

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant's deliberate falsification of his 25 March 2002 security clearance application and his criminal conduct disqualify him for a security clearance. Clearance denied.

CASENO: 02-24823.h1

DATE: 03/02/2005

DATE: March 2, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24823

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esquire, Department Counsel

Robert E. Coacher, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's deliberate falsification of his 25 March 2002 security clearance application and his criminal conduct disqualify him for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 12 February 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 28 March 2004 and requested a hearing. DOHA assigned the case to me 19 July 2004 and I heard it 24 August 2004. DOHA received the transcript 1 September 2004.

FINDINGS OF FACT

Applicant denied the allegations of the SOR. He is a 24-year-old computer technician employed by a defense contractor since March 2002. He has not previously had a clearance.

When Applicant applied for an industrial clearance in March 2002, he deliberately concealed his adverse employment record, criminal record, and drug abuse history between 1997 and August 2000 by answering "no" to questions 20 (adverse employment), 24 (alcohol/drug offenses), and 27 (illegal drug use). In fact, he had been fired from his job in May 1998 for stealing from his employer, arrested for possession of marijuana in August 2000, and used marijuana from 1997 until his August 2000 arrest.

Although Applicant has consistently denied any intent to mislead the government, he has given varied and inconsistent

explanations for his omissions. ⁽²⁾ However, he acknowledged not being truthful on his application (Tr. 81) and not wanting his adverse conduct to be widely known (Tr. 36, 50). He did not contact the government investigator between completion of his application and his first interview in June 2002, and did not disclose his drug arrest until confronted with the information in a second interview in July 2002.

The record is 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. ⁽³⁾

CONCLUSIONS

The government established a Guideline E and J case and Applicant did not mitigate the conduct. He deliberately concealed his drug use, theft in the workplace, and criminal conduct from the government.⁽⁴⁾ 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.⁽⁵⁾ The underlying conduct also bespeaks poor judgment and untrustworthiness.

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: 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. Applicant eventually admitted he was not confused by the questions (Tr. 35) and knew that the electronic application would allow him to answer the questions truthfully even if he did not have all the details about his firing and arrest (Tr. 56-81).
3. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
4. 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. . . ;
5. 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.