

KEYWORD: Security Violations

DIGEST: Applicant had three incidents, within a two month time frame, in which she violated the security regulations of her employer. Mitigation has not been shown. Clearance is denied.

CASENO: 03-19011.h1

DATE: 03/14/2005

DATE: March 14, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19011

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had three incidents, within a two month time frame, in which she violated the security regulations of her employer. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On August 12, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) 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 Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

In a signed and sworn statement, dated September 9, 2004, Applicant responded to the SOR allegations. She requested that her case be decided on the written record in lieu of a hearing. On November 2, 2004, Department Counsel prepared the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and she was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant filed no response to the FORM. The case was assigned to this Administrative Judge on December 29, 2004.

Department Counsel offered 11 documentary exhibits (Exhibits 1-11), which have been admitted without objection. Applicant offered no documentary evidence into the record.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline K (Security Violations) of the Directive. The SOR contains three allegations, 1.a., through 1.c., under Guideline K. Applicant admitted all of the SOR allegations. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR and the admitted documents, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 45 years old. She is employed by a defense contractor, and she seeks a DoD security clearance in connection with his employment in the defense sector.**Paragraph 1 (Guideline K - Security Violations)**

Since this matter is being decided without a hearing, my evaluation is necessarily limited to the contents of the various documents that are found in the case file. The Government alleges that Applicant is ineligible for clearance because she has been involved in a number of security violations. They will be discussed as they were alleged in the SOR.

1.a. On February 21, 2003, Applicant failed to comply with security regulations by failing to properly follow the correct procedure to secure a part of the facility in which she is employed. This area was improperly secured for approximately two and one half hours until it was discovered and locked by a security officer (Exhibits 3, 5, 7, 8, and 11). The employer has concluded that this breach of security did not result in a compromise of information (Exhibits 8 and 11).

1.b. On March 7, 2003, Applicant again failed to comply with security regulations by failing to properly follow the correct procedure to secure a part of the facility in which she is employed. This area was improperly secured for approximately 30 hours until it was discovered and locked by a security officer (Exhibits 3, 5, 7, 9, and 11). The employer has concluded that this breach of security did not result in a compromise of information (Exhibits 9 and 11).

1.c. On April 3, 2003, Applicant again failed to comply with security regulations by failing to properly follow the correct procedure to secure a part of the facility in which she is employed. The area was improperly alarmed (Exhibits 3, 5, 7, 10, and 11). The employer has concluded that this breach of security did not result in a compromise of information (Exhibits 10 and 11).

Applicant has indicated that her home life was in some distress at the time that these security violations occurred, and this may have contributed to these incidents (Exhibits 3 and 5).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case.

As set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an

Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future."

The Administrative Judge 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

(Guideline K - Security Violations)

In this case, the Government has established its case under Guideline K. The record evidence clearly establishes Applicant failed to completely follow the approved safety procedures of her employer on at least three separate occasions over a time span of less than three months in 2003. Applicant has failed to introduce persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case against her.

Applicant's overall conduct pertaining to her security violations falls within Disqualifying Condition (DC) (E2.A11.1.2.2.), violations that are multiple and due to negligence. I conclude that Mitigating Condition (MC) (E2.A11.1.3.1.), the violations were inadvertent, is applicable to this case. However, this MC cannot mitigate the fact that Applicant committed three violations in such a short span of time, and that she failed to follow proper security procedures on two additional occasions after she was put on notice of her first violation.

Applicant has failed to offer any independent evidence indicating that she has is now more reliable and trustworthy. I resolve Guideline K against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline K: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against 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.

Martin H. Mogul

Administrative Judge