

DATE: January 24, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23984

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Thomas M. Abbott, Esq.

SYNOPSIS

Applicant is a project engineer for a defense contractor and has had a security clearance for 22 years. In a period of ten months, Applicant had four security violations. Two violations involved a failure to properly spin a safe dial lock so the lock engaged. One violation was the unauthorized copying of material to a CD to transfer the material to another computer. The other violation was the failure to retrieve and properly store a computer hard drive after completing a project. There was no compromise of classified material as a result of any violation. Applicant has participated with his employer in developing programs and procedures to prevent security violations and shows a positive attitude towards security rules and procedures. Clearance is granted.

STATEMENT OF THE CASE

On June 22, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to revoke a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb 20, 1990), 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). Applicant acknowledged receipt of the SOR on June 30, 2004. The SOR alleges security concerns under Guideline K (Security Violations) of the Directive.

Applicant answered the SOR in writing on July 7, 2004. He admitted all of the allegations under Guideline K with explanation. He requested a hearing before an administrative judge. The request for a hearing was received by DOHA on July 10, 2004. Department Counsel was prepared to proceed with the case on July 22, 2004. The case was assigned to another administrative judge on July 30, 2004. Applicant asked for a change of venue on August 9, 2004, and the case was assigned to another administrative judge on August 10, 2004, and a notice of hearing was issued on October 29, 2004. The case was assigned to me on November 10, 2004. The hearing was held on December 16, 2004, as scheduled. Nine government exhibits, 17 Applicant exhibits, and the testimony of Applicant were received during the hearing. The transcript was received on January 4, 2005.

FINDINGS OF FACT

Applicant is a 45-year-old project engineer for a defense contractor. He has a bachelor and master degrees in engineering. Applicant worked for defense contractors for over 22 years and held a security clearance for that entire time. Twenty of those years are with his present employer. Applicant had a security violation shortly after starting work for his present defense contractor employer but none for 17 years. Applicant had four security violations in the span of ten months which are the subjects of the allegations in the SOR.

In May 2002, Applicant was working on documents from his classified document safe. He was called away from his desk and put the documents back in the safe. In haste, Applicant did not properly spin the dial to engage the safe lock leaving the safe open. Applicant's wife was having medical problems at the time that also distracted Applicant from following proper procedures. Applicant was trained in and knew the correct procedures. The safe was located in a secure area and documents were not compromised. The security department discovered the improperly locked safe and instructed Applicant on proper locking procedures. Applicant's employer's security manager determined the violation was not deliberate, not the result of gross negligence, and did not involve a pattern of negligence or carelessness. No further action was taken by his employer.

On a Saturday in October 2002, Applicant and a co-worker were working on a time-sensitive project in a secured part of the employer's complex. Neither Applicant nor his co-worker usually work in this area. Security personnel advised Applicant by telephone on that morning of the security procedures to use in the facility. The instructions included guidance that no material would be copied onto any other device. Applicant was shopping with his family when advised by phone of the security procedures. After completing their work, Applicant and his partner were not able to print the material from the computer to the attached plot printer. They copied the information to use another computer in the same area but with a different plot printer. Applicant was confused about the procedures and did not realize that to copy data to the CD to use in the same area was a security violation. Applicant properly safeguarded the CD and placed it in his approved security container in his work area. On Monday, Applicant was asked how the project went on Saturday and relayed the process used to print the information including copying the data to the CD. Applicant did not realize he had a security violation until he told his supervisor about the Saturday activities. Applicant's employer's security manager determined Applicant's violation was a deliberate disregard of security requirements and involved a pattern of negligence and carelessness.

Three days later, Applicant was called to the security office to discuss the CD transfer security violation with his supervisor and security. Before leaving his work area, he placed all of his material in his security safe and spun the dial. He did not spin the dial correctly and the lock did not engage creating another security violation. Applicant was suspended for two weeks without pay for the two October 2002 security violations. Applicant's employer also placed restrictions on his access to and use of classified material imposing a buddy system for Applicant's access to classified documents. He could not possess and access classified material except in conjunction with another cleared employee.

In February 2003, Applicant was working with a cleared fellow employee on a classified project. The computer being used had a removable hard drive and a CD disc with data. After completing their project, Applicant and his colleague tried to eject the CD disc but had problems. It took approximately 30 minutes to remove CD. Upon removal of the disc, Applicant and his partner failed to remove the hard drive and store it in the proper secure container. The hard drive was discovered in the machine the next day by security. The employer's security manager determined the violation involved a pattern of negligence and carelessness. The Defense Security Service (DSS) was advised of the security violation.

No classified information was compromised in any of these security violations. As a result of these violations, Applicant and his employer have taken corrective actions. Applicant worked with other engineers after the second dial spin failure to develop a system that sounds a buzzer if a safe dial is not properly engaged. Since employer installed the device on security containers, there have been no security violations for improperly locked safes. As a result of the incident in February 2003, Applicant developed a check sheet to use when handling classified information and devices. His employer disseminated this check sheet to other employees and it is being used by other employees.

Applicant's employer consider him an excellent employee. The employer received two patents for work done by Applicant. Even though there are four security violations, Applicant's employer and his supervisors consider Applicant

not a security risk. They state he has a positive attitude towards security requirements and shows a positive concern for security responsibilities. The employer's security manager, who classified all of the violations in his description of the events as either deliberate, or due to negligence or carelessness, provided a letter of recommendation. In the letter, he classified the CD disc incident in October 2002, the result of conflicting guidance and a time stressed situation. He classified the two failures to adequately spin the lock dial as clearly accidental and not the result of any deliberate carelessness. He also states Applicant has a good respect for security requirements. I find the description of the events in the security manager's letter of recommendation to be his accurate evaluation of Applicant's violations.

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 restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1 (b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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 (DC) and mitigating conditions (MC) 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." Directive ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* 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. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[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." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determination should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

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:

Under Guideline K (Security Violations), a security concern exists because noncompliance with security regulations raises doubt as to an individual's trustworthiness, willingness, and ability to safeguard classified information. Directive ¶ E2.A11.1.1. Appellant's security violations bring this matter within Security Violations Disqualifying Condition Directive ¶ E2.A11.1.2.2. (*violations that are deliberate or multiple or due to negligence*). There are multiple security violations by Applicant that can be classified as deliberate or due to negligence. I conclude the Security Violations Disqualifying Condition has been established.

The Security Violations Mitigating Conditions applicable to Appellant are: Directive ¶ E2.A11.1.3.1. (*were inadvertent*); Directive ¶ E2.A11.1.3.2. (*were isolated and infrequent*); Directive ¶ E2.A11.1.3.3. (*were due to improper or inadequate training*); and Directive ¶ E2.A11.1.3.4. (*demonstrate a positive attitude towards the discharge of security responsibilities*). All of the security violations were inadvertent. Applicant's security violations happened in a ten-month period of a 22 year period of time working with classified material. The incidents were not isolated or infrequent in the ten months but were isolated and infrequent when considering the entire time Applicant dealt with classified material. Even though Applicant took full responsibility for each incident, they were inadvertent and due in part to the circumstances surrounding the events. Applicant had been trained in security procedure and only the October 2002 copying of the CD was the result of confusing guidance. Applicant has demonstrated a positive attitude towards the discharge of security responsibilities. He helped developed the buzzer system for safe locks and the check list procedure for handling classified material. His supervisor and security manager determined he is positive on security responsibilities and recommend his continued security clearance. I conclude Applicant has mitigated the disqualifying condition under Guideline K.

I carefully considered all of the circumstances in light of the "whole person" concept and apply a fair, impartial, and commonsense decision. I conclude Applicant is 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 K: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

DECISION

In light of all of the circumstances presented in the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Thomas M. Crean

Administrative Judge