

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant's deliberate falsification of his 11 September 2000 clearance application and the criminal conduct he concealed makes him unsuitable for a security clearance. Clearance denied.

CASENO: 02-24485.h1

DATE: 02/28/2005

DATE: February 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24485

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Nichole Ligon Noel, Esquire, Department Counsel

James C. Norman, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's deliberate falsification of his 11 September 2000 clearance application and the criminal conduct he concealed makes him unsuitable for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 26 March 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of personal conduct and criminal conduct. [\(1\)](#) Applicant answered the SOR on 7 April 2004 and requested a hearing. DOHA assigned the case to me 19 July 2004 and I heard it 10 August 2004. DOHA received the transcript 25 August 2004.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR, except for subparagraph 1.a. I incorporate his admissions as findings of fact. He is a 26-year-old software engineer employed by a defense contractor since July 2000. He previously had a clearance in the 1990s while in the military and government service.

When Applicant applied for an industrial clearance in September 2000, he deliberately concealed his criminal conduct between July 1999 and March 2000 by answering "no" to questions 22 (firearms offenses), 25 (military offenses), and 26 (other offenses). In fact, he had received non-judicial punishment in September 1999 for forging military permanent-change-of-station orders to get out of an apartment lease, had been arrested in January 2000 for an alleged assault in July 1999, and was pending trial for assault and firearms charges in March 2000. [\(2\)](#) [\(3\)](#) In a 4 September 2001 sworn statement (G.E. 8) he acknowledged the forged orders and the January 2000 arrest, but did not disclose the March 2000

arrest until confronted three days later by the investigating agent (Tr. 78). His 7 September 2001 sworn statement (G.E. 7) admitted his deliberate falsification: "I am sorry for not reporting this incident. With everything that I have accomplished to get to this point, you should be able to see how this event could ruin my life and ruin an asset to the government." At hearing, Applicant admitted he did not want his employer to learn of his criminal record (Tr. 58) and feared it would impact his clearance application (Tr. 80-81).

Applicant received commendations for his work at a government agency in October 2003, but the record is otherwise silent on his character or work performance.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline E (Personal Conduct) and Guideline J (Criminal Conduct).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly

consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁴⁾

CONCLUSIONS

The government made a Guideline E and J case and Applicant did not mitigate the conduct. He deliberately concealed his criminal conduct from the government.⁽⁵⁾ He has given varied and conflicting explanations for his conduct, but has acknowledged--and I conclude--he intended to conceal this information from both the government and his employer. This conduct violated 18 U.S.C. §1001.⁽⁶⁾ The underlying criminal conduct also bespeaks poor judgment and untrustworthiness as well as a willingness to take matters into his own hands in inappropriate ways.

Applicant's conduct demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on in order to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline E and J against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline E: AGAINST THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Paragraph 2. Guideline J: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. He was also alleged (1.a) to have falsely answered question 20 (adverse employment record) for failing to disclose the circumstances of his leaving employment in a fast food restaurant in December 1993. The government produced no evidence to corroborate its allegation (Tr. 86-87) and the Applicant's evidence establishes only that he left an at-will employment at a minimum wage job without giving notice because he was getting ready to move from the area and he was dissatisfied with work hours and schedule that interfered with his college classes. As described by Applicant, this incident does not meet the reporting requirements of question 20 for adverse employment history.
3. All three incidents revolved around a romantic triangle Applicant was in. The documentary record corroborates Applicant's claim that he was the more aggrieved party and acted largely out of perceived self defense. Thus, the January 2000 arrest involved counter-charges of assault that were ultimately nolle prossed by the state. And the other individual was eventually convicted of assault. The March 2000 charges were also nolle prossed except for the firearms offense, for which Applicant received probation before judgment. None of these dispositions vitiate the fact that Applicant displayed poor judgment in forging military orders in September 1999 and confronting his tormenter with a gun in March 2000.
4. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

6. E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

E2.A10.1.2.2. A single serious crime or multiple lesser offenses.