DATE: June 1, 2004

In Re:

SSN: -----------

Applicant for Security Clearance

ISCR Case No. 02-32762

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's extensive history of criminal conduct is not mitigated where it was punctuated by nine arrests between January 1987 and November 1992--four of which involved larceny, including larceny by deception. Falsification of his clearance application in April 2002 suggests he cannot be relied upon to disclose the truth if it conflicts with his personal interests. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 23 October 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR)[1] recommending denial or revocation of Applicant's clearance. Applicant answered the SOR and requested an administrative decision on the record on 30 November 2003.[2] On 20 May 2004, he responded to the Government's File of Relevant Material (FORM), issued 31 March 2004; the record in this case closed 20 May 2004, the day Department Counsel indicated no objection to the response. The case was assigned to me on 25 May 2004 to decide if clearance should be granted, continued, denied, or revoked.

FINDINGS OF FACT

Applicant admitted the allegations of the SOR. Accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 45-year-old security associate at a defense contractor--seeks access to classified information. He has not previously held a clearance

Applicant has an extensive history of criminal conduct punctuated by nine arrests between January 1987 and November 1992. In January 1987, he was arrested for drug possession. In July 1987 and December 1987, he was arrested for petit larceny. In January 1988, it was drug possession and trespassing. In October 1988, it was grand larceny and conspiracy, when Applicant and his friends duped a mental health patient at a facility where they worked into signing withdrawal

slips for his account at a local bank. In January 1989, it was petit larceny again. In June 1989, it was bail jumping. In January 1992, he was arrested for disorderly conduct. In November 1992, he was arrested for violating his probation from the October 1988 arrest by failing to make restitution as ordered.

On 2 April 2002, Applicant falsified his clearance application when he failed to disclose any of the above criminal record. Several arrests were exempt from disclosure as having occurred more than seven years earlier. However, Applicant was required to disclose the October 1988 felony arrest (question 21) and the two drug arrests in January 1987 and January 1988. He also failed to disclose an unpaid judgment from May 1995--a judgment entered because of his failure to make restitution from the October 1988 arrest. The record is otherwise silent on Applicant's character or work performance.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section 6.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc*.

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

PERSONAL CONDUCT (GUIDELINE E)

E2A5.1.1. The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

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, . . . [or] determine security clearance eligibility or trustworthiness. . .;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

CRIMINAL CONDUCT (GUIDELINE J)

E2.A10.1.1. A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

E2.A10.1.2.2. A single serious crime or multiple lesser offenses.

E2.A10.1.3. Conditions that could mitigate security concerns include:

None.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the SOR. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The Government has established its case under Guideline J. Applicant's falsifications violate the provisions of 18 U.S.C. §1001, and he has provided insufficient mitigation of his conduct. Although several of his arrests could be considered mitigated by the passage of time, and no criminal involvement since November 1992, the four larceny arrests bespeak a dishonesty that reappeared when Applicant falsified his clearance application in April 2002. I conclude Guideline J against Applicant.

The Government has established its case under Guideline E. Applicant clearly falsified the answer to three questions that would have uncovered significant criminal conduct to increase his chances of getting his clearance. I conclude Guideline E against the Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline J: AGAINST THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: For the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: For the Applicant

Subparagraph j: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, as amended (Directive).

2. Although his answer was returned to him twice for technical corrections to form and completeness.