

KEYWORD: Criminal Conduct; Personal Conduct

DIGEST: Applicant was involved in a mutual affray with his stepbrother in April 1998, pled guilty to assaulting his girlfriend in November 1998, and pled guilty to criminal trespassing in November 2002. Applicant failed to appear for a hearing he demanded on his speeding citation and paid the fine after it had gone to collection. He was terminated from his employment for insubordination, failing to do assigned work, and chronic absenteeism. He deliberately falsified his security clearance application and a statement he gave to a DSS agent. Clearance is denied.

CASENO: 03-20540.h1

DATE: 02/23/2005

DATE: February 23, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-20540

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant was involved in a mutual affray with his stepbrother in April 1998, pled guilty to assaulting his girlfriend in November 1998, and pled guilty to criminal trespassing in November 2002. Applicant failed to appear for a hearing he demanded on his speeding citation and paid the fine after it had gone to collection. He was terminated from his employment for insubordination, failing to do assigned work, and chronic absenteeism. He deliberately falsified his security clearance application and a statement he gave to a DSS agent. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 12 April 2004, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 3 May 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 6 January 2005. On 8 February 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 22 February 2005.

**RULINGS ON PROCEDURE**

Without objection from Applicant, I granted Department Counsel's motion to amend the SOR by adding allegations 2.c and 2.d, as follows:

2.c. You falsified material facts on a security clearance application, which you caused to be transmitted on about August 8, 2001, when you answered "no" to question number 26, your police record, other offenses, in the last seven years have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25" (leave out

traffic fines of less than \$150 unless the violation was alcohol or drug related." You deliberately failed to disclose your arrest as set forth in allegation 1.c above.

2.d. You intentionally falsified material facts in a statement to a special agent of the Defense Security Service on or about August 8, 2003 when you stated, " I have never otherwise been arrested, charged, cited, held, detained, or questioned regarding any alcohol offense." And "I have never otherwise been arrested, charged, cited, held, detained, or questioned regarding any offenses regarding violence or domestic violence." You knew this was false because you were arrested for an offense involving alcohol and violence as set forth in allegation 1.c above.

### **FINDINGS OF FACT**

Applicant is a 32-year-old computer operator for a defense contractor. Ex. 1 at 1, 2. He had hoped to follow his father, who served more than 30 years in the military, but was unable to do so because of his eyesight. Tr. 9-10.

On 11 April 1998, Applicant was arrested and charged with assault. He and his stepbrother had been drinking alcoholic beverages at a bar and became embroiled in an affray. The fight was stopped with Applicant's stepbrother on top of him. Applicant had minor injuries, but declined medical treatment. Ex. 5. No charges were filed and the case was dismissed.

Applicant was arrested on 17 November 1998 and charged with assault, domestic violence, and malicious mischief. Applicant and his girlfriend were having problems. He arrived home and found his belongings piled up in the yard. Applicant forced open the door and pushed his girlfriend until she fell over a coffee table. He pushed over bookcases and threw items about the apartment. When his girlfriend tried to stop him, he threw her on the couch and began to strangle her with both hands. In attempt to prevent Applicant from damaging more property, his girlfriend grabbed him around the waist from behind. Applicant swung his arm back and struck her in the face. He left the apartment after being confronted by the landlord with a baseball bat. Ex. 6 at 2. Applicant pled guilty and was sentenced to jail for 30 days and to obtain anger management treatment. Applicant served 16 or 18 days in jail and received anger management treatment for one year. The charges were eventually dismissed. Answer; Tr. 19-25.

In April 1999, Applicant was terminated from his employment for insubordination, failing to do assigned work, and chronic absenteeism. Ex. 4. He also admits being terminated from four other jobs or leaving under unfavorable conditions. Tr. 38-40.

On 7 August 2001, applicant signed and submitted a security clearance application (SCA) in which he certified his answers were "true, complete, and correct" to the best of his knowledge and belief and acknowledged that a "knowing and willful false statement" could be punished under 18 U.S.C. § 1001. Question 26 asked if, in the previous seven years he had been arrested for, charged with, or convicted of any offenses not listed in other modules. Applicant answered "no," and failed to list his April 1998 arrest for assault and domestic violence. (2) Ex. 2 at 12.

On 29 November 2002, Applicant was arrested and charged with criminal trespass. Applicant had been out drinking alcohol with a friend. On his way home, he cut through private property, "underneath a garage," and was apprehended by police. A judgment of continuance was entered on condition Applicant pay court costs, complete a chemical dependency assessment, and comply with a verbal no contact order, which he did.

On 18 December 2002, Applicant was cited for speeding. He contested the citation, but failed to appear at the hearing. The judge assessed a fine of \$162. The fine was turned over for collection. Applicant did not pay the fine for some time. Tr. 48; Ex. 8.

On 8 August 2003, Applicant made a signed, sworn statement to a Defense Security Service agent. In it, he discussed some of his criminal offenses. He failed to include the 11 April 1998 arrest for assault and domestic violence. Applicant stated: "I have never otherwise been arrested charged, cited, held, detained, or questioned regarding any offenses regarding violence or domestic violence." Ex. 3 at 3.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to

deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

### **Guideline J--Criminal Conduct**

In the SOR, DOHA alleged Applicant was arrested in November 2002 and charged with criminal trespass/1st degree (¶ 1.a); arrested in November 1998 and charged with 3d degree assault/domestic violence (¶ 1.b); and arrested in April 1998 and charged with assault (¶ 1.c). Applicant admitted each of the allegations. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

The Government's evidence and Applicant's admissions establish potentially disqualifying conditions under Guideline J. Applicant admitted criminal conduct (DC E2.A10.1.2.1) consisting of multiple lesser offenses (DC E2.A10.1.2.2). Applicant appears to have a problem with alcohol, as each of the offenses occurred after he had been drinking. None of the mitigating conditions apply. There is no clear evidence of rehabilitation. *See* MC E2.A10.1.3.6. I find against Applicant.

### **Guideline E--Personal Conduct**

In the SOR, DOHA alleged Applicant was charged with speeding in December 2002 and failed to pay the fine (¶ 2.a); was terminated from employment in April 1999 for insubordination, failing to do assigned work, and chronic absenteeism (¶ 2.b); deliberately falsified his SCA by failing to list his arrest for assault/domestic violence (¶ 2.c); and intentionally falsified a statement by failing to acknowledge his arrest for assault/domestic violence. Applicant admitted the allegations in ¶¶ 2.a and 2.b, but denied he actually was insubordinate, failed to do assigned work, and was chronically absent. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government's evidence and Applicant's admissions establish potentially disqualifying conditions under Guideline E. His failure to appear for the hearing he demanded on the speeding citation and the failure to timely pay his fine, as

well as the reasons for the termination of his employment is reliable unfavorable information (DC E2.A5.1.2.1) and demonstrates a pattern of rule violations (E2.A10.1.2.5). The deliberate omission of relevant and material facts from his SCA is a possibly disqualifying condition. DC E2.A5.1.2.2. Deliberately providing false or misleading information to an investigator concerning a security clearance is also disqualifying. DC E2.A5.1.2.3. An applicant's arrest for criminal conduct is relevant and material to a determination of that applicant's security worthiness. After carefully considering all of the evidence and the adjudication process factors, I find against Applicant. *See* Directive ¶ 6.3.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

#### Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

#### Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

### **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. Required by Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).
2. He did not list that offense under any of the other modules in the SCA.