unsworn averments are not believable. Question 21 is straight forward, the language clear, and there is no mention of seven years, whatsoever. Indeed, two following questions, 22 and 24, posit similar questions, also with no time limits being stated (Item 4 at pages 4 and 5).

I find that his falsification was knowing and wilful; and as such, Guideline E is found against the Applicant, and the waiver provision of 10 U.S.C. 986 under Guideline J is moot.

Mitigation

Attached to both his answer to the SOR and to reply to the FORM the Applicant offers the endorsement of numerous persons who have known him throughout the years, and all are most laudatory in their comments. The Applicant also offers as attachments to his answer two Superior Performance Awards and several Certificates of Training.

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Criminal Conduct

Condition that could raise a security concern:

(3) Conviction in a Federal or State court . . . of a crime and sentence to imprisonment for a term exceeding one year;

Conditions that could mitigate security concerns:

None.

Personal Conduct

Conditions that could raise a security concern:

(2) The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . or similar form . . . ;

Conditions that could mitigate security concerns:

None.

As set forth in the Directive, "[each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in

enclosure 2, including as appropriate:

- a. Nature, extent and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must make out its case under Guideline E (personal conduct) and Guideline J (criminal conduct); which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

Personal conduct is conduct involving questionable judgement, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations; and improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in his private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

The Applicant was less than candid in answering question 21 on his May 2001 SCA. In addition, there is absolutely no evidence that the Applicant came forward with the truth as to his past felony conviction until he was confronted as to the falsehood sometime later. The Applicant's lack of candor, coupled with the fact that he was sentenced to five years imprisonment for his felonious conduct, are thus clearly of security significance; and as such, Guidelines E and J are found against the Applicant. As this denial is not solely based on 10 U.S.C. 986, its possible waiver provision has been mooted.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his criminal conduct, and his related personal conduct. The Applicant has thus not met the mitigating conditions of Guidelines E and J, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline E and J.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.

b. Against the Applicant.

Paragraph 2: AGAINST THE APPLICANT

b. Against the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light 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 the Applicant.

Richard A. Cefola

Administrative Judge