

DATE: August 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-19730

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 27 years old and works for a federal contractor. Applicant was arrested, charged and/or convicted of numerous criminal offenses from January 1995 through April 2000. Some of the offenses involved the selling of drugs, others were obstructing a police officer, and one was for strong armed robbery. Applicant's criminal history is extensive, as is his drug history. Applicant deliberately omitted his criminal history, drug history and other requested information on his security clearance application. Applicant has failed to mitigate the security concerns regarding his criminal conduct, personal conduct and drug involvement. Clearance is denied.

STATEMENT OF CASE

On May 7, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline J, criminal conduct, Guideline E, personal conduct, and Guideline H, drug involvement considerations.

Applicant provided two statements to the SOR that were deemed unresponsive and were returned to him. Applicant's final response dated August 4, 2004 was deemed appropriate. In it Applicant responded to the SOR allegations, admitting them all, and provided an explanation in extenuation and mitigation. Applicant elected to have his case decided on the written record. Department Counsel submitted the government's case on April 8, 2005. Department Counsel moved to amend the SOR to clarify specific allegations and requested Applicant to file any objection to the amendment and respond to the modified allegations. A file of relevant material (FORM) was mailed to Applicant on April 15, 2005 and received on May 5, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object nor did he file any additional evidence to be considered. The case was assigned to me on June 15, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and statements, I make the following findings of fact:

Applicant is 27 years old and works for a federal contractor. Applicant was almost 23 years old when he filled out his security clearance application (SF 86) on July 6, 2001.

Applicant was charged with battery on or about January 8, 1995. Applicant was charged with Strong-Armed Robbery on or about January 10, 1995. No information was provided regarding the disposition of these charges. Applicant was a juvenile when he was charged with these offenses.

On or about May 22, 1997, Applicant was charged with Eluding Police. On or about June 25, 1997, Applicant pled guilty and was placed on probation for twelve months.

On or about September 1, 1998, Applicant was charged with Obstructing or Opposing an Officer Without Violence. On or about May 10, 1999, Applicant pled guilty and was placed on probation for six months. He was also ordered to perform sixteen hours of community service. No information was provided regarding how this offense impacted his previous probation requirement.

On or about April 7, 1999, Applicant was arrested for Obstructing or Opposing an Officer Without Violence. On or about July 15, 1999, Applicant was arrested for Probation Violation, and Obstructing or Opposing an Officer Without Violence. On or about July 16, 1999, Applicant was charged with (1) Possession of Cocaine With Intent to Sell/Deliver (felony) and (2) Trespass After Warning. On or about February 21, 2000, Applicant pled guilty to the July 15, 1999 charges and was found guilty of Trespassing After Warning. He was placed on probation for 24 months. The adjudication of the drug charge withheld. No information was provided regarding the April 7, 1999 offenses.

On or about July 25, 1999, Applicant was charged with (1) Possession of Marijuana, and (2) Possession of Drug Paraphernalia. On or about September 23, 1999, these charges were nolle prossed.

On or about November 4, 1999, Applicant was charged with (1) False Name to a Law Enforcement Officer; (2) Possession of Drug Paraphernalia; (3) Possession of Cannabis; (4) Possession of Cocaine; and (5) Possession of Cocaine with Intent to Deliver. On or about February 21, 2000, Applicant pled guilty to Possession of Cocaine, Possession of Cannabis, Possession of Drug Paraphernalia, and False Name to Law Enforcement Officer, was found guilty, and sentenced to time served and placed on probation for two years. No information was provided regarding how long Applicant actually served in jail.

On or about April 5, 2000, Applicant was charged with (1) Probation Violation-Possession of Cocaine [2 counts] and (2) Probation Violation-Obstructing or Opposing an Officer Without Violence. On June 19, 2000, an Order of Termination of Probation as Unsuccessful was issued. No information was provided about the ramifications of the termination.

Applicant has been involved in criminal activity from January 8, 1995 through April 5, 2000. Applicant admitted allegations 1.a. through 1.j. of the SOR which includes the above mentioned arrests and charges. Applicant admitted the allegations in subparagraphs 2.a. through 2.f. of the SOR that he falsified material facts on his SF 86. The specific falsifications are provided below.

Applicant answered "No" to Question 19 on his SF 86 (*Your Medical Record-In the last 7 years, have you consulted a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition?*) Applicant attended court ordered drug counseling from June 15, 2000 to September 14, 2000. He did not provide this information at the time he filled out the SF 86. Applicant claimed he did not know that this question included his drug counseling. Applicant did not provide any additional information with regards to whether he followed up on the treatment recommendations.

In response to Question 21 (*You Police Record-Felony Offenses-Have you ever been charged with or convicted of any felony offense? For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal*

Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.) Applicant did not disclose his felony charge for Strong Armed Robbery.

Applicant answered "No" to Question 24 (*Your Police Record-Alcohol/Drug Offense-Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been sealed or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.)*) Applicant did not disclose any of his drug, charges or convictions.

Applicant answered "No" to Question 26 (*Your Police Record-Other Offenses. In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been sealed or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.)*) Applicant failed to disclose any of the criminal offenses for which he was arrested.

Applicant answered "No" to Question 27 (*Your Use of Illegal Drugs and Drug Activity-Illegal Use of Drugs. Since the age of 16 or in the last 7 years, which ever is shorter, have you illegally used an controlled substance, for example marijuana, cocaine, crack cocaine, hashish, narcotic (opium, morphine, codeine, heroin, etc.) amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.) hallucinogenics (LSD, PCP, etc.) or prescription drugs? Applicant failed to disclose his history of drug use.*

Applicant answered "No" to Question 29 (*Your Use of Illegal Drugs and Drug Activity-Drug Activity in the last 7 years, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis for your own intended profit or that of another? Applicant admitted in response to the SOR that he possessed cocaine, possessed cocaine with the intent to distribute, possessed marijuana. Applicant failed to disclose this information on his SF 86.*

Applicant's claims "this information⁽²⁾ was disclosed when [the] detective came by my home with this information when I first applied."⁽³⁾ Applicant stated that he was told to put on his SF 86 all of his arrests, but he missed some because he thought that the request was only for felonies.⁽⁴⁾ Applicant admitted allegation 3.b. that he used marijuana two to three times a week from about 1996 to on or about 1998. He claimed he did not list his drug use because he thought the use had to be for a long time.⁽⁵⁾ In Applicant's statement dated March 27, 2002, he stated he has "been clean for going

on 3 years."⁽⁶⁾ Presumably, Applicant is referring to his drug use. He also admitted that he was charged with multiple drug-related criminal offense.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline J, criminal conduct, Guideline E, personal conduct, and Guideline H, drug involvement considerations, with their respective DC and MC, apply in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome

determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁷⁾ The government has the burden of proving controverted facts.⁽⁸⁾ The burden of proof is something less than a preponderance of evidence.⁽⁹⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽¹⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹¹⁾

No one has a right to a security clearance⁽¹²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁴⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁵⁾ 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.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline J - Criminal Conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling classified information.

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

Guideline H-Drug Involvement is a security concern because improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline J, Guideline E, and Guideline H.

Based on all the evidence Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1 (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*), and E2.A10.1.2.2 (*A single serious crime or multiple lesser charges*) apply. Applicant was arrested, charged with, and convicted for various and numerous offenses from 1995 through 2000, including misdemeanors and felonies.

I considered all the mitigating conditions and specifically considered Criminal Conduct Mitigating Condition (CC MC) E2.10.1.2.1 (*The conduct was not recent*); CC MC E2.10.1.2.2 (*The crime was an isolated incident*); CC MC E2.10.1.2.4 (*The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*); and CC MC E2.10.1.3.6 (*There is clear evidence of successful rehabilitation*). I conclude none of the mitigating

conditions apply. Although Applicant was first arrested as a juvenile, he continued to be arrested for violating the law when he obtained the age of majority. Applicant's disregard and lack of respect for the law is apparent when considering some of his arrests were within a short period of time of each other, and many for the same or similar offenses. Applicant was given opportunities by the judicial system through probation and dispositions held in abeyance to change his behavior, but he squandered them. As late as April 5, 2000 Applicant was charged with a probation violation, possession of cocaine, and obstructing or opposing an officer without violence. His probation was terminated. No information was provided as to his current probation status. Applicant's last alleged criminal offense was in 2000 and although this might not be considered recent, considering Applicant's consistent and increasingly more serious pattern of criminal conduct, not enough time has elapsed to mitigate it under CC MC E2.10.1.2.1. Applicant has failed to provide any evidence of successful rehabilitation or if he has completed any sentence that may have been awarded due to his probation being revoked. Applicant has failed to mitigate the security concerns regarding his criminal conduct.

Based on all the evidence, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2 (*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*), PC DC E2.A5.1.2.4 (*Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*), and PC 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*) apply in this case.

Applicant deliberately omitted and concealed his extensive criminal record and drug history. He deliberately provided false answers on his SF 86 and did not divulge the information until confronted by an investigator. Applicant's conduct and concealment of information increases his vulnerability to exploitation and coercion. Applicant has shown through his criminal activity and by lying on numerous questions on his SF 86 a pattern of dishonesty and rule violations.

I considered all the mitigating conditions and specifically considered Personal Conduct Mitigating Condition (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*), PC MC E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*), and PC MC E2.A5.1.3.5 (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*). I conclude none of the mitigating conditions apply. Applicant blatantly falsified his SF 86. He did not provide the correct information until confronted by an investigator. Applicant did not offer any information to show any steps he may have taken to reduce his vulnerability to coercion or exploitation. Applicant

was obviously attempting to hide his past, which makes him especially vulnerable and unreliable. Applicant failed to mitigate the personal conduct security concerns.

Based on all the evidence, Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*Any drug abuse* ⁽¹⁶⁾), and E2.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*) apply. Applicant admitted using marijuana two to three times a week from 1996 to 1998. Applicant also was arrested and charged with multiple drug-related criminal offenses, involving the illegal possession of controlled substances.

I considered all the mitigating conditions and especially considered Drug Involvement Mitigating Condition (DI MC) E2.A8.1.3.1 (*The drug involvement was not recent*); E2.A8.1.3.2 (*The drug involvement was an isolated or aberrational event*); E2.A8.1.3.3 (*A demonstrated intent not to abuse any drugs in the future*); and E2.A8.1.3.4 (*Satisfactory completion of a prescribed drug treatment program including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional.*) I conclude none of these mitigating conditions apply. Although Applicant claims he has been "clean for three years" there is nothing to substantiate his claim. He has a lengthy history of drug involvement that includes using drugs, possessing and selling drugs. Applicant's involvement with drugs was not an isolated or aberrational event. Applicant did attend mandated drug counseling, but no information was provided about whether he followed up and completed the treatment recommendations. No information was provided by Applicant regarding his future intentions regarding drug use.

Applicant failed to mitigate the security concerns regarding his drug involvement.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered the whole person and I find Applicant failed to mitigate the security concerns regarding his criminal conduct, personal conduct, and drug involvement. Applicant's concealment and disregard for the truth is a grave and serious concern that reflects poorly on his character and judgment. Applicant's obvious lack of respect for the law is also a serious concern. Although Applicant claims he has been drug free for three years, based on his extensive involvement and lack of information about his potential rehabilitation raises a security concern. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guidelines J , E and H are decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1: Criminal Conduct (Guideline J) 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

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against the Applicant

Paragraph 2: Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.c. Against the Applicant

Subparagraph 2.d. Against the Applicant

Subparagraph 2.e. Against the Applicant

Subparagraph 2.f. Against the Applicant

Paragraph 3: Drug Involvement (Guideline H) AGAINST THE APPLICANT

Subparagraph 3.a. Against the Applicant

Subparagraph 3.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. Clearance is denied.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. Applicant is referring to the allegations in the SOR.

3. Item 7.

4. Item 9.

5. *Id.*

6. *Id.*

7. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

8. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.

9. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

10. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.

11. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.

12. *Egan*, 484 U.S. at 531.

13. *Id.*

14. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

15. Executive Order 10865 § 7.

16. E2A8.1.1.2.1 defines drug abuse as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.