

KEYWORD: Personal Conduct

DIGEST: Applicant, a former employee of a U. S. Government agency, was a participant in a scheme to defraud the government out of housing allowances. He falsely answered a question on his security clearance application about leaving employment under unfavorable circumstances and failed to disclose the reason for the criminal fraud investigation by his employer. He also did not disclose two previous suspensions involving dishonesty. Applicant failed to successfully mitigate the allegations of personal conduct security concerns under Guideline E. Clearance is denied.

CASENO: 03-04082.h1

DATE: 04/28/2006

DATE: April 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04082

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a former employee of a U. S. government agency, was a participant in a scheme to defraud the government out of housing allowances. He falsely answered a question on his security clearance application about leaving employment under unfavorable circumstances and failed to disclose the reason for the criminal fraud investigation by his employer. He also did not disclose two previous suspensions involving dishonesty. Applicant failed to successfully mitigate the allegations of personal conduct security concerns under Guideline E. Clearance is denied.

STATEMENT OF THE CASE

On November 16, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR alleged facts under Guideline E (personal conduct), detailing reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

In a sworn written Answer, dated January 8, 2005, Applicant responded to the allegations in the SOR, and requested a hearing. The case was assigned to me on April 4, 2005. Notice of the hearing was issued May 13, 2005, scheduling the hearing for June 22, 2005. The hearing was held as scheduled. The transcript (Tr.) was received June 30, 2005.

FINDINGS OF FACT

Applicant denied the allegations in the SOR. After a thorough review of the record, I make the following additional findings of fact:

Applicant is a single, 47-year-old employee of a federal contractor.⁽¹⁾ He earned a certificate from a vocational school in 1984.⁽²⁾ Applicant has continuously held a top secret security clearance since 1985.⁽³⁾

While living overseas, in 2001, Applicant was employed by a government agency, and was investigated for initiating a false lease agreement between his girlfriend (GF) and two European nationals (Y and Z).

Applicant's statements regarding the investigation to federal criminal investigators reveal the following.⁽⁴⁾ In February 1999, Applicant's girlfriend, GF, began her permanent change of station (PCS) assignment in Europe. Initially, GF lived in temporary base housing but then she and her two daughters moved in with Applicant while looking for suitable housing. After some time passed without GF finding housing, Applicant approached Y and Z and asked if they would be willing to sign a false lease agreement (Lease) stating that GF was leasing a home from Y and Z even though she would not be residing at that residence. A few days later Y and Z indicated their willingness to sign such a Lease. GF obtained proper paperwork from the base housing office. The Lease was executed by GF, Y and Z. GF then submitted the Lease to the housing office to obtain living quarters allowance (LQA) benefits. Applicant was aware of this and stated that although, he knew GF was not entitled to LQA because she was living with him, he nevertheless believed she was entitled to it. No money was exchanged between Applicant, GF, Y, and Z. About a month after GF began receiving LQA benefits she and Applicant discussed that it was wrong and that they should do something about it. They did not do anything.

GF received LQA of approximately \$40,000. GF purchased a motorcycle for Applicant, and paid monthly payments on an automobile purchased by Applicant. GF helped pay Applicant's mortgage.⁽⁵⁾

During the April 2001 criminal investigation interview, Applicant admitted a prior suspension for misuse of a government credit card.⁽⁶⁾ Further investigation by the agent determined Applicant had received a 10-day suspension in October 1997 for misuse of a government credit card and a 1-day suspension in 1994 for intentional disregard of his financial obligations.⁽⁷⁾

Applicant left government employment in September 2001, because the investigation was pending and he was tired of waiting.⁽⁸⁾ On his SF 86, "**Question:20. Your Employment Record** - Has any of the following happened to you in the last 10 years? Fired from job - Quit a job after being told you'd be fired - Left a job by mutual agreement following allegations of unsatisfactory performance - Left a job for other reasons under unfavorable circumstances," Applicant answered "No."⁽⁹⁾ In a subsequent interview with a DSS investigator on October 16, 2002, Applicant failed to disclose the criminal fraud investigation by a government agency; he did not disclose he had benefitted from the LQA payments

to GF; and he did not mention the 1994 or 1997 suspensions.⁽¹⁰⁾ He did state that he was under investigation for cohabitation.⁽¹¹⁾ He stated that GF made restitution of \$40,000.00 to the government.⁽¹²⁾

POLICIES

"[No] one has a 'right' to a security clearance."⁽¹³⁾ 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."⁽¹⁴⁾ 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 judgment, as well as freedom from conflicting allegiances and potential coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information."⁽¹⁵⁾ Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

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 factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information.⁽¹⁶⁾ The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability.⁽¹⁷⁾

Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁽¹⁸⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁹⁾ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government,

therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁽²⁰⁾ Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, not actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the evidence as a whole, I find the following guidelines most pertinent to an evaluation of the facts of this case: Guideline E: *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.*

CONCLUSIONS

Under Guideline E, a security concern arises where it is shown an applicant has exhibited questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such conduct may indicate the person may not properly safeguard classified information. Personal Conduct Disqualifying Conditions (PC DC) include PC DC E2.A5.1.2.1. *Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances;* PC DC 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, award benefits, or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;* PC DC E2. A5.1.2.3. *Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;* and PC DC E2.A5.1.2.5. *A pattern of dishonesty or rule violation, including violation of any written or recorded agreement made between the individual and the agency.*

The government questions Applicant's trustworthiness and reliability first because his employer disclosed the facts of the criminal fraud investigation that involved Applicant. Applicant did not disclose the facts of the criminal investigation on his SF 86, did not disclose it to the DSS investigator, nor did he come forward after that interview in an effort to correct the record. In his answer to the SOR, he again denied the false answer in a continuing effort to conceal the truth. His actions raise concerns by the government. PC DC E2.A5.1.2.1. applies.

The government also questions Applicant's trustworthiness because it appears he has deliberately omitted from his SF 86 an adverse employment termination (SOR ¶ 1.a.). The government also alleges Applicant deliberately made false statements during a DSS interview (SOR ¶¶ 1.b., 1.c., 1.d., and 1.e.). Through Applicant's Answer, his testimony at hearing, testimony from the DSS investigator, and two documentary exhibits, the government has established a *prima facie* case for disqualification under Guideline E. At hearing, Applicant claimed his answer on the SF 86 was not false because the matter had been pending, he tired of waiting, and left his employment. Illegal conduct is a material factor in determining an individual's reliability for employment and trustworthiness for a security clearance. Applicant was involved in a scheme to defraud the government, knowing that it was wrong, financially benefitting from it, and yet allowing it to continue. He initiated the idea, brought together the parties to the fraudulent Lease, and benefitted personally. I find leaving employment with a criminal fraud investigation pending is tantamount to leaving under unfavorable circumstances. I find Applicant deliberately falsified his answer to Question 20. PC DC E2.A5.1.2.2. applies.

During his 2002 DSS interview, Applicant denied violating the government agency's rules of conduct and concealed the criminal nature of the 2001 investigation. He failed to disclose his 1-day suspension in 1994 for rule violations. He did not mention his 10-day suspension in 1997 for misuse of a government credit card. Finally, he stated he did not know the nature of the investigation in 2001, when in fact he had given a sworn statement on April 26, 2001, which detailed the reasons for the investigation. He continued his deception by denying the allegations in SOR ¶¶ 1.b. through 1.e. I find he knowingly and deliberately provided false information to the DSS investigator. PC DC E2.A5.1.2.3. is applicable.

Applicant has a history of rule violations, all of which involve questions of honesty and integrity. By failing to disclose them on his SF 86 and to the DSS investigator, it raises security concerns about his candor, trustworthiness, and ability to properly safeguard classified information. It undermines the security background checks and underscores a pattern of dishonesty. PC DC E2.A5.1.2.5. applies.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future. Applicant's conduct demonstrates a lack of candor required of personnel who hold security clearances. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose all adverse information. I find none of the personal conduct mitigating conditions apply. I conclude Guideline E against the Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by 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

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 Applicant's security clearance. Clearance is denied.

Christopher Graham

Administrative Judge

1. Government Exhibit 1 (*Standard Form 86, Security Clearance Application*, signed June 24, 2002) at 1, 4.

2. *Id.* at 3.

3. *Id.* at 8.
4. Government Exhibit 2 (*Report of Investigation*, dated April 26, 2001) at 2-4.
 5. *Id.* at 5.
 6. *Id.* at 4.
 7. *Id.* at 5.
8. Government Exhibit 1 (*Standard Form 86, Security Clearance Application*, signed June 24, 2002) at 3; Tr. at 41-42.
 9. *Id.* at 6.
 10. Tr. at 18-22.
 11. Tr. at 26.
 12. Tr. at 37-38.
13. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).
 14. *Id.* at 527.
15. Exec. Or. 12968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995).
 16. *Egan, supra*, at 531.
17. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).
18. See ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
 19. *Id.* at 3.
20. See *Egan*; Directive ¶ E2.2.2.