

KEYWORD: Personal Conduct

DIGEST: Applicant is a 38-year-old security guard who has been employed by a defense contractor since 2001. Applicant answered "No" to Question 20 on his security clearance application questioning if he had ever been terminated from employment due to poor performance or any other reason under unfavorable circumstances. Applicant had been terminated twice, once under each provision. Applicant later admitted his terminations, but then proceeded to contradict himself in his sworn statements and answer to the SOR. Applicant has failed to mitigate the security concerns regarding his personal conduct. Clearance is denied.

CASENO: 03-16167.h1

DATE: 07/15/2005

DATE: July 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-16167

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 38-year-old security guard who has been employed by a defense contractor since 2001. Applicant answered "No" to Question 20 on his security clearance application questioning if he had ever been terminated from employment due to poor performance or any other reason under unfavorable circumstances. Applicant had been terminated twice, once under each provision. Applicant later admitted his terminations, but then proceeded to contradict himself in his sworn statements and answer to the SOR. Applicant has failed to mitigate the security concerns regarding his personal conduct. Clearance is denied.

STATEMENT OF CASE

On June 30, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline E, Personal Conduct considerations.

In a sworn statements, dated August 4, 2004, Applicant responded to the SOR allegations, admitting all of them and provided an explanation in extenuation and mitigation. Applicant also elected to have his case decided on the written record. Department Counsel submitted the government's case on August 13, 2004. A file of relevant material (FORM) was received by Applicant on August 30, 2004. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. No information was submitted by Applicant. The case was originally assigned to another administrative judge on November 1, 2004. Due to case load considerations it was reassigned to me on May 5, 2005.

FINDINGS OF FACT

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

Applicant is a 38-year-old single man who has been employed as a security guard by a federal contractor since 2001. His prior jobs included, messenger, staff assistant, and mail clerk. Applicant has a high school education. Applicant completed and signed his security clearance application (SF 86) on January 17, 2001.

Applicant worked for Company A from 1991 to 1996. Applicant was terminated from this job. Applicant stated "I was terminated from this job, I guess from poor performance. I can't tell you why."⁽²⁾

Applicant worked as a messenger for Company B from 1996 to 2001. Applicant had an argument with his supervisor because Applicant was not wearing a tie.⁽³⁾ Applicant threatened his

supervisor.⁽⁴⁾ Applicant was placed on leave without pay and a month later received a letter terminating his employment.⁽⁵⁾

Applicant answered "No" to Question 20 on his SF 86 (*Has any of the following happened to you in the last 10 years? Fired from a job; Quit a job after being told you'd be fired; Left a job by mutual agreement following allegations of misconduct; Left a job by mutual agreement following allegations of unsatisfactory performance; Left a job for other reason under unfavorable circumstances.*)

Applicant was interviewed on February 27, 2001 by a Defense Security Service (DSS) special agent and provided information about his termination from employment with Company B. He did not provide information about his termination of employment from Company A at that time. On June 18, 2001, Applicant provided a sworn statement to the DSS special agent and again failed to provide information about his termination from Company A. Applicant was again interviewed on October 1, 2001, and admitted he failed to provide the information regarding his termination from Company A. Regarding his failure to provide the accurate information Appellant stated "I did not list this on my security paperwork, because I thought it would stop me from getting a job."⁽⁶⁾ When asked why he answered "No" to Question 20 of the SF 86, Applicant stated "because I thought it was going to stop me from getting a job with [Company C]"⁽⁷⁾ (his present employer). Applicant admitted he was not being truthful on his SF 86. When asked why he did not reveal his other termination when he was confronted with the first one he stated he did not know.⁽⁸⁾

In Applicant's answer to the SOR with regards to Subparagraph 1.a. he admits he was terminated from Company A, but states "I was not aware of the specific reasons that are stated in the Statement of Reasons of my termination from this company."⁽⁹⁾ He goes on to say "I was totally unaware of the explanation that was stated in the Statement of Reasons."⁽¹⁰⁾ This contradicts Applicant's previous sworn statement that he believed he was terminated due to poor performance.⁽¹¹⁾

In Applicant's answer to the SOR with regards to Subparagraph 1. b. he admits he was terminated from Company B, but states "I encountered a verbal disagreement with my supervisor about a route dispute, which upon this time I was placed on non-pay leave status."⁽¹²⁾ This contradicts the previous reason Applicant stated he was placed in a non-pay leave status.⁽¹³⁾ Applicant goes on to say "I was also never notified to turn in my uniforms, or work gear, i.e. gunbelt and ammunition, after being placed on non-pay leave status. In the interim of this dispute, since I was never contacted on my status of this position, I proceeded to find other employment opportunities."⁽¹⁴⁾ This directly contradicts Applicant's previous statement when he said he received a termination letter about a month after being put on non-pay leave.⁽¹⁵⁾

In Applicant's answer he also admitted that he had falsified information on his SF 86, but claims "I was unaware of these specific reasons that were stated in the Statement of Reasons for my termination from these previous employers. I was never contacted nor notified formally in writing of these specific reasons for my termination as stated in the Statement of Reasons from these employers."⁽¹⁶⁾ This statement directly contradicts Applicant's previous statement, in part, regarding that he did receive notice in writing that he was being terminated.⁽¹⁷⁾

Applicant provided a note from a doctor relating that he may need time off from work on an irregular basis due to a chronic illness. Applicant stated he had to take time off from work in the past due to his medical condition.⁽¹⁸⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence as a whole, Guideline E, personal conduct considerations, with its respective DC and MC, applies in this case. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken

with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁹⁾ The government has the burden of proving controverted facts.⁽²⁰⁾ The burden of proof is something less than a preponderance of evidence.⁽²¹⁾ 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.⁽²²⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²³⁾

No one has a right to a security clearance⁽²⁴⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²⁵⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²⁶⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²⁷⁾ 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.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline E-Personal Conduct is a security concern when an individual's conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline E.

Based on all the evidence Personal Conduct Disqualifying Condition (PE DC) E2.A5.1.2. (*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 PE DC E2.A5.1.2.5. (*A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*) apply in this case. Applicant admitted he deliberately falsified his SF 86. His reason for the falsification was he thought it would hamper him getting a job if he were truthful. After his falsification on his SF 86 Applicant proceeded to contradict his previous sworn statements with new falsifications that he swore to. Applicant deliberately, materially, and blatantly lied on SF 86, his sworn statements, and in his answer, contradicting his own sworn statements.

I have considered all the mitigating conditions and specifically considered Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2. (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), PC MC E2.A5.1.3.3. (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). I conclude none of the mitigating conditions apply. Applicant falsified his SF 86 and when given an opportunity to provide accurate answers and he deliberately made additional false statements.

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 life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered the whole person and I find Applicant has failed to mitigate the security concerns regarding his personal conduct. Applicant's disregard for the truth is a grave and serious concern that reflects poorly on his character and judgment. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline E is decided against Applicant.

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: Personal Conduct (Guideline E) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.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. Clearance is denied.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Item 6, Sworn Statement dated October 1, 2001 at 2.
3. *Id.* at 1.
4. *Id.* at 2.
5. *Id.*

6. *Id.* at 1.
7. *Id.*
8. *Id.*
9. Item 3.
10. *Id.*
11. Item 6 at 2.
12. Item 3 at 2.
13. Item 6 at 2.
14. Item 3 at 2.
15. Item 6 at 1.
16. Item 3 at 1.
17. Item 6.
18. Item 3.
19. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
20. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.
21. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
22. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
23. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
24. *Egan*, 484 U.S. at 531.
25. *Id.*
26. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
27. Executive Order 10865 § 7.