

DATE: February 4, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-23424

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant was cited for Receiving Stolen Property in 1988, and accepted punishment pursuant to an Article 15 for the alleged Wrongful Use of a Government Credit Card in 1996. In 2001, he failed to disclose the existence of his Article 15 when he executed his Security Clearance Application (SCA). This wilful falsification, coupled with his prior misconduct, demonstrates a pattern of dishonesty, which is clearly of security significance. Clearance is denied.

STATEMENT OF THE CASE

On August 29, 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 June 13, 2003.

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 October 9, 2003. 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 December 2, 2003, and submitted nothing in reply. The case was received by the undersigned for resolution on January 23, 2004. The issue raised here is whether the Applicant's Personal Conduct militates against the granting of a security clearance. [The Applicant admits the citation and the Article 15, but denies the wilful falsification.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The Applicant is 39 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the

Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline E - Personal Conduct

1.a. and 1.b. In 1988, the Applicant was cited for Receiving Stolen Property (Government Exhibit (GX) 7). While stationed with the Army in Germany, he admittedly received, "between September 87 and January 88, . . . approximately \$40" worth of free food, from his wife, who worked at a food outlet at the Post Exchange (GX 7 at page 3). In 1996, the Applicant also accepted punishment under Article 15 of the Uniform Code of Military Justice for Wrongful Use of a Government Credit Card, in the amount "of about \$854" (GX 6 at page 2).

1.c. In answering question 25 on his January 2001, SCA the Applicant knowingly and wilfully failed to disclose the existence of his prior Article 15. The question is styled "Your Police Record - Military Court" (GX 4 at page 6). It asks, in part, "[i]n the last 7 years, have you been subject to court martial or other disciplinary proceedings under the Uniform Code of Military Justice? (include **non-judicial** . . .)" (*id*, emphasis supplied). In his unsworn answer to the SOR, he avers "I only read police record and did not continue to read further" (GX 2 at page 3). This is not believable. He knew he was cited by the police in 1988; and as such, there is no logical reason for him not to read the rest of the question. Furthermore, the Applicant offers absolutely nothing in support of his credibility.

Mitigation

The Applicant offers little in the way of mitigation, but avers only that his falsification was not deliberate.

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:

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 . . . ;
- (5) A pattern of dishonesty or rule violations . . . ;

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); 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. 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 25 on his January 2001 SCA. In addition, there is absolutely no evidence that the Applicant came forward with the truth as to his past Article 15, until he was confronted with the falsehood in his SOR more than 19 months later. The Applicant's lack of candor, coupled with his prior acts of dishonesty, is clearly of security significance; and as such, Guideline E is found against the Applicant.

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

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.
- c. 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