

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant is an electronics technician for a defense contractor. He completed two security clearance applications and did not note on either one that he had been terminated from a previous job. He did not list any drug use on his first application, but did admit to marijuana use on his second application. He was interviewed twice by security agents. He admitted in the first interview to marijuana use, but no other drug use. He admitted to marijuana, cocaine, and crack cocaine use in the second interview. Applicant has not mitigated security concerns for personal conduct. Clearance is denied.

CASENO: 03-22504.h1

DATE: 07/13/2005

DATE: July 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22504

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is an electronics technician for a defense contractor. He completed two security clearance applications and did not note on either one that he had been terminated from a previous job. He did not list any drug use on his first application, but did admit to marijuana use on his second application. He was interviewed twice by security agents. He admitted in the first interview to marijuana use, but no other drug use. He admitted to marijuana, cocaine, and crack cocaine use in the second interview. Applicant has not mitigated security concerns for personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On December 3, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on December 14, 2004. The SOR alleges security concerns under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) of the Directive.

Applicant answered the SOR in writing on December 27, 2004, denying all but one of the allegations under Guideline E. He provided an explanation for his actions as well as letters of recommendation and commendation. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on March 9, 2005. Applicant received a complete file of relevant material (FORM) on March 23, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due April 22, 2005. As of May 13, 2005, he had not responded. The case was assigned to me on May 18, 2005.

FINDINGS OF FACT

Applicant is a 26-year-old electronics engineer technician employed by a defense contractor for almost five years. He is a graduate of a technical college with an associate's degree. His October 2003 security clearance application states he has never married and has no children.⁽¹⁾ However, his December 2004 answer to the SOR states he has a two month-old child.⁽²⁾

The processing of Applicant's security clearance has been convoluted. Applicant submitted his first security clearance application on September 14, 1999. In response to question 20 asking if in the last ten years he had been fired from a job, quit after being told he would be fired, or left a job by mutual agreement following allegations of misconduct, unsatisfactory performance, or under unfavorable circumstances, Applicant responded "NO". In response to question 27 asking if since the age of 16 or in the last seven years, he had used illegal drugs, Applicant answered "NO".⁽³⁾

Applicant submitted his second security clearance application on October 8, 2003. Applicant again answered "NO" to question 20, concerning job termination. In response to question 27 concerning drug use, he answered "YES" stating he used marijuana ten times from January 1995 to January 1997.⁽⁴⁾

After submitting his first security clearance application, Applicant was twice interviewed by agents from the Defense Security Service (DSS). In his first interview conducted on February 12, 2001, Applicant admitted he was arrested for driving under the influence of alcohol in September 1998, and convicted in January 1999. He received a diversion sentence requiring him to undergo alcohol abuse treatment which he successfully completed. He denied being fired from any job but recounted a disagreement with one employer that he thought the employer could interpret that he fired Applicant. He provided details of an arrest in July 1997 for marijuana possession but denied involvement in the offense even though he was convicted of the offense. He stated he never used any other drugs.⁽⁵⁾

Applicant was again interviewed by a DSS agent on April 19, 2001. Applicant provided further details of his termination from his previous job. He admitted to threatening his former employer because he was angry. He admitted the employer told him he was terminated for absences from the job. Applicant stated that was alright with him since he intended to leave the job anyway. He stated "I intentionally failed to list my termination . . . on my Security Clearance Application (SCA) because I was afraid that it would keep me from getting a security clearance." Applicant admitted using marijuana, the powder form of cocaine, and crack cocaine. He admitted smoking marijuana twice weekly from 1995 to January 1999. He admitted snorting cocaine twice a month from 1995 to February 2001. He admitted smoking crack cocaine twice monthly from 1995 to January 1999, and five times from January 1999 to March 2001. Applicant admitted using cocaine a month before the April 2001 interview. He denied using any other illegal drugs. He stated "I knowingly falsified my SCA about my use and purchase of illegal drugs because I was afraid I could lose my job and the

chance of holding a security clearance." ⁽⁶⁾

Applicant presented a letter of commendation and recommendations from his present employer and present co-workers. He presented awards he received for his job performance in his present job. He presented recent urinalysis test results showing negative for use of drugs.

POLICIES

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." ⁽⁷⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. ⁽⁸⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. ⁽⁹⁾ An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence. ⁽¹⁰⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. ⁽¹¹⁾ 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information. ⁽¹²⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts. ⁽¹³⁾ An applicant "has the ultimate burden of

demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (14) "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." (15) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (16)

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

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

Guideline J - Criminal Conduct: A security concern exists because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, or trustworthiness.

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 section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government has established its case under Guideline E. Applicant's threats of bodily harm to his former employer, his termination for absences and tardiness from the job, false answers on both of his security clearance applications, and providing false information to security investigators brings the matter under Personal Conduct Disqualifying Conditions E2.A5.1.2.1 (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*); 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, . . . determine security clearance eligibility or trustworthiness. . .*); and E2.A5.1.2.3 (*deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, . . . in connection*

with a security or trustworthiness determination). In his statement of April 19, 2002, Applicant admitted to the unfavorable information that he threatened his former employer, and the employer fired him for absenteeism from his job. In the same statement, Applicant admitted he deliberately did not fully disclose his involvement with illegal drugs on his security clearance applications. In his first statement to security agents, Applicant deliberately failed to fully disclose his illegal drug use. I conclude the above disqualifying conditions have been established.

The Personal Conduct Mitigating Conditions possibly applicable to Applicant's case are E2.A5.1.3.1 (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*); and E2.A5.1.3.3 (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). The facts are clear that Applicant was not a good employee for his previous employer because he did not like the work he was doing. He and his employer had a disagreement. Applicant threatened his employer out of anger, even though the Applicant did not intend to carry out the threats. Applicant admitted that the employer, under the circumstances, could reasonably think he fired Applicant. The unfavorable information from his previous employer has been substantiated by Applicant's own admission and the situation is pertinent to determine if Applicant is trustworthy, reliable, and exercised good judgment. Applicant did not make a good-faith effort to correct the false information on both security clearance applications and in his first statement to investigators. It took two interviews for Applicant to reveal correct information. It took the second interview for Applicant to fully detail his use of illegal drugs. In fact, Applicant now is denying his use of cocaine and crack cocaine. In his December 21, 2004 answer to the SOR, Applicant states "I am denying the use of cocaine and crack cocaine. I am not sure where this information came from." It came from his own admission in his April 14, 2001 statement. Applicant has yet to tell a consistent story concerning his use of illegal drugs. Applicant has not corrected the falsification and has not mitigated the security concerns for personal conduct.

Allegation 1.k. in the SOR alleges Applicant falsified material facts in the DSS interview on April 19, 2001, by failing to disclose his full use of cocaine and crack cocaine. Allegation 1.l. in the SOR alleges Applicant falsified material fact in that same interview by failing to disclose the threats to his former employer. Applicant did disclose in this interview his use of cocaine and crack cocaine and his threats to the employer. I find for the Applicant on these two allegations.

The government has established its case under Guideline J. Applicant's false answers on his security clearance application and his false information to security investigators brings this matter under E2.A10.1.2.1 (*allegations or admission of criminal conduct, regardless of whether the person was formally charged*); and E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*). A materially false, fictitious, or fraudulent statement on a security clearance application or statement to a security investigator is a serious federal criminal offense.⁽¹⁷⁾ Applicant's statement of April 19, 2001, shows he provided false information concerning his illegal drug use on both security clearance applications, and he did not provide correct or full information during his first security interviews. I conclude the above disqualifying conditions have been established.

Applicant has presented no information to mitigate the disqualifying conditions. He provided false answers and made false statements as late as 2001 and even in his December 2004 answer to the SOR. His falsifications are recent and not isolated. He presented no evidence of clear rehabilitation and that he now intends to tell the truth. His latest statement of December 2004 concerning drug use contradicts his earlier statements of April 14, 2001. Applicant has not mitigated the security concern for criminal conduct by violating a federal criminal statute.

I carefully considered all of the circumstances in light of the "whole person" concept. I specifically considered the letters or recommendation and commendation, and positive urinalysis test. I considered that Applicant was only a teenager or in his early 20s when he used illegal drugs and submitted his first security clearance application. He had opportunities to set the record straight, but he has not done so. I conclude Applicant is not eligible 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 E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: For Applicant

Paragraph 2, Guideline J: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

DECISION

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

Thomas M. Crean

Administrative Judge

1. FORM, Item 3 (Security clearance application, dated Oct. 8, 2003)
2. Applicant's answer to the SOR (Letter, dated Dec. 27, 2004).
3. FORM, Item 4 (Security clearance application, dated Sep. 14, 1999).
4. FORM, Item 3 (Security clearance application, dated Oct. 8, 2003).
5. FORM, Item 5 (Applicant's statement, dated Feb. 12, 2001).
6. FORM, Item 6 (Applicant's statement, dated Apr. 19, 2001).
7. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
8. Directive ¶ E2.2.1.
9. *Id.*
10. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
11. *See* Exec. Or. 10865 § 7.
12. Directive ¶ E3.1.14.
13. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
14. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
15. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
16. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

