

KEYWORD: Security Violations; Personal Conduct

DIGEST: Applicant is 48 years old, married with two children, and a production assistant for a defense contractor. Once in 1998 and three times in 2000 he violated his company's security protocols, these being his only security procedure violations in 29 years of employment with that company. After each incident he was counseled and retrained. There have been no incidents since 2000 and his manager and security officer vouch for his competency and adherence to security protocols. Applicant mitigated the security violations and personal conduct security concerns. Clearance is granted.

CASENO: 03-14260.h1

DATE: 06/10/2005

DATE: June 10, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-14260

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 48 years old, married with two children, and a production assistant for a defense contractor. Once in 1998 and three times in 2000 he violated his company's security protocols, these being his only security procedure violations in 29 years of employment with that company. After each incident he was counseled and retrained. There have been no incidents since 2000 and his manager and security officer vouch for his competency and adherence to security protocols. Applicant mitigated the security violations and personal conduct security concerns. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On January 18, 2005, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline K (Security Violations) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on February 3, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on March 14, 2005. On May 4, 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. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on May 13, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 48 years old, married, and has two teenage children. He works as a production technician for a defense contractor. He has been employed in this capacity with his company since 1976. He has held a security clearance since 1978. (Tr. 20, 21, 27, 35, 36, 46, 49, 50, 74; Exhibits 6, A)

Applicant is a good, reliable worker who is recommended for a continuation of his security clearance by his manager and his facility security officer. After the security incidents that occurred in 1998 and 2000 Applicant received retraining on appropriate security procedures, and also received annual security training and updates. Applicant is scared that any of his actions would compromise security, he realizes his actions directly affected him, and he is much more careful and aware of security requirements now. He is ashamed of his actions, feels bad they happened, and will make honest efforts in the future to avoid reoccurrence of these actions. (Tr. 49, 61, 62, 69; Exhibits A, B and E)

Applicant admitted to all four security procedure violations, claiming they were inadvertent. Applicant's first security incident occurred on October 9, 1998 when, as the last person out of the factory area of his company's facility, he had to check seven exterior factory doors. This factory was located within another building, and the seven exterior doors opened into the space within the larger company building. Applicant checked all locks, saw the last door's bolt come out, but because the door and frame were not aligned properly and had not been for some time, did not put his shoulder to the door to make certain the bolt was fully engaged in the faceplate. That door's misalignment was never corrected by his employer even before they moved out of that building in 2002. Applicant received security retraining after that incident. (Tr. 32, 38-40, 52; Exhibits 5-8)

In 2000 Applicant had three violations of security procedures. The first occurred on April 19, 2000, when he was asked to help a co-worker for about 20 minutes on a project. He asked another co-worker in the controlled clean room where they were working to watch over a classified testing device. That second co-worker had a security clearance, but was not cleared to the level or type that Applicant was and that was needed to have access to the testing device. Again, Applicant received the appropriate retraining. Then, on July 27, 2000, the day before Applicant was to get married, he failed to spin the safe's dial after removing material and papers he needed for his work. Thus, the safe was closed but not locked. The same failure to spin the safe's dial occurred on October 11, 2000, after Applicant removed the work material he needed that day. The safe used was within the controlled factory area in which Applicant worked. All such safes were later replaced by his employer with safe's using electronic locks. Applicant, after the October 2000 incident, recommended the safe be moved into the clean room work area, and his employer adopted his suggestions. No further incidents occurred. After both incidents, Applicant was retrained on security procedures. (Tr. 28-30, 33-35, 40-43, 46-48, 52, 71; Exhibits 1-4, 6-8)

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 has 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 the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with 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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual'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 or recurrence (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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 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 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. 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. *See* ISCR Case No. 95-0611 at 2 (App. Bd. ay 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec.

Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline K: Security Violations: *The Concern: Noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information.* E2.A11.1.1

Guideline E: Personal Conduct: *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.A5.1.1

CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR.

Regarding the Guideline K Security Violations concerns, the Disqualifying Condition (DC) applicable is DC 2 (*Violations that are multiple or due to negligence.* E2.A11.1.2.2) Applicant had four security violations within a two year period, and three of them were within one year and six months apart.

The Mitigating Conditions (MC) applicable are MC 1 (*actions were inadvertent* E2.A11.1.2.1), and MC 4 (*actions demonstrate a positive attitude towards the discharge of security responsibilities* E2A11.1.3.4). Applicant clearly did not intend to commit these security violations, nor were they done deliberately. The misaligned door and frame was a significant contributing factor to the 1998 violation. Applicant's lack of knowledge of his co-workers full security qualifications caused the second violation in 2000. His second and third violations in 2000 were the result of a failing to spin a safe dial in his secure work area. In Applicant's 29-year work history with his employer these incidents were the only ones that occurred. Applicant's suggestion concerning the placement of the safe deeper inside the more controlled work area, coupled with his repeated retraining on the security procedures, demonstrates his positive attitude toward his security duties. He is more security conscious, feels ashamed that he committed these actions, is more aware and careful of his actions now, and will make honest efforts to avoid any reoccurrence in the future. Since 2000, Applicant has not had another incident in almost five years. Therefore, I conclude this guideline for Applicant.

Regarding the Guideline E Personal Conduct guideline, the DC applicable are DC 4 (*Personal conduct that increases an individual's vulnerability to coercion, exploitation, or duress E2.A5.1.2.4*) and DC 5 (*A pattern of rule violations E2.A5.1.2.5*). Applicant's actions on the security requirements of his job made him vulnerable to pressure by anyone who knew about them. His four incidents in two years show a pattern of inattentiveness to security procedures.

The MC applicable is MC 5 (*The individual has taken positive steps to reduce his vulnerability to coercion, exploitation, or duress E2.A5.1.3.5*). While not a listed mitigating condition, the pattern of security violations from 2000 has not repeated itself during the past five years. Thus, his vulnerability has been reduced. Applicant underwent additional security training, has not repeated his violations in five years, suggested a change in 2000 to the location of the safe that obviated the problem, and has reconcentrated his efforts to avoid future incidents. Considering all of the facts and the whole person perspective of Applicant, I conclude this guideline for Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline K: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).