

DATE: June 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-07217

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was employed by a large defense contractor as an electrical engineer for over 20 years but terminated for unsatisfactory performance and excessive absence. Applicant falsified his resume and job application by not listing a bankruptcy and other employments, and falsifying the reasons for his termination. He was finally hired by a defense contractor based on his false representations. Applicant also deliberately falsified his security clearance application so it was consistent with his application for employment. He has not mitigated security concerns for personal conduct and criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On August 18, 2004, the Defense Office of Hearings 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 August 24, 2004. 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 September 10, 2004. He admitted the allegations under Guideline E, but denied the allegation under Guideline J. He requested a hearing before an administrative judge and the request was received by DOHA on September 13, 2004. Department Counsel was prepared to proceed with the case on December 15, 2004, and the case was assigned to another administrative judge on December 22, 2004. The case was reassigned to me on May 5, 2005, a notice of hearing was issued on May 12, 2005, and the hearing convened on June 1, 2005. Six government exhibits, five Applicant exhibits, and the testimony of the Applicant were received during the hearing. The transcript was received on June 14, 2005.

FINDINGS OF FACT

Applicant is a 61-year-old electrical engineer for a large defense contractor. He has a doctoral degree in electrical engineering and taught electrical engineering at a university. After teaching at the college level, he was employed for over 20 years by a defense contractor. He held a security clearance while employed by this contractor. He was terminated by that employer for unsatisfactory performance and excessive absenteeism in 1995.⁽¹⁾ Applicant challenged his termination but was denied relief by the federal courts.⁽²⁾ Applicant petitioned for and was discharged in bankruptcy in 1998.⁽³⁾

Applicant sought employment for 19 months after his termination. He finally was employed in 1997 by a contractor doing work for another government agency. He worked for that contractor for almost two years before the contractor lost the contract. Applicant was able to find employment in early 1999 with another non-defense industry company.⁽⁴⁾ Applicant determined he had to change his resume and applications to find employment in the defense industry. He changed his application and resume to reflect he had left employment with his former employer to take care of his sick mother and child, did not list his employment with the other contractors, and did not note his bankruptcy. He was hired by his present defense contractor employer in November 1999 based on his false application and resume.⁽⁵⁾

Applicant had to submit a security clearance application as part of his employment with the defense contractor. He realized the application would not be submitted directly to the Department of Defense but through his employer. Since he falsified his application and resume, Applicant decided to complete the security clearance application he submitted in 2000 so as to be consistent with the application.⁽⁶⁾ In response to question 6 on the security clearance application requesting his employment activities, Applicant listed he was unemployed from April 30, 1995 to the present. In response to question 20 asking if in the last 10 years he had been fired from a job, Applicant responded "NO." In response to question 33 asking if in the last seven years he had filed a bankruptcy, Applicant responded "NO."⁽⁷⁾ Applicant made a conscious decision to answer these questions falsely.⁽⁸⁾

Applicant was interviewed by a special agent from the Defense Security Service (DSS) on April 26, 2002, concerning his security clearance application. He admitted the information on his termination for unsatisfactory performance in 1995 was false, and admitted he did not include information on his employment by two companies and his bankruptcy.⁽⁹⁾

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."⁽¹⁰⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽¹¹⁾

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.⁽¹²⁾ 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.⁽¹³⁾

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.⁽¹⁴⁾ 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.⁽¹⁵⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽¹⁶⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁷⁾ "[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."⁽¹⁸⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽¹⁹⁾

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 judgment, 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 to the questions on his security clearance application concerning employment, reasons for leaving his previous employment, and bankruptcy, as well as the information provided to perspective employers on his application for employment and in his resume bring the matter under Personal Conduct Disqualifying Condition 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*). Applicant admitted he provided his employer false information concerning his employment history. He admitted he provided false information on his security clearance application concerning his employment history, the reason for his termination from employment, and omitted a bankruptcy. Applicant's termination of employment for unsatisfactory performance and absenteeism is unfavorable information and brings the matter under Personal Conduct Disqualifying Condition E2.1.5.1.2.1 (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*). I conclude the above disqualifying conditions have been established.

Applicant argues he informed the DSS agent about the falsifications when interviewed on April 26, 2002, thereby mitigating the Personal Conduct security concerns based on Personal Conduct Mitigating Condition E2.A5.1.3.3 (*the individual made prompt, good-faith efforts to correct the falsifications before being confronted with the facts*). Applicant did tell the security agent on April 26, 2002 that he falsified his application for employment in 1999, and falsified his security clearance application in 2000. Applicant revealed to the agent his employment with the other two employers, facts unknown to the agent until informed by Applicant. Applicant's admission was more than two years after he provided the false information and not a prompt disclosure. He divulged his false responses only after confronted by the security agent. The fact he informed the agent of the other two periods of employment is not a good-faith effort to correct the facts before confrontation. Applicant was confronted with the facts and merely finally

acknowledged his correct employment history. Applicant has not mitigated the security concerns for personal conduct.

The government has established its case under Guideline J. A materially false, fictitious, or fraudulent statement on a security clearance application is a serious federal criminal offense. ⁽²⁰⁾ Applicant's action in deliberately providing false information on the security clearance application is a violation of the criminal statute and brings the matter under Criminal Conduct Disqualifying Condition 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 he falsified information on his security clearance application, a serious crime under federal law. I conclude the above disqualifying conditions have been established.

Applicant presented no information to mitigate the Criminal Conduct Disqualifying Conditions. Mitigating Condition E2.A10.1.3.1 (*the criminal behavior was not recent*) does not apply because the offense happened in 2000 when he completed his last security clearance application and thus recent. Mitigating Condition E2.A10.1.3.2 (*the crime was an isolated incident*) is not applicable since the criminal conduct was done to be consistent with the falsifications on his employment application.

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

Paragraph 2, Guideline J AGAINST APPLICANT

Subparagraph 2.a.: 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. Tr. 20; Government exhibit 3 (Personnel Termination documents, dated Apr. 27, 1995).
2. Applicant exhibit A (Applicant's Memorandum of Law for Federal District Court); Applicant exhibit B (Applicant's opposition brief to motion for summary judgment); Applicant exhibit C (District Court Order, dated Nov. 1, 1996); Applicant exhibit D (Federal Circuit Court Opinion, dated Feb. 28, 1998); Applicant exhibit E (Applicant's petition for

rehearing, dated Mar. 12, 1998). Applicant's petition for rehearing was denied. *See*, TR. 20.

3. Government exhibit 4 (Bankruptcy documents, dated Oct. 9, 1998).

4. Tr. 22.

5. Government exhibit 5 (Application for employment, dated Nov. 16, 1999); Government exhibit 6 (Applicant's resume).

6. Tr. 24; Government exhibit 1 (Security clearance application, dated Jan. 31, 2000).

7. Tr. 28-30; Tr. 35.

8. Tr. 33.

9. Government exhibit 2 (Applicant's statement, dated Apr. 26, 2002).

10. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

11. Directive ¶ E2.2.1.

12. *Id.*

13. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

14. *See* Exec. Or. 10865 § 7.

15. Directive ¶ E3.1.14.

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

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

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

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

20. 18 U.S.C. ¶ 1001 (a).