

KEYWORD: Criminal Conduct; Personal Conduct; Financial

DIGEST: Applicant's criminal conduct, deliberate falsification of his 2 January 2002 security clearance application, and his financial irresponsibility disqualify him for a security clearance. Clearance denied.

CASENO: 03-17888.h1

DATE: 07/19/2005

DATE: July 19, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-17888

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's criminal conduct, deliberate falsification of his 2 January 2002 security clearance application, and his financial irresponsibility disqualify him for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 13 February 2004 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of criminal conduct, personal conduct, and financial considerations. [\(1\)](#) Applicant answered the SOR on 8 March 2004 and requested a hearing. DOHA assigned the case to me 10 September 2004 and I convened a hearing on 10 January 2005. DOHA received the transcript 18 January 2005.

FINDINGS OF FACT

Applicant admitted the Guideline J allegations, except for 1.h., the Guideline E allegations, except for 2.f., and the Guideline F allegations; accordingly, I incorporate his admissions as findings of fact. He is a 55-year-old facility support associate employed by a defense contractor since December 2001. He has not previously had a clearance.

When Applicant applied for an industrial clearance in January 2002, he answered "no" to a series of questions requiring him to disclose his criminal record (questions 21-26), any drug or alcohol abuse (questions 27-29), and any adverse financial history (questions 33-39). In fact, he had a substantial criminal history, some of which was required to be reported, an extensive drug abuse history, all of which was required to be reported, and was currently experiencing financial difficulties.

Applicant's criminal involvement covers a period of nearly 20 years, 1978-1997. He was arrested for DWI in 1978.⁽²⁾ He was arrested for disorderly conduct in April 1982 and November 1989. Both charges were ultimately dropped. He was arrested in July 1990 for possessing stolen mail (GE 3). The charge was later dismissed. He was arrested in August 1990 for possessing stolen mail, trespass, and forgery.⁽³⁾ On the advice of counsel, he later pled to the forgery charge and received three years probation (GE 3).

In August 1994, Applicant was charged with larceny of a \$35.00 watch from a department store. The charge was nolle prossed (GE 2, 3). In December 1996, Applicant was arrested for shoplifting. The charge was later dismissed. In October 1997, Applicant was arrested for theft under \$300.00 and later had a bench warrant issued when he failed to appear for his court date (GE 6).⁽⁴⁾

In addition to concealing his 1978 DWI arrest, Applicant concealed a 1993 arrest for possession of cocaine (GE 5).⁽⁵⁾ He also concealed his extensive history of cocaine abuse from 1992-1997.⁽⁶⁾ Furthermore, when Applicant completed his clearance application, he had an outstanding \$2,500.00 judgment from 1998,⁽⁷⁾ and three delinquent accounts totaling over \$1,500.00.⁽⁸⁾

Applicant admitted concealing his criminal arrest record because he thought revealing it would keep him from getting his clearance and cost him his job (GE 5). However, he denied deliberately omitting his drug and alcohol abuse history and his financial difficulties. He thinks he misread the drug questions and overlooked the financial questions entirely.

Applicant attributes his financial difficulties to a lengthy period of unemployment he experience between January 1996 and March 1998. However, he has not taken any steps to address his past due accounts despite continued employment in his current job since December 2001.

Applicant's character references (AE A) consider him an honest individual and a trustworthy employee. Neither appears to be aware of the allegations of the SOR.

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline J (Criminal Conduct), Guideline E (Personal Conduct), and Guideline F (Financial Considerations).

BURDEN OF PROOF

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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. [\(9\)](#)

CONCLUSIONS

The government established a Guideline J case under disqualifying conditions 1 and 2, [\(10\)](#) and Applicant did not mitigate the conduct. His spate of drug and alcohol offenses, disorderly conduct offenses, and petty larceny and shoplifting offenses cast serious question on his judgment and reliability notwithstanding the last of these offenses occurred in 1997. In 2002, he deliberately concealed his criminal record, drug use, and financial problems from the government in violation of 18 U.S.C. §1001. I resolve Guideline J against Applicant.

The Government established a Guideline E case under disqualifying condition 2, and Applicant did not mitigate the security concerns. Applicant provided false answers to six different questions on his clearance application. His conduct demonstrates a lack of candor required of cleared personnel and suggests he is willing to put his personal needs ahead of legitimate government interests. The government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision, and relies on applicants to truthfully disclose that adverse information. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on in order to perform damage assessments and limit the compromise of classified information. I resolve Guideline E against Applicant.

The Government established a Guideline F case under disqualifying conditions 1 and 3, (12) and Applicant did not mitigate the security concerns. Although his two-years' unemployment from 1996-1998 was beyond his control, (13) he has taken no steps to address the past due debts after regaining full time employment. This delay does not demonstrate good faith in addressing his debts. (14) I conclude Guideline F against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline J: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: 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

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Paragraph 3. Guideline F: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: 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 and Department of Defense Directive 5220.6, as amended (Directive).
2. Required to be disclosed in response to question 24 (drug and alcohol arrests).
3. Required to be disclosed in response to question 21 (felony arrests/charges/convictions).
4. Both the December 1996 and October 1997 arrests were required to be disclosed in response to question 26 (other arrests within the last 7 years).
5. Required to be disclosed in response to question 24 (drug or alcohol arrests).
6. Required to be disclosed in response to question 27 (illegal drug use within the last 7 years), or at least the portion of coke abuse from 1995-1997.
7. Required to be disclosed in response to question 37 (unpaid judgments).
8. Required to be disclosed in response to questions 38 and 39 (90/180 day delinquent accounts).
9. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
10. 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.
11. 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. . . ;
12. E2.A6.1.2.1. A history of not meeting financial obligations; E2.A6.1.2.3. Inability or unwillingness to satisfy debts.
13. E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g. loss of employment. . .).
14. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.