

DATE: May 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10924

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Catherine M. Engstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's falsification of clearance application in January 2001 suggests he cannot be relied upon to disclose the truth if it conflicts with his personal interests. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 24 July 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) [\(1\)](#) recommending denial or revocation of Applicant's clearance. Applicant answered the SOR and requested an administrative decision on the record on 9 September 2003. He did not respond to the Government's File of Relevant Material (FORM)--issued 10 December 2003; the record in this case closed 4 February 2004, the day the response was due at DOHA. The case was assigned to me on 4 May 2004 to decide if clearance should be granted, continued, denied, or revoked.

FINDINGS OF FACT

Applicant admitted the allegations the SOR. Accordingly, I incorporate these admissions as findings of fact.

Applicant--a 37-year-old employee of a defense contractor--seeks access to classified information. He previously served on active duty with the U.S. Navy from 1990 to 1996, and had a clearance from 1993 to 1996 concomitant with that duty.

In December 2000, Applicant was arrested for--and later convicted of--DWI. On 12 January 2001, he falsified his Security Clearance Application by failing to disclose this arrest, either in response to a question requiring him to disclose any alcohol-related arrests, [\(2\)](#) or in response to questions requiring him to disclose any pending charges or any arrests, charges, or convictions not listed elsewhere on the application. [\(3\)](#)

In his March 2003 statement, Applicant denied falsifying his clearance application, and explained that he had omitted the arrest because he had just been arrested and had not been to court yet. In his September 2003 Answer, he again denied any intent to falsify his clearance application and claimed he did not understand the question and thought he did not have to report this arrest.

The record is otherwise silent on Applicant's character or work performance.

POLICIES

Enclosure 2 of the Directive establishes adjudicative guidelines for evaluating security clearance eligibility. An Administrative Judge must consider the factors raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each decision must also assess the Section 6.3. factors of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

PERSONAL CONDUCT (GUIDELINE E)

E2A5.1.1. 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. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The Government established its case under Guideline E. Applicant knew he had been arrested for DWI only weeks before applying for his clearance, yet decided that information was none of the Government's business. While the failure to disclose did not prevent the Government from discovering the arrest and the arrest itself was found to have no current security significance as evidence of alcohol abuse, neither fact is relevant to an assessment of Applicant's fitness for access to classified information. The Government has an interest in examining all relevant and material adverse

information about an Applicant before making a clearance decision. The Government relies on applicants to truthfully disclose that adverse information. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the Government relies upon to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs and assessment of his privacy issues ahead of legitimate Government interests.

Applicant's varying explanations for his omission are neither reasonable nor credible. The plain language of the alcohol-or-drug-related arrest question requires Applicant to report that he was charged, regardless of the disposition of the offense. Further, Applicant falsely answered "no" to a question that required him to disclose any pending charges. He also falsely answered "no" to a question that required him to disclose any other arrests or charges not covered elsewhere on the application. Finally, Applicant previously applied for--and obtained--a clearance while in the Navy. I do not believe he was ignorant of the kind of information the Government seeks from an applicant before granting access to classified information. I resolve Guideline E against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: 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 a security clearance for Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, as amended (Directive).
2. Question 24 as alleged in the SOR.
3. Questions 23 and 26 respectively, which were not alleged in the SOR.