

DATE: August 5, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-29955

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between 1992 and 1995, Applicant stole an expensive test scanner from his employer. On at least 10 occasions during the same period while working for his employer's customer, Applicant pilfered computer discs and pens from the employees' desks of his employer's customer. Yet, in his sworn statement dated October 2003, Applicant deliberately furnished false information by claiming he did not steal the scanner. Applicant's continuing denial he falsified material information in his October 2003 sworn statement eliminates him from security clearance access under the personal conduct guideline. Clearance is denied.

STATEMENT OF CASE

On June 3, 2004, 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, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons under the personal conduct guideline 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant furnished his answer to the SOR on June 30, 2004. Applicant elected to have his case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on September 16, 2004. Applicant received the FORM on September 29, 2004. His response to the FORM was due by October 29, 2004. No response was received. The case was assigned to me on November 16, 2004.

FINDINGS OF FACT

Applicant admitted the four SOR allegations with explanations. Applicant is 33 years old and employed as a consultant for a defense contractor. He seeks a secret level clearance.

Regarding subparagraph 1.a., the government has established Applicant's July 2000 termination through his admission. However, I find for Applicant under subparagraph 1.a. because of the absence of corroborative evidence to support the government's case. The negative work attitude cited by Applicant's employer leading to his termination in July 2000 may not have been the same type of negative attitude that is documented in the two reprimands in 1995 and exhibited in Item 7. A careful reading of Applicant's answer does not indicate he agreed that his negative attitude was the complete or partial reason for the termination. Rather, Applicant believed the primary reason to be his former employer's displeasure over his refusal to accept a different career path. Applicant's claim of receiving unemployment benefits for an unlawful discharge from the employer identified in subparagraph 1.a., even though undocumented, is credible.

Between 1992 and about 1995, Applicant (while working as a cable installer) stole a test scanner (subparagraph 1.b.) from his employer. See subparagraph 1.d. below and Applicant's answer to the SOR. The scanner was valued between \$3,000.00 and \$6,000.00. In his first sworn statement dated October 2003, Applicant denied stealing anything from his employer at the time. Instead, he supplied an elaborate tale of contributing half the purchase cost with a former coworker for the test scanner, and having the scanner delivered to him through the mail.

From 1992 to 1995, while working as a cable installer at a customer's site for his employer, on approximately 10 occasions Applicant stole computer discs and pens (subparagraph 1.c.) from the employees' desks of his employer's customer. He stole these items because he could not afford to buy his own discs. Applicant's supervisor saw him take the discs and pens and confronted him. Applicant stopped rifling through the desks and returned about half the discs he took, but only after he found out they were incompatible with his home computer.

Subparagraph 1.d. alleges Applicant provided a sworn statement in October 2003 denying he stole his employer's scanner referenced in subparagraph 1.b. However, in December 2003, Applicant confessed to stealing the scanner for the first time, but denied providing false information in the October 2003 sworn statement. Instead, the December 2003 statement was the first time he actually remembered how he obtained the scanner. I do not find his claim credible.

Applicant's employer in February 1995 noted in Applicant's performance evaluation that Applicant was an outstanding employee when he wanted to be. (Item 7) Between 1995 and January 1998, Applicant took correspondence courses in applied computer science. His transcripts appear in Item 8. Although he received no degrees, his grade-point-average was rated as good to excellent. In his answer to the SOR, Applicant acknowledged his mistakes as a young adult but indicated he has changed dramatically to become a dedicated professional.

POLICIES

Enclosure 2 of the Directive sets forth guidelines to consider when evaluating an applicant's security clearance eligibility. Each guideline has disqualifying conditions (DC) and mitigating conditions (MC). These conditions, the general factors of the whole person concept, and witness credibility should be given binding consideration in making security clearance decisions.

Burden of Proof

The government must prove controverted facts by substantial evidence. After the government meets its burden, the applicant has the ultimate burden of presenting evidence in refutation, extenuation, or mitigation that demonstrates it is clearly consistent with the national interest to grant or continue his security clearance. Any doubt concerning an applicant's security clearance access should be resolved in favor of national security. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Personal Conduct (PC)

The security concern of this guideline is questionable judgment, dishonesty or rule violations that could indicate an individual may not properly safeguard classified information.

CONCLUSIONS

Exhibiting a pattern of dishonest conduct over an eight-year period between 1992 and 2003 falls within the purview of

personal conduct (PC) disqualifying condition (DC) E2.A5.1.2.5. (*a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*). Between 1992 and 1995, Applicant swiped computer discs and pens from his employer's customer. Applicant did not stop until his supervisor confronted him after Applicant had committed 10 separate thefts. Between 1992 and 1995, Applicant also took a test scanner valued at between \$3,000.00 and \$6,000.00 from his employer. He did not return the equipment until confronted by his employer. In sum, Applicant's illegal acts demonstrate a pattern of dishonest conduct under PC DC E2.A5.1.2.5.

Even though Applicant denies he deliberately falsified how he obtained the scanner, I am not persuaded by his faulty memory claim. PC DC E2.A5.1.2.3. (*deliberately providing false or misleading information concerning relevant and material matters to an investigator in connection with a personnel security determination*). Each element of the disqualifying condition has been satisfied. First, Applicant provided false information in his October 2003 sworn statement. The information was material and relevant information because it had the potential for influencing the direction of Applicant's security investigation. The false information was provided by Applicant to an investigator in connection with his personnel security clearance application. Finally, after weighing the cost of the scanner, the extensive detail of Applicant's initial attempt to conceal the theft, the pattern of similar conduct in stealing computer discs and pens, and Applicant's interest in a favorable outcome of his security clearance adjudication, I conclude Applicant deliberately falsified the October 2003 statement regarding how he came into possession of the scanner.

Because I conclude the government has met its burden of proof under the PC guideline, the burden shifts to Applicant to refute, explain or mitigate the facts. The PC guideline contains three mitigating conditions (MC) that potentially could overcome the pattern of dishonest conduct. PC MC E2.A5.1.3.1. (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*) does not apply to these circumstances as dishonest conduct on the job is always relevant to a determination of whether an applicant has the suitable character elements to safeguard classified information. Stealing expensive equipment from one's employer and stealing computer discs and pens from the employer's customer represent extremely poor judgment. Applicant's thievery is found even more flagrant because Applicant had no intention of returning the scanner until he was confronted by his supervisor. He only returned the discs after his thefts had been observed by the manager and his coworkers, and after he discovered the discs were incompatible with his home computer.

Applicant also claims he stole the discs because he could not afford to buy them. Not having the money to afford the discs does not give Applicant the right to repeatedly violate the law to satisfy his personal desires.

PC MC E2.A5.1.3.2. (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*) While the falsification was an isolated incident, it occurred less than two years ago and must be considered recent. What is more important is that Applicant continues to deny he falsified his October 2003, sworn statement.

When an applicant makes a good-faith effort to correct the falsification before being confronted with the facts, he may achieve sufficient mitigation under PC C E2.A5.1.3.3. (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). Though Applicant finally furnished the true account of stealing the scanner in his December 2003 sworn statement, the structure of the statement persuades me to conclude Applicant did not volunteer the information. Indeed, he continues to deny he falsified the October 2003 statement. Applicant has not produced sufficient evidence to find in his favor under PC MC E2.A5.1.3.3. Accordingly, I find against Applicant under the PC guideline.

A review of the facts and circumstances of this case results in the same conclusion under the general factors of the whole person concept. Even though the theft of the scanner occurred more than nine years ago, Applicant furnished false information in October 2003 that he did not steal the scanner. The recency of the falsification must be scrutinized closely under E2.2.1.3. (*the frequency and recency of the conduct*) of the whole person concept. Applicant's age (30) when he falsified the false, sworn statement in October 2003 must also receive careful consideration under E2.2.1.4. (*the individual's age and maturity at the time of the conduct*) While Applicant claims he has matured professionally and personally since the early to middle 1990s, Applicant has provided only scholastic transcripts showing his commendable accomplishments in the computer field. These academic accomplishments have negligible, probative value under

E2.2.1.6. (*the presence or absence of rehabilitation and other behavioral changes*) of the whole person. In view of Applicant's continuing denial he falsified the October 2003 sworn statement, there is insufficient evidence to justify his past behavior will not recur in the future. See, E2.2.1.9. (*the likelihood of recurrence or continuation*).

FORMAL FINDINGS

Paragraph 1 (personal conduct, Guideline E): AGAINST THE APPLICANT.

- a.. For the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- 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 Applicant a security clearance.

Paul J. Mason

Administrative Judge