

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: From 1971 until 2004, Applicant repeatedly and deliberately provided false information concerning his abuse of controlled substances in security clearance documents he submitted and interviews he provided. Clearance is denied.

CASENO: 03-25228.h1

DATE: 02/27/2006

DATE: February 27, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25228

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

From 1971 until 2004, Applicant repeatedly and deliberately provided false information concerning his abuse of controlled substances in security clearance documents he submitted and interviews he provided. Clearance is denied.

STATEMENT OF THE CASE

On February 8, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline J (criminal conduct) and Guideline E (personal conduct). Applicant's response to the SOR was received by DOHA on February 25, 2005. He admitted all SOR allegations and requested a hearing.

The case was assigned to me on August 26, 2005. A notice of hearing was issued on October 3, 2005, scheduling the hearing for October 24, 2005. The hearing was conducted as scheduled. The government submitted 19 documentary exhibits that were marked as Government Exhibits (GE) 1-19, and admitted into the record without objection. Applicant testified and called two witnesses to testify on his behalf. The transcript was received on November 9, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 56-year-old man who is employed as senior principal systems engineer by a defense contractor. He has been continuously employed by defense contractors since 1977. He served on active duty in the U.S. Marine Corps from February 1970 until February 1974, attained the rank of corporal (paygrade E-4), and received an honorable discharge.

Applicant was married in July 1973, and that marriage ended by divorce in February 1991. He has four adult children from that marriage. He remarried in arch 1991, divorced that wife in December 2001, and has since remarried her. He has four stepchildren and three grandchildren from the second marriage. He and his wife are the legal guardians of one of his grandchildren who is six years old.

Applicant was assigned as an avionics combat technician while on active duty in the Marine Corps, and was required to possess a secret clearance. Despite possessing that clearance, he illegally used marijuana, amphetamines, and, on at least one occasion, marijuana laced with opium while in the Marine Corps. He also used marijuana once in 1983.

In late 1970 or early 1971, Applicant was required to submit security clearance forms so his clearance could be upgraded to provide him access to Air Force One, if needed, during the President's scheduled visit to the Marine Corps air station where he was stationed. Although he had abused controlled substances before that time, he lied on the security clearance update forms and denied he had abused drugs. He claims he lied at the instruction of a gunnery sergeant who told him and other Marines who were present to lie because their previous drug use did not affect their ability to do their jobs as avionics technicians.

Applicant maintained his denial of having ever used drugs or having used drugs while in possession of a security clearance on each and every security clearance application he submitted thereafter until he was requested to submit to a polygraph examination on May 26, 2004. Included in the false documents he submitted were: (a) a security clearance application (SF 86) he executed and swore to on September 23, 2002, in which he denied having used marijuana while possessing a security clearance; (b) a Department of Defense National Agency Questionnaire (DD 398-2) he executed and swore to on September 12, 1995, in which he denied having ever illegally used controlled substances; (c) an undated Response to Intent to Deny Eligibility for Access to Special Access Information he submitted in which he stated he had never used drugs; and (d) a signed and sworn statement he provided to a Special Agent from the Defense Security Service on May 10, 2004, in which he denied having ever used illegal drugs. Also, during interviews conducted on November 14, 2002, and November 21, 2002, by a Department of Defense investigator, Applicant denied ever having used illegal drugs.⁽²⁾ Applicant's explanation for repeatedly and deliberately providing false information is that he believed he had to continue in the lie he told while in the Marine Corps if he were to be allowed to retain a security clearance.

Applicant was convicted of driving under the influence of alcohol and speeding in September 1999. He was sentenced to probation for one year, ordered to pay fines and costs totaling \$870.00, and required to attend alcohol counseling sessions. His blood alcohol concentration at the time of arrest was 0.17.

Applicant was convicted of domestic violence/assault in July 1996 for an incident involving his then teenage stepson. He was sentenced to probation for one year, ordered perform 12 hours community service work, and required to attend domestic violence counseling.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a

fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. 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. Considering the evidence as a whole, Guideline J, pertaining to criminal conduct, and Guideline E, pertaining to personal conduct, with their respective DC and MC, are most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁵⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ 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.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹²⁾

CONCLUSIONS

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Under Guideline J, criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling classified information.

For more than 30 years, Applicant repeatedly and deliberately provided false answers and information about his abuse of marijuana, amphetamines, and marijuana laced with opium while he served on active duty with the Marine Corps and possessed a security clearance. Specifically, and as alleged in the SOR, Applicant executed and swore to documents he submitted in September 1995, September 2002, and May 2004. Each of those

sworn statements was made after Applicant had been advised they were being made subject to the criminal penalties provided for by 18 U.S.C. § 1001 making it a crime for him to make knowing and wilful false statements in those documents. Applicant also provided false information in an unsigned and undated security clearance document he submitted, and during the course of two interviews with a DoD investigator.

Guideline E Disqualifying Conditions (DC) 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, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;* and DC 3: *Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other representative in connection with a personnel security or trustworthiness determination* apply. Guideline J DC 1: *Allegations or admission of criminal conduct, regardless of whether the person was formally charged;* and DC 2: *A single serious crime or multiple lesser offenses* also apply.

Applicant did nothing to correct the false information he provided until he was confronted with the prospect of a polygraph examination in May 2004. His criminal conduct continued through his submission of the false May 2004 written statement that was given subject to the criminal penalties of 18 U.S.C. § 1001. I have considered all mitigating conditions under both guidelines, and none apply.

In all adjudications the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant has failed to present sufficient evidence of refutation, extenuation, and/or mitigation to overcome the case against him. Guideline E and Guideline J are decided against Applicant.

FORMAL FINDINGS

SOR ¶ 1-Guideline E: Against Applicant

Subparagraphs a-e: Against Applicant

SOR ¶ 2-Guideline J: Against Applicant

Subparagraphs a-c: Against Applicant

DECISION

In light of all the circumstances presented by 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. The factual finding of providing false statements to a DoD investigator on November 14, 2002, and November 21, 2002, is based upon Applicant's admission to the allegations contained in SOR subparagraph 1.b.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
10. *Egan*, 484 U.S. at 528, 531.
11. *Id* at 531.
12. *Egan*, Executive Order 10865, and the Directive.