

KEYWORD: Personal Conduct

DIGEST: In 1997, Applicant was terminated from his employment for sending sexually harassing notes to "numerous" women in the company. DOHA alleged security concerns from his conduct and his failure to fully admit the reasons for his termination in his security clearance application. Applicant mitigated security concerns raised by his answer on the security clearance application. Although the termination was not recent, Applicant refused to fully accept responsibility for his conduct. Clearance is denied.

CASENO: 03-24967.h1

DATE: 12/31/2005

DATE: December 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24967

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

In 1997, Applicant was terminated from his employment for sending sexually harassing notes to "numerous" women in the company. DOHA alleged security concerns from his conduct and his failure to fully admit the reasons for his termination in his security clearance application. Applicant mitigated security concerns raised by his answer on the security clearance application. Although the termination was not recent, Applicant refused to fully accept responsibility for his conduct. 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 29 December 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline E (Personal conduct) of the Directive. Applicant answered the SOR in writing on 10 February 2005 and elected to have a hearing before an administrative judge. The case was originally assigned to another judge, but was re-assigned to me on 8 September 2005. On 20 October 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 3 November 2005.

FINDINGS OF FACT

Applicant is a 48-year-old employee of a defense contractor. He has been married for 23 years. Applicant and his wife have two children.

Between January 1980 and February 1997, Applicant worked for a different defense contractor as a principal engineer.

He held a security clearance during that period. In February 1997, Applicant was "terminated from employment" based upon an internal company investigation that found that, from the end of 1995 through 1996, he was the author of anonymous, unsolicited sexually harassing mail to "numerous known female employees" of the company. Ex. 2. The investigation revealed Applicant had made several comments about female employees' physical characteristics and dress that made them uncomfortable around him. Ex.4.

Applicant acknowledged sending one card to one woman. He claims to have no recollection of any other incidents. Yet a questioned-documents examiner opined Applicant wrote at least four of the alleged notes and could not be eliminated as the person who wrote three others.

Applicant signed the termination notice that stated he was being discharged and the reasons for the discharge-violating the company's standards of business conduct by sending to numerous female employees anonymous, unsolicited mail that contained sexual innuendos, was offensive, and was unwelcome. Ex. 2. Applicant applied for unemployment compensation. It was originally denied because unemployment compensation is not available to those who have been terminated for cause. At a hearing to determine whether he should receive unemployment compensation, the company declined to put the reasons for Applicant's discharge on the record. The unemployment compensation hearing examiner had to find Applicant's discharge was not for misconduct connected with work. Ex. 2. Applicant was found eligible for unemployment compensation. Answer, Atch 3.

Applicant completed his security clearance application on 22 May 2001 by certifying the information contained therein was "true, complete, and correct" to the best of his knowledge and belief. He also acknowledged that a knowing and willful false statement could be punished by fine and/or imprisonment under 18 U.S.C. § 1001. Question 20 asked if, in the previous seven years, Applicant had been fired from a job, quit after being told he would be fired, left by mutual agreement following allegations of misconduct, left a job by mutual agreement following allegations of unsatisfactory performance, or left a job for other reasons under unfavorable circumstances. Applicant answered "yes," identified the employer, and claimed he left a job for other reasons under unfavorable circumstances. In the remarks section, Applicant indicated he had been "laid off." Ex. 1 at 5.

There is no evidence Applicant has been involved in any misconduct since his termination. As part of his current employer's training program, Applicant has received training on sexual harassment.

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 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

In the SOR, DOHA alleged Applicant was terminated from his employment with a defense contractor in February 1997 for sending sexually harassing notes to numerous female employees (¶ 1.a) and falsified material facts on his SCA by deliberately failing to indicate that he had been terminated from his employment as specified in ¶ 1.a (¶ 1.b). Applicant denied both allegations. 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.

A security concern that may be disqualifying is raised by reliable, unfavorable information that shows an applicant is unreliable or exercises questionable judgment. DC E2.A5.1.2.1. Applicant's conduct in sending the sexually harassing notes to fellow employees demonstrates such questionable judgment. An applicant may mitigate personal conduct security concerns by establishing he has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress. MC E2.A5.1.3.5. Applicant is not vulnerable to coercion, exploitation, or duress because of his misconduct. I have also considered that the misconduct is not recent, having occurred some eight to nine years ago.

Applicant claims he never received appropriate training on sexual harassment, asserts he did no more than others with whom he worked, and he only "remembers" sending one note. I am concerned about his inability to fully accept responsibility for his actions. In light of the evidence of record, I find his assertion that he only sent one of the notes to be incredible. Under all the circumstances of this case, and after reviewing adjudicative process factors, I am unable to conclude Applicant mitigated the security concerns about his reliability, candor, and judgment. I find against Applicant on ¶ 1.a.

It is a security concern that may be disqualifying for an applicant to deliberately omit, conceal, or falsify relevant and material facts from an SCA. DC E2.A5.1.2.2. Information is material if it would affect a final agency decision or if incorrect would impede a thorough and complete investigation of an applicant's background. ISCR Case No. 01-06870, 2002 WL 32114535 at *6 (App. Bd. Sep. 13, 2002). After considering all of the evidence, I conclude Applicant did not deliberately omit or falsify relevant and material information from his SCA. Although he could have more accurately described how he was terminated from his position, his answer to question 20 was sufficient to place the Government on notice that there was an issue worth investigating. I find for Applicant on ¶ 1.b.

FORMAL FINDINGS

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

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: 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.

James A. Young
Administrative Judge

1. As required by Exec. Or. 10865 (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended and modified (Directive).