

KEYWORD: Personal Conduct

DIGEST: Applicant deliberately concealed his illegal drug involvement from the Government on several occasions since first applying for a security clearance. Ten years after regaining his sobriety, Applicant revealed his drug abuse history and apologized for his long history of false statements made to the Government. Applicant deserves significant credit for his disclosures, albeit very belated, and he is highly regarded by his coworkers, but his extensive record of falsification continues to raise doubts about his personal judgment, reliability, and trustworthiness. Clearance is denied.

CASENO: 02-17863.h1

DATE: 01/25/2005

DATE: January 25, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17863

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant deliberately concealed his illegal drug involvement from the Government on several occasions since first applying for a security clearance. Ten years after regaining his sobriety, Applicant revealed his drug abuse history and apologized for his long history of false statements made to the Government. Applicant deserves significant credit for his disclosures, albeit very belated, and he is highly regarded by his coworkers, but his extensive record of falsification continues to raise doubts about his personal judgment, reliability, and trustworthiness. Clearance is denied.

STATEMENT OF THE CASE

On December 4, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant. The SOR 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 Applicant. [\(1\)](#) DOHA recommended referral to an administrative judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked. The SOR was based on personal conduct (Guideline E).

On January 7, 2004, Applicant executed an Answer to the SOR, and requested a hearing before a DOHA administrative judge. The case was assigned to me on ay 3, 2004. Pursuant to formal notice of May 5, 2004, a hearing was held as scheduled on May 26, 2004. Four Government exhibits and 11 Applicant exhibits were entered into the record. Applicant also testified, as reflected in a transcript received June 7, 2004.

FINDINGS OF FACT

The SOR alleges personal conduct (Guideline E) concerns due to Applicant having deliberately falsified security clearance applications executed in 1989, 1994, and 2001, by failing to disclose his use and purchase of marijuana and cocaine and his treatment for illegal drug abuse, and otherwise lying about his illegal drug involvement during investigations into his security suitability conducted in 1983, 1990, and 1995. In his answer, Applicant admitted he had made the false statements as alleged, but submitted in mitigation that he "faced up to [his] past," volunteering in his subject interview of 2001 that he had lied on previous security clearance applications. Applicant's admissions are accepted and incorporated as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact:

Applicant is a 48-year-old systems engineer who has worked for a defense contractor since December 1982, continuing his employ after the company was acquired by another defense firm in 1999. Initially granted a secret clearance in April 1983, Applicant has held a top secret clearance since January 1990 for his defense-related duties. He has a history of illegal drug use from 1974 until late 1991 that he concealed from the Department of Defense until October 2001, as follows:

Applicant began to drink alcohol and to abuse illegal drugs in high school. He consumed an average of four to six beers daily from 1974 to December 1991. He also started using marijuana in 1974 because his friends were smoking it. Applicant enjoyed the drug's effects, and he used it regularly (almost daily) and purchased it weekly, paying about \$20 for a half ounce, from 1974 to 1980. Following his marriage in May 1980, he continued to smoke marijuana approximately once monthly when it was offered at parties. On completing his studies for his bachelor of science degree in math and logistics, Applicant went to work for a defense contractor in December 1982. He was granted a secret clearance shortly thereafter in April 1983. Applicant did not disclose his marijuana involvement when he applied for that clearance as he assumed he would be denied the job and clearance opportunity if he admitted to using and possessing illegal drugs. [\(2\)](#)

Applicant stopped using marijuana in the mid-1980s as he lost interest in the drug. Sometime in 1986 or 1987, Applicant told his spouse that he thought he had a drinking problem. No longer able to drink at home, he began to conceal his drinking from her. He also started snorting cocaine occasionally at parties, about twice a year until 1988. His use increased in 1989 as he liked the effect the drug had on him at that time, and to 1990 he snorted cocaine once to twice weekly, primarily when alone. He purchased cocaine once to twice weekly at a cost of \$50 for a half gram, which led to some problems with paying bills on time.

On August 15, 1989, Applicant executed a Personnel Security Questionnaire (Industrial) in application for a clearance upgrade to top secret. Having failed to admit during his first background investigation that he had used marijuana, Applicant felt caught in a trap. Fearful he might lose his job not only because of his past drug use, but also because of his past dishonesty, Applicant responded "No" to questions 18.a. ["Have you ever used any narcotic, depressant, stimulant, hallucinogen (to include LSD or PCP) or Cannabis (to include marijuana or hashish) except as prescribed by a licensed physician?"] and 18.b. ["Have you ever been involved in the illegal purchase, possession, or sale of any narcotic, depressant, stimulant, hallucinogen, or Cannabis?"]. Applicant falsely certified that his answers were "true, complete, and correct to the best of [his] knowledge and belief." Applicant was granted his top secret clearance in January 1990.

Although Applicant reported to work under the influence of cocaine on occasion, he had no obvious difficulties at work because of his drug use and it remained hidden from his employer. However, his use of alcohol and cocaine caused him problems in his marriage. At the urging of his spouse, Applicant sought outpatient treatment in 1991. For about a year, Applicant attended weekly counseling for his substance abuse while continuing to drink on average four to six beers daily and to snort cocaine once to twice a month.

In late December 1991, Applicant began an affiliation with Alcoholics Anonymous (AA), going to daily meetings for the first year. With the help of AA, he stopped using alcohol and cocaine. His AA attendance gradually decreased over the next few years to where it ceased altogether by 1997, but he did not resume use of mood-altering substances.

In conjunction with a periodic reinvestigation into his security suitability, Applicant completed a Personnel Security Questionnaire (DD Form 398) on July 20, 1994. Applicant again elected to conceal his illegal drug involvement, and responded "No" to question 22.a., which asked whether he had ever tried or used or possessed any narcotic (to include heroin or cocaine), depressant (to include quaaludes), stimulant, hallucinogen (to include LSD or PCP), or cannabis (to include marijuana or hashish), even one time or on an experimental basis, and question 22.b. concerning any involvement ever in the purchase of illegal drugs. Applicant also did not reveal that he had received counseling for his abuse of cocaine and alcohol. Unaware of Applicant's illegal drug abuse history, the Department of Defense renewed his top secret clearance in March 1995.

In update of his clearance, Applicant submitted a Security Clearance Application (SF 86) in early May 2001. ⁽³⁾ Still fearing the repercussions for his security clearance and ultimately his job, Applicant responded "No" to question 28 ["Have you EVER illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly and immediately affecting public safety."]

On October 3, 2001, Applicant was interviewed by a special agent of the Defense Security Service (DSS) in conjunction with the periodic reinvestigation of his clearance. During the interview, the DSS agent and Applicant went over his responses on his recent SF 86. When the agent asked him the drug questions, Applicant decided he could no longer lie. He volunteered to the agent that he had not been truthful about his use of illicit drugs and alcohol abuse during his prior security investigations or on his earlier security clearance applications, and he decided "to come clean and reveal [his] past use of illegal drugs and alcohol abuse counseling." Applicant detailed his abuse of marijuana from 1974 to the mid-1980s, of cocaine from the mid-1980s through 1991, and of alcohol until he became involved in AA starting late December 1991. Having overcome his substance abuse problem, Applicant described himself as "a trustworthy person who got himself painted in a corner," and his uncertainty as to how to get out of the situation led to the long delay in him coming forward.

Immediately after the interview, Applicant told his second level supervisor that he had not been candid in the past about his illegal drug involvement. On October 5, 2001, Applicant met again with the special agent where he then executed a sworn statement containing his disclosures of past drug involvement and admissions to having misrepresented his past to the Government.

Applicant is highly regarded by his current and former supervisors, his coworkers, and his neighbors, all of whom now know that Applicant abused alcohol and illegal drugs in the past.⁽⁴⁾ He has complied with the requirements for the handling and safeguarding of classified information, even taking the initiative to ensure that security issues were properly handled. His second-level supervisor from 1994 to 2002 believes Applicant's willingness to come forward with regard to his past is an example of his "willingness to do the right thing regardless of the consequences." Dedicated to his family, Applicant has been active in the community as a coach and teaching Sunday school.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Considering the evidence as a whole, I find the following adjudicative guidelines to be most pertinent to this case:

Guideline E

Personal Conduct

E2.A5.1.1. 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 also 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

E2.A5.1.2.5. A pattern of dishonesty

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

E2.A5.1.3.5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress;

E2.A5.1.3.7. Association with persons involved in criminal activities has ceased.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, I conclude the Government established its case with respect to guideline E, personal conduct. Applicant does not dispute that he deliberately concealed his illegal drug involvement from the time he initially applied for security clearance in 1982 until he was interviewed by a DSS agent in October 2001 during the latest periodic reinvestigation into his security suitability. He lied initially because he did not want his drug involvement to adversely impact his employment. He continued to perpetuate the lie each time he applied for clearance renewal, even on his application for his current clearance that he completed in May 2001. His lack of candor extended to interviews with DSS agents that was required for his top secret clearance. (5) Security significant personal conduct concerns are raised where an applicant has not been completely candid with the Government about matter relevant and material to his or her personnel security application and investigation. (See DC E2.A5.1.2.2. *The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire. . . used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* and DC E2.A5.1.3.3. *Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination*). Applicant's self-interest in keeping his job does not justify or excuse his deliberate falsifications. (6) Given his record of multiple dishonesty spanning several years, DC E2.A5.1.2.5. *A pattern of dishonesty or rule violations*, applies as well.

Even though his falsifications were too repeated to fall within mitigating conditions (MC) E2.A5.1.3.2., which requires the falsification be isolated, or E2.A5.1.3.3., which requires the rectification be prompt as well as prior to confrontation, Applicant is credited with eventually disclosing his illegal drug history in October 2001. He has also taken positive steps to significantly reduce the potential for vulnerability to coercion, exploitation, or duress by revealing his past drug use to his spouse and close coworkers and neighbors. Immediately after his DSS interview on October 3, 2001, Applicant revealed to his supervisor that he had a history of illicit substance abuse that he had previously concealed. (See E2.A5.1.3.5.) There is no evidence that he is currently associating with any individuals involved in criminal activities such as illegal drug use or purchase (see E2.A5.1.3.7). Also in his favor, Applicant has expressed regret for his failure to fulfill his obligation to be candid with the Government.

Yet, the Government can ill afford allowing individuals to decide for themselves the timing and extent of disclosure. For many years, Applicant showed a willingness to lie to the Government to conceal negative information about himself when he believed it was in his personal interest to do so. Applicant's falsifications were not confined to the period when he was actively abusing, but continued long after he had achieved sobriety. Applicant had the opportunity to correct old falsifications when he completed his SF 86 in May 2001, but he elected instead to again falsely deny that he had ever used illegal drugs while possessing a security clearance. It is not just the calendar time for making correction of material misstatements that is security significant to making an overall assessment of candor and honesty in an applicant, but the crucial event(s) where disclosure could be reasonably expected of the applicant and was disregarded. When asked at his hearing about his failure to relieve himself of the heavy burden of falsification that he claimed had been weighing on him for several years, Applicant responded he hadn't yet made up his mind that he was going to come clean about his past. (Tr. 60) Applicant made no effort to contact either the Government or his employer after he completed his latest SF 86, and while he volunteered the details of his drug use, the disclosures of October 2001 were in response to inquiries from the agent. Acknowledging that it took some courage on his part to reveal his drug abuse history after his years of concealment, his rehabilitation is still viewed as incomplete. Having already testified at his hearing that his initial omission was due to selfishness, he subsequently testified he had been told by others initially to not report what was in the past ("I was advised, when I first filled out the first security clearance, that it's, that you did things in the past, you don't have to bring those up, and that was poor guidance, and I should have known better anyways." Tr. 38) He later attributed his falsifications at least in part to his failure to understand that what he reported to security would not have been revealed to his work department. (Tr. 66) Doubts are raised as to whether Applicant accepts full responsibility for his behavior. Applicant's record of dedicated contributions to his employer do not excuse his exercise of extremely poor judgment over several years. SOR subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., and 1.g. are resolved against him.

FORMAL FINDINGS

Formal Findings as required by Section 3. Paragraph 7 of Enclosure 1 to the Directive are hereby rendered as follows:

Paragraph 1. Guideline E: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: 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. Clearance is denied.

Elizabeth M. Matchinski

Administrative Judge

1. The SOR was issued under the authority of Executive Order 10865 (as amended by Executive Orders 10909, 11328, and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4).
2. Applicant indicated for the first time at his hearing that he had been given poor advice when he filled out his first personnel security questionnaire, that he had been advised that he need not bring up things that he did in the past. (Tr. 38) Applicant had told the DSS agent in October 2001 that he believed if he admitted to using illegal drugs, he might be denied his clearance and lose his job. (Exhibit 4) Also, when he was first asked at his hearing about his motivation for omitting his drug use, Applicant indicated, "I guess it was selfish at that time, because I was right out of college and it was my, you know, I was in charge of my life. . . ." (Tr. 37) The evidence does not show that he acted in good faith reliance on mistaken advice.
3. See Government Exhibit 1, which consists of an incomplete copy of the SF 86 bearing Applicant's signature and a date of April 30, 2001, and a complete copy generated May 4, 2001, that is unsigned by Applicant.
4. While Applicant testified credibly that he told his character references about his history of alcohol and drug use since "a lot of them were not aware that [he] had ever done drugs before" (Tr. 52), it is not clear to what extent they are aware of his past drug involvement.
5. Applicant admitted he was not candid during security clearance investigations in 1983, 1990 and 1995. While there is no information as to the dates of any interviews, the 1989 and subsequent investigations were for top secret access. As provided for in Department of Defense Regulation 5200.2-R dated January 1987, the background investigation for a top secret clearance covered a 5-year period and consisted of a subject interview, National Agency Check, Local Agency Checks, credit checks, developed character references, employment references, and select scoping as required to resolve unfavorable or questionable information. (See C.2.3. of 5200.2-R, Personnel Security Program Regulation)
6. See DOHA Appeal Board Decision in ISCR Case No. 99-0442 (April 22, 1999)