

KEYWORD: Security Violations, Personal Conduct

DIGEST: Applicant is 40 years old and works as a budget analyst for a federal contractor. Applicant left a classified document on top of his desk, together with other mail, for nearly a week in an unclassified area. He also ordered a subordinate to bill hours to a contract for work unrelated to the contract. He did not intend to submit a letter to his employer, in which he forged his landlord's signature, for reimbursement of his security deposit for his residence. Applicant has not mitigated the security concerns regarding security violations and personal conduct. Clearance is denied.

CASE NO: 03-21140.h1

DATE: 06/20/2006

DATE: June 20, 2006

In re:

SOULES, Thomas Bradley

SSN: 148-52-8228

Applicant for Security Clearance

ISCR Case No. 03-21140

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Ray T. Bank, Esq., Department Counsel

FOR APPLICANT

Leslie McAdoo, Esq.

SYNOPSIS

Applicant is 40 years old and works as a budget analyst for a federal contractor. Applicant left a classified document on top of his desk, together with other mail, for nearly a week in an unclassified area. He also ordered a subordinate to bill hours to a contract for work unrelated to the contract. He did not intend to submit a letter to his employer, in which he forged his landlord's signature, for reimbursement of his security deposit for his residence. Applicant has not mitigated the security concerns regarding security violations and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On November 30, 1998, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).⁽¹⁾ On January 13, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons under Guideline K (Security Violations) and Guideline E (Personal Conduct) 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 granted or revoked.

In a sworn, written statement, dated February 7, 2005, Applicant responded to the SOR allegations and requested a hearing. Department Counsel indicated the government was ready to proceed on February 24, 2005. The case was assigned to me on April 4, 2005. A Notice of Hearing was issued on April 25, 2005. Applicant requested a continuance and I granted it. An Amended Notice of Hearing was issued on May 17, 2005, and the hearing was held, as scheduled on June 15, 2005. During the hearing, five Government exhibits, 12 Applicant exhibits, and the testimony of two Applicant witnesses (including Applicant), were received. The transcript (Tr.) was received on June 27, 2005.⁽²⁾

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to security violations under Guideline K (subparagraph 1.a.), and personal conduct under Guideline E (subparagraph 2.c.). Those admissions are incorporated herein as findings of fact. Applicant denied the allegations pertaining to personal conduct under Guideline E (subparagraphs 2.a. and 2.b.). After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Since September 1996, Applicant, a 40-year-old male, has worked as a budget analyst for a defense contractor. (3) He first obtained a clearance in either 1998 or 1999. (4) Applicant received a degree in marketing in 1989. He was married in 2002, but divorced in April 2003. He has no children.

On or about September 2002, Applicant received mail at work labeled "secret." He left the classified material for about one week in plain view on his desk in an unclassified area. (5)

The package in question was in a flat cardboard box and was sent by either Fed-Ex or UPS. (6) He put this package with the other packages on his desk. He stated that: "[i]t could have been as long as a week [that package set on his desk opened]. Then I opened it and saw that it had markings on it but I wasn't familiar with it. I wasn't exactly -- I didn't feel comfortable opening it right then." He further testified:

It had brown paper as many of the other documents have. This one was marked "Secret." I know now what that means but at the time I did not. I have never used a clearance for any documents. This is the only classified document I had ever seen up until that point. I put it in my desk because it came through public mail.

I figured my best judgment at the time then was it just went through public mail. I'm not going to tell anybody I've got it. I'll keep it in my drawer and lock it. It was two or three days until I got to it. I called my FSO [security officer] to ensure that I was not going to risk anything going wrong with the package and ask her, where do I need to go to open it, how do I open it, what do I need to do. (7)

When Applicant informed his security officer that the document was in his possession, he was given a written reprimand for not following the protocol for handling classified documents. He was also informed that his handling of the package was a violation of procedure. (8) Consequently, he attended two briefings on handling classified documents. (9)

While living in another state, in October or December 2002, Applicant accepted a job with his current employer, which

required him to move his residence and break his lease for the house he was renting. At first the landlord did not want to let him out of his lease, so Applicant wrote a letter and signed it in place of his landlord. He was going to submit this letter to his employer for reimbursement for his lost security deposit, the equivalent of one month's rent. He told a coworker he had written the letter and was going to submit it. The coworker told management. However, Applicant stated that he never intended to submit the letter, he was just letting off steam against the landlord.⁽¹⁰⁾ In fact, he never submitted it. In a letter dated June 14, 2005, the controller of his current employer, indicated that he "reviewed the files relating to an Employee Relocation report for [Applicant]. The report related to a request for reimbursement for a forfeited security deposit. The file did not contain a letter purporting to be from [Applicant's] landlord in [another state]."⁽¹¹⁾

On or about March 23, 2001, Applicant ordered a subordinate to bill hours to a United States Air Force (USAF) contract for work unrelated to that contract after his boss instructed him to do this. Applicant conveyed the information to his coworker, who was on the phone. He gave her a note telling her what the boss wanted her to do.⁽¹²⁾ His coworker reported Applicant and her boss to the defense contractor's Ethics Department.⁽¹³⁾ The defense contractor's standards required Applicant to call the Ethics Department when he first suspected the instruction to be unethical.⁽¹⁴⁾ Both Applicant and his boss were reprimanded.

Applicant also failed to comply with the defense contractor's time recording policy by not accurately accounting for his time on a project.⁽¹⁵⁾ His boss told him to only account for 40 hours, even if he worked more time than that. Applicant complied for about two to three weeks. He then consulted a co-worker, who told him that he should follow the contractor's policy and account for all hours worked.⁽¹⁶⁾ He allegedly knew that such action was illegal. He said he would follow his boss's advice because his boss "threatened [him] with termination." On April 24, 2001, Applicant's employer issued him a Formal Reprimand and Censure.⁽¹⁷⁾ His employer determined that he had failed to comply with their time reporting policy by not accurately accounting for his time and providing improper direction to a subordinate with respect to her time charging responsibilities. For these two infractions, he was formally reprimanded for violation of the firm's policies and practices; and he was also placed on probation for a year.

POLICIES

Enclosure two of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be

measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁸⁾ The government has the burden of proving controverted facts.⁽¹⁹⁾ The burden of proof is something less than a preponderance of evidence.⁽²⁰⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽²¹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²²⁾

No one has a right to a security clearance⁽²³⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²⁴⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁵⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁶⁾ 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.

Based upon consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline K (Security Violations): *The Concern:* Noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information.

Guideline E (Personal Conduct): *The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards.

Security Violations

Applicant left an unopened package, in either Fed-Ex or UPS packaging, on his desk for at least two to three days before he even opened it. Upon opening the package, he saw the word "Secret" written on an envelope. He then put the "secret" document back in the original envelope and placed it in his locked desk drawer for safekeeping. After a week, he called his security officer to inquire how to handle the package. When he disclosed how he had handled the package, he was issued a written reprimand for not following the appropriate procedure. ⁽²⁷⁾ Applicant was negligent and careless in handling the classified document. His first mistake was keeping the firm's mail on his desk for up to three days before opening it. Secondly, once he opened the mail and saw the word "secret" he did absolutely nothing to safeguard it for three or four days. Consequentially, I conclude Security Violations Disqualifying Condition E2A11.1.2.2 (*violations that are deliberate or multiple due to negligence*) applies.

On the other hand, some of the mitigating security violations concern apply here. Applicant received training on how to properly handle classified documents after his initial mistake and confusion. The record is devoid of any other instances of improper handling of classified documents. Thus, I conclude Security Violations Mitigating Conditions (SV MC) E2.A11.1.3.1 (*were inadvertent*) and SV MC E2.A11.1.3.2 (*were isolated or infrequent*) apply. Applicant mitigated the security concerns caused by his security violations. Accordingly, allegation 1.a. of the SOR is concluded for Applicant.

Personal Conduct

In March 2001, Applicant ordered a subordinate to bill hours to a USAF contract for work unrelated to the contract. Applicant indicated that even though he thought his boss should not have told him to do this particular activity, he did it because his boss threatened to terminate him if he objected. Instead of reporting this questionable act, he caved in and executed his boss's request even though he believed it was not the correct thing to do. Such behavior demonstrates his susceptibility to coercion. Personal Conduct Disqualifying Condition E2.A5.1.2.4 (*personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*) applies. None of the Personal Conduct Mitigating Conditions apply to this allegation. Accordingly, allegation 2.a. of the SOR is concluded against Applicant.

On the other hand, Applicant allegedly forged the signature of his landlord on a letter to be submitted to the contractor's finance department for a \$1,175 reimbursement of his residential security deposit, there is no evidence in the record that Applicant actually submitted this letter to the firm. He was reimbursed through the firm's regular channel for repayment. Thus, the Personal Conduct Disqualifying Conditions do not apply to this allegation. Personal Conduct itigating

Condition E2.A5.1.3.1 (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*) applies. Accordingly, allegation 2.b. of the SOR is concluded for Applicant.

Applicant received training on how to properly handle classified documents after his initial mistake and confusion. Also, he attended two briefings on handling classified documents. Moreover, the record is devoid of any other instances of improper handling of classified documents. Thus, the Personal Conduct Disqualifying Conditions do not apply. Consequently, PC MC E2.A5.1.3.5 (*the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) applies. Accordingly, allegation 2.c. of the SOR is concluded for Applicant.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I am persuaded by the totality of the evidence in this case that it is clearly consistent with the national interest not to grant Applicant a security clearance because he feared termination of his job when his boss told him to do an objectionable task. Under these circumstances, Applicant has failed to mitigate or overcome the Government's case.

For the reasons stated, I conclude Applicant is not suitable for access to classified information.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline K (Security Violations): FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a. Against Applicant

Subparagraph 2.b. For Applicant

Subparagraph 2.c. For 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.

Jacqueline T. Williams

Administrative Judge

1. Government Ex. 1 (Security Clearance Application, dated November 30, 1998).
2. On August 2, 2005, Applicant's counsel filed a Notice of Filing of Transcript Errata. The Government did not object to the transcript errata's sheet. I accepted all of Applicant's errata, and amended the transcript to reflect those changes.
3. Tr. 60.
4. Tr. 62.
5. Tr. 63-70; Applicant's Answer, dated February 7, 2005.
6. Tr. 65-66.
7. Tr. 66-67.
8. Tr. 69.

9. Tr. 70.

10. The SOR stated: "The landlord also returned the security deposit to you." At the hearing, Government Counsel did not know whether Appellant received two reimbursements for the lost security deposit. Thus, I will rely on the evidence to decide this issue.

11. Ex. L (Letter, dated June 14, 2005).

12. Tr. 87-88.

13. Tr. 90-92.

14. Tr. 95-96.

15. Tr. 84; Government Ex. 2 (Formal Reprimand and Censure, dated April 24, 2001).

16. Tr. 85-86.

17. Ex. 2, note 14, *supra*.

18. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.

19. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.

20. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

21. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.

22. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.

23. *Egan*, 484 U.S. at 531.

24. *Id.*

25. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

26. Executive Order 10865 § 7.

27. Tr. 69.