

DATE: May 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23250

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In answer to Module 26 on an undated and unsigned Electronic Personal Security Questionnaire SF 86 Worksheet (EPSQW), the Applicant failed to disclose that he was arrested for and charged with burglary in 1996. As the Applicant admits that this was a knowing and wilful falsification, the provisions of 18 U.S.C 1001 are applicable. Mitigation is not shown; and as such, Guidelines E and J are found against the Applicant. Clearance is denied.

STATEMENT OF THE CASE

On July 31, 2003, 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 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 September 2, 2004.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on November 26, 2003. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on December 18, 2003, and submitted nothing in reply. The case was originally assigned to another judge, and was received by the undersigned for resolution on April 26, 2004. The issues raised here are whether the Applicant's admitted Personal Conduct and related Criminal Conduct militate against the granting of a security clearance. [The Applicant admits the allegations.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The

Applicant is 26 years of age, and is employed by a defense contractor that 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 E - Personal Conduct & Guideline J - Criminal Conduct

1.a. In answer to Module 26 on an undated and unsigned EPSQW, the Applicant failed to disclose that he was arrested for and charged with burglary in 1996 (Government Exhibit (GX) 5 at page 12). In his June 6, 2002, sworn statement, the Applicant states, "I did not list this incident on my Security Questionnaire because I did not think a detailed review of records would be conducted. I also did not want my employer to find out about the stupid thing I did at age 18 . . ." (GX 8 at page 2). In his August 22, 2003, Answer to the SOR, the Applicant further avers "I admit to deliberately omitting my prior convictions because I did not want my employer to find out" (GX 3).

2.a. The Applicant's admitted lack of candor is also a violation of 18 U.S.C. 1001. This federal statute states, in part, the following, "[w]hoever . . . knowingly and wilfully falsifies . . . a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined . . . or imprisoned . . ."

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 which is speculative or conjectural in nature.

The Government must make out its case under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct); 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.

Personal Conduct is conduct involving questionable judgement, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. 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.

CONCLUSIONS

When the Applicant filed out his EPSQW, he deliberately withheld from the Government that he was arrested and charged with burglary in 1996. The second Disqualifying Condition is therefore applicable as there is a "deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness . . ." No Mitigating Conditions are applicable. As there was a wilful falsification, Guideline E is found against the Applicant.

As to his admitted Criminal Conduct, his false representation on his EPSQW is also a violation of 18 U.S.C. 1001. The first Disqualifying Condition is therefore applicable as there is an "admission of criminal conduct, regardless of whether the person was formally charged." Again, no Mitigating Conditions are applicable; and as such, Guideline J is found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his admitted Personal Conduct and Criminal Conduct. The Applicant has thus not met the mitigating conditions of Guidelines E and J, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines E and J.

FORMAL FINDINGS

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

Paragraph 1: AGAINST THE APPLICANT

a. Against the Applicant.

Paragraph 2: AGAINST THE APPLICANT

a. Against 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 not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge