

DATE: September 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-15806

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jeff Nagel, Esquire, Department Counsel

FOR APPLICANT

B. Daniel Lynch, Esquire, Applicant's Counsel

SYNOPSIS

The Applicant misused his present employer's information technology systems on four separate occasions more than ten years ago. This misuse also constitutes a pattern of rule violations. He has recently disclosed this misuse to his employer; and as such, is not vulnerable to coercion, exploitation or duress. The misuse of Information Technology Systems is also not recent. Those who know and work with the Applicant think most highly of him. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On April 25, 2005, 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 the 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 May 27, 2005.

The case was received by the undersigned on July 19, 2005. A notice of hearing was issued on August 3, 2005, and the case was heard on August 30, 2005. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence, and called two witnesses to testify on his behalf. The transcript (TR) was received on September 14, 2005. The issues raised here are whether the Applicant's admitted Misuse of Information Technology Systems and related Personal Conduct militate against the granting of a security clearance. [The Applicant admits the underlying basis of all of the allegations, but denies subparagraphs 1.a.~1.d., in that his employer now knows of his past transgressions.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 44 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 M - Misuse of Information Technology Systems & Guideline E - Personal Conduct

1.a. and 2.a. In about 1990 or 1991, the Applicant deleted a co-worker's private computer files, from a classified system and without authorization (TR at page 54 line 23 to page 57 line 12, and at page 65 line 15 to page 68 line 6). This co-worker had belittled the Applicant, and the deletion of the private files was the Applicant's way of "getting even" with the co-worker (*Id*). The Applicant's then and present employer is aware of this incident (Applicant's Exhibit (AppX) A at page 1).

1.b. and 2.a. In about 1994, the Applicant viewed a co-worker's personal computer files containing personal information, from a classified system and without authorization (TR at page 59 lines 8~22, and at page 68 line 7 to page 71 line 8). He "attempted" to compare his co-worker's "accomplishments and goals" with his own, in preparation for his evaluation (*Id*). The Applicant's then and present employer is also aware of this incident (AppX A at page 1).

1.c. and 2.a. In about 1994, the Applicant accessed his supervisor's personal computer files containing personnel evaluations, from a classified system and without authorization (TR at page 59 line 23 to page 60 line 7, and at page 71 line 9 to page 72 line 21). He again attempted to compare himself with his co-workers (*Id*). The Applicant's then and present employer is aware of this incident (AppX A at pages 1~2).

1.d. and 2.a. In about 1993 or 1994, the Applicant accidentally deleted shared files from a classified computer system (TR at page 60 line 8 to page 61 line 17, and at page 72 line 22 to page 74 line 19). The Applicant's then and present employer is aware of this incident (AppX A at pages 1~2).

1.e. and 1.f. In about 1994, the Applicant disclosed to his spouse the location of his job site, where the Applicant worked on a classified test program (TR at page 62 at line 18 to page 63 line 15, at page 75 line 10 to page 76 line 9, and at page 79 line 25 to page 82 line 9). While out boating with his spouse, the Applicant pointed out the barge on which he worked (*Id*). The Applicant's spouse has little recollection of the incident, but the Applicant was subsequently removed from the special access program (*Ibid*, and TR at page 49 lines 1~16).

Mitigation

Those who know and work with the Applicant think most highly of him (TR at page 21 line 15 to page 42 line 12, at page 43 line 22 to page 50 line 17, and AppXs B and C). His former supervisor is also recommending that the Applicant succeed her as a supervisor (TR at page 32 lines 6~15).

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. Furthermore, 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 that is speculative or conjectural in nature.

The Government must make out a case under Guideline E (Personal Conduct), and Guideline M (Misuse of Information Technology Systems); 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.

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 rules, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

The Applicant admittedly misused his employer's classified computer system on four separate occasions from about 1990 to 1994. The first and second disqualifying conditions under Misuse of Information Technology Systems are therefore applicable as there was "unauthorized entry into . . . [an] information technology system," and on one occasion "destruction . . . [of] information residing on an information technology system." This was more than ten years ago, however, thus bringing his misconduct within the purview of the first mitigating condition, as the "misuse was not recent." Further evidence of the Applicant's trustworthiness is the testimony of his former supervisor, and the five letters of recommendation from those who know and work with the Applicant. Guideline is therefore found for the Applicant.

As to the Applicant's admitted related Personal Conduct, the fourth and fifth disqualifying conditions are applicable as the above misuse was concealed from his employer, which "render the person susceptible to blackmail," and there is a "pattern of . . . rule violations." This is countered by the fifth mitigating condition, however, as the Applicant, by disclosing his past transgressions, "has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation or duress." The past pattern of rule violations is countered by his decade of exemplary work and conduct as attested to by those who know and work with the Applicant. Guideline E is also found for the Applicant.

FORMAL FINDINGS

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

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.
- e. For the Applicant.
- f. For the Applicant.

Paragraph 2: FOR THE APPLICANT

a. For 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 clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge