

DATE: September 21, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24163

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is an environmental engineer for a defense contractor. Applicant has used variations of his name, altered his birth certificate, obtained a diver's license using the altered birth certificate, failed to list criminal and drug offenses on his security clearance application, and use another name when arrested. He has been arrested for carrying a concealed weapon, possession of marijuana, driving while intoxicated, false pretenses, and contempt of court. Applicant has not presented sufficient evidence to mitigate the security concerns for the above conduct. Clearance is denied.

STATEMENT OF THE CASE

On February 3, 2005, 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 February 14, 2005. 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 February 23, 2005, admitting all of the allegations under both Guidelines E and J. There are eight allegation under Guideline E, and nine allegations under Guideline J. [\(U\)](#) 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 April 11, 2005. Applicant received a complete file of relevant material (FORM) on May 16, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due July 12, 2005. As of August 1, 2005, he had not responded. The case was assigned to me on August 3, 2005.

FINDINGS OF FACT

Applicant is 51 years old and has worked as a Level II environmental engineer for a defense contractor for two years. He is not married but has lived with the same women for over 16 years. He has three children. Applicant submitted a security clearance application on April 3, 2003. [\(2\)](#)

Applicant answered "NO" on his security clearance application to question 2 asking if he ever used or been known by another name. Applicant admitted he has used or been known by three versions of his name. He thought the term "AKA," which means "also known as," meant alias. The term "AKA" is not used on the security clearance application. In 1977, he used a girl friend's brother's name when arrested for carrying a concealed weapon, because he did not want to have another arrest on his record. [\(3\)](#)

Applicant answered "NO" on his security clearance application to question 21 asking if he had ever been charged with or convicted of any felony offense. Applicant also answered "NO" to question 22 asking if he had ever been charged with or convicted of a firearms or explosives offense. Applicant admitted he had been charged with and convicted of carrying a concealed weapon in June 1974, and March 1977. [\(4\)](#)

Applicant answered "NO" on his security clearance application to question 24 asking if he had ever been charged with or convicted of any offenses relating to alcohol or drugs. Applicant admitted he was arrested for possession of marijuana in 1974, and driving while under the influence of alcohol or drugs in both 1989 and 1996. [\(5\)](#)

Applicant admitted to changing his birth date on his birth certificate to facilitate dating older women. He also obtained a state driver's license using the forged birth certificate. He used this false driver's license when arrested for driving while under the influence in 1989 and 1996. [\(6\)](#)

Applicant admits to a long history of criminal activity. He admits to being arrested and convicted of carrying a concealed weapon in both 1974 and 1977. He admits to being arrested for possession of marijuana in 1974. Applicant admits to being arrested and convicted of contempt of court in 1977. Applicant admits he was arrested, but not prosecuted, for assault with a deadly weapon in 1984. Applicant admits he was arrested and convicted of failure to provide support for his children 1987. Applicant admits he was arrested and convicted of driving under the influence in 1989 and 1996. Failure to include the above arrests and convictions on his security clearance application is a criminal offense in violation of 10 U.S.C. § 1001. [\(7\)](#)

Applicant stated he grew up on the streets of a major mid-west city where life depended on carrying a concealed weapon. At no time did he use the weapon to commit a criminal offense. He admits to being foolish in changing the date on his birth certificate and drinking and driving. He has worked hard for over 25 years. He did not understand the nature and seriousness of a security background check. If he had know the seriousness of the inquiry, he would have been more accurate in answering the questions on the security clearance application. [\(8\)](#)

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." [\(9\)](#) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. [\(10\)](#)

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.⁽¹¹⁾ 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.⁽¹²⁾

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.⁽¹³⁾ 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.⁽¹⁴⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽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."⁽¹⁶⁾ "[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."⁽¹⁷⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁸⁾

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 judgement, reliability and 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 false answers on the security clearance application, changing the date on his birth certificate, using that document to obtain a driver's license, as well as using a false name when arrested 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 employment qualifications, . . . determine security clearance eligibility or trustworthiness. . .*); and E2.A5.1.2.5 (*a pattern of dishonesty or rules violation. . .*). Applicant's history of altering a birth certificate, using that document to obtain a state driver's license, using a false name when arrested is reliable unfavorable information, and a pattern of dishonesty and rule violations. His false answers on the security clearance application is a deliberate concealment or falsification of the true facts. Because of his history of changing official documents, it is not surprising he did not provide the correct information on his security clearance application. The questions on the application are straight forward. The application does not use the term "AKA" so Applicant could not be confused that question 2 was asking if

he had ever used another name, and not just an alias. Applicant had used other names on various occasions. He knew of his arrests and convictions for various offense and did not include them on the application in response to questions 21, 22, and 24. The above disqualifying conditions have been established.

I have considered Personal Conduct Mitigating Conditions E2.A5.1.3.1 (*the falsification was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*); and E2.A5.1.3.3 (*the individual made a prompt, good-faith effort to correct the falsification before being confronted with the facts*). Applicant admits to a long history of providing false information, so the information on his false answers is reliable and does impact on a determination of his security worthiness. These facts show his untrustworthiness, unreliability, lack of candor, and dishonesty. Applicant only admitted the correct information when confronted with the facts in his interview. I conclude that Applicant deliberately provided false information or concealed the facts on his security clearance application. He has not mitigated the security concerns for his personal conduct.

The government has established its case under Guideline J. Applicant's history of arrests and convictions since 1974 brings the matter under Criminal Conduct Disqualifying Conditions 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*). Applicant admitted, and the government evidence shows, Applicant was arrested and/or convicted of two offenses for carrying concealed weapons, two driving while intoxicated offenses, a possession of marijuana offense, an assault with a deadly weapon offense, a failure to provide, and a contempt of court from 1974 to 1996. His deliberate false answers on the security clearance application submitted in 2003 is also a criminal offense. The above disqualifying conditions have been established.

I have considered Criminal Conduct Mitigating Conditions E2.A10.1.3.1 (*the criminal behavior was not recent*); E2.A10.1.3.2 (*the crime was an isolated incident*); and E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*), and determine none of them apply to Applicant. While most of the crimes were committed from eight to 20 years ago, the course of Applicant's criminal conduct continues to be recent since he omitted relevant and material facts on his security clearance application in 2003. There is a series of crimes, and falsification to numerous questions on his security clearance application, so they are not isolated. While Applicant rationalizes his past criminal activities, and states his desire to continue to work for his employer, he has not presented information of successful rehabilitation from his course of criminal conduct. Applicant has not met his heavy burden to mitigate security concerns for his criminal activities.

I carefully considered all of the circumstances in light of the "whole person" concept. 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.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Paragraph 2, Guideline J: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Subparagraph 2.g.: Against Applicant

Subparagraph 2.h.: Against Applicant

Subparagraph 2.k.: 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 a security clearance for Applicant. Clearance is denied.

Thomas M. Crean

Administrative Judge

1. While there are nine allegations in the SOR under Guideline J, the allegations are mis-lettered. There are no allegations 2.i. and 2.j. The allegations go from 2.h. to 2.k.
2. Government Exhibit 9 (Security clearance application, dated Apr. 3, 2003).
3. Government Exhibit 11 (Applicant's statement, dated Apr. 7, 2004) at 3 and 5. It should be noted Applicant used his brother-in-law's name in 1977 and not 1974 as alleged in allegation 1.h. Applicant admitted to the offense but the date was wrong.
4. *Id.* at 4-5.
5. *Id.* at 6.
6. *Id.*
7. Government Exhibit 11 (Applicant's statement, dated Apr. 7, 2004).
8. *Id.* at 9.
9. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
10. Directive ¶ E2.2.1.
11. *Id.*

12. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

13. *See* Exec. Or. 10865 § 7.

14. Directive ¶ E3.1.14.

15. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

16. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

17. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

18. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.