

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant deliberately falsified her February 2002 clearance application. Her personal conduct renders her an unsuitable candidate for a security clearance. Clearance denied.

CASENO: 02-25917.h1

DATE: 02/24/2005

DATE: February 24, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-25917

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Nichole Ligon Noel, Esquire, Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant deliberately falsified her February 2002 clearance application. Her personal conduct renders her an unsuitable candidate for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 9 March 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial of her clearance because of personal conduct and criminal conduct.⁽¹⁾ Applicant answered the SOR on 31 March 2004 and requested a hearing. The case was assigned to me 28 June 2004, and I convened a hearing on 27 July 2004. DOHA received the transcript 10 August 2004.

FINDINGS OF FACT

Applicant admitted all the allegations of the SOR. Accordingly, I incorporate her admissions as findings of fact.

Applicant--a 24-year-old scan technician at a defense contractor--seeks clearance for access to classified information. She has not previously held a clearance

Applicant started her clearance processing on 1 February 2002, when she completed and signed her security clearance application. She did not disclose a May 2000 arrest for marijuana possession and possessing a stolen temporary license plate in response to either question 24 (drugs) or 26 (other arrests). She also did not disclose any of her five debts totaling nearly \$2,200.00⁽²⁾--all of which had been past due since at least August 2000--on either question 38 or 39

(debts greater than 90 or 180 days past due). She also falsified a 30 April 2002 sworn statement when she claimed the marijuana was found in the car she had borrowed to run an errand; in fact, the marijuana was found in a jeans jacket she was wearing at the time--albeit a jacket she found in the borrowed car and put on because it was cold.

Applicant's sworn statement, answer, and testimony present varied and contradictory explanations for her omissions, none of which obscure the essential facts: Applicant knew she had a May 2000 drug arrest and delinquent accounts and did not disclose them, seek guidance whether she should disclose them, or obtain records that would reveal to her whether she should disclose them. She acknowledges she did not want her employer to know about the marijuana arrest. She provided no character evidence to support her case. ⁽³⁾

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge 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 established its case under Guideline E and Applicant failed to mitigate the security concerns. She falsified the answer to four questions on her security questionnaire that would have uncovered criminal conduct and financial problems to increase her chances of getting her clearance.⁽⁵⁾ She later misrepresented the circumstances of her arrest to a government investigator.⁽⁶⁾

None of the mitigating factors apply. I conclude Guideline E against the Applicant.

The government also established its case under Guideline J.⁽⁷⁾

Applicant's falsifications violate the provisions of 18 U.S.C. §1001, and she provided insufficient mitigation of her conduct. I conclude Guideline 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

Subparagraph d: Against the Applicant

Paragraph 2. Guideline J: AGAINST THE APPLICANT

Subparagraph a: 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, both amended (Directive).
2. I accept Department Counsel's proffer that the debts at 1.c.(3) and 1.c.(4) are identical.
3. Her exhibits (A.E. A-C) dealt largely with her debts, which were not alleged as security concerns.
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.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;
7. 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.