

KEYWORD: Personal Conduct

DIGEST: Applicant is a 34-year-old consultant with a defense contractor. For more than 15 years, he routinely stole small items or small amounts of money from family, friends and employers. He has made monetary restitution on one occasion and returned stolen items twice. He has retained most of the money stolen and the benefit of the goods taken by him. Since he has not demonstrated that he is rehabilitated, he has not overcome the government's concerns about his personal conduct. Clearance is denied.

CASE NO: 05-05023.h1

DATE: 05/12/2006

DATE: May 12, 2006

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In re:

SSN:

Applicant for Security Clearance

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ISCR Case No. 05-05023

**DECISION OF ADMINISTRATIVE JUDGE**

**MARY E. HENRY**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Esq., Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a 34-year-old consultant with a defense contractor. For more than 15 years, he routinely stole small items or small amounts of money from family, friends and employers. He has made monetary restitution on one occasion and returned stolen items twice. He has retained most of the money stolen and the benefit of the goods taken by him. Since he has not demonstrated that he is rehabilitated, he has not overcome the government's concerns about his personal conduct. Clearance is denied.

### **STATEMENT OF THE CASE**

On November 3, 2005, 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 Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed 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 a security clearance for Applicant. Specifically, the SOR set forth security concerns arising under Guideline E (Personal Conduct), of the Directive. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. On November 28, 2005, Applicant submitted a notarized response to the allegations. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy on February 10, 2006. Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response or additional evidence. This case was assigned to me on April 7, 2006.

## FINDINGS OF FACT

Applicant admitted, with explanation, the allegations in subparagraphs 1.a. through 1.g. of the SOR.<sup>(1)</sup> Those admissions are incorporated here as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 34-year-old staff software consultant for a defense contractor.<sup>(2)</sup> He has worked for this contractor for two years.<sup>(3)</sup> He completed a security clearance application (SF 86) in April 2004.

Applicant recently married.<sup>(4)</sup> He was born in the Republic of Korea (Korea) and became a naturalized United States citizen in 1979.<sup>(5)</sup> He is a graduate of a major U.S. university.<sup>(6)</sup>

Applicant started stealing small items in 1987, when he stole an audio tape for another student.<sup>(7)</sup> The police questioned him, but did not arrest or charge him with a crime.<sup>(8)</sup> He returned the tape, and the school punished him.<sup>(9)</sup> During the same year, he twice stole \$100.00 from his father, who did not know about the theft.<sup>(10)</sup> He never returned the money to his father.<sup>(11)</sup>

In 1990, while a college student, he took his roommate's ATM card and withdrew \$100.00 from his roommate's bank account on two separate occasions.<sup>(12)</sup> When questioned by school police, he admitted his conduct.<sup>(13)</sup> He made restitution to his roommate, and as a punishment, the school required him to move off campus.<sup>(14)</sup> He was not arrested or charged with a crime as a result of his conduct.<sup>(15)</sup>

From 1994 until 1996, while employed by an electronics store, he stole a Panasonic phone/answering machine worth \$100.00 and an Alpine car CD changer worth \$199.00.<sup>(16)</sup> He did not return these items to the store or pay for them.<sup>(17)</sup> He was not arrested or charged with any crimes related to his conduct.<sup>(18)</sup>

During his employment with a discount store in 1996 and 1997, he regularly skimmed between \$100.00 and \$150.00 a week for the last six months of his employment.<sup>(19)</sup> He stated that he took approximately \$2000.00.<sup>(20)</sup> Based on his

statement, I calculate that he took between \$2,600.00 and \$4,000.00. [\(21\)](#)

In 1997, he started working for a large electronics and appliance store. [\(22\)](#) During the first five years of his employment, he stole two network cards valued at \$40.00 each, digital hard drive worth \$150.00, memory sticks worth between \$300.00 and \$400.00, a computer printer worth \$199.00, a computer monitor worth \$199.00, and a CD burner worth \$150.00. [\(23\)](#) He also illegally copied software between 60 and 70 times. He values this at \$40.00. [\(24\)](#) He worked at this store through 2004. [\(25\)](#) He was not arrested or discharged for theft. [\(26\)](#)

When he was employed at a technology company, his employer provided him with a laptop for his personal use. [\(27\)](#) At the end of his employment, he was to return the laptop. [\(28\)](#) His employment ended in 2003. [\(29\)](#) He did not return the laptop until December 2004. [\(30\)](#)

Applicant states that since meeting his wife, he last took money or merchandise from any employer in January 2002. [\(31\)](#) He also states that he cannot be blackmailed for this conduct. [\(32\)](#)

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. 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. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (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 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. [\(33\)](#)

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.<sup>(34)</sup> The government has the burden of proving controverted facts.<sup>(35)</sup> The burden of proof is something less than a preponderance of the evidence.<sup>(36)</sup> Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.<sup>(37)</sup> Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>(38)</sup>

No one has a right to a security clearance,<sup>(39)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(40)</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>(41)</sup> Section 7 of Executive Order 10865 specifically provides industrial security clearance 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." The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.<sup>(42)</sup> 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 a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

**Personal Conduct - Guideline E: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulation could indicate that the person may not properly safeguard classified information.**

## CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline E. From 1987 through 2004 Applicant stole money or goods belonging to others for his own use. He took items belonging to family, friends and employers, and exploited those fiduciary relationships. Applicant has shown a pattern of rule violations under Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.5. (*A pattern of dishonesty or rule violations*).

Although the police detained him for questioning on two occasions, he was never criminally charged for any of his conduct. He has made restitution in one incident only after being confronted by the police. He also returned two pieces of property, but has not returned any of the other property or stolen money, which is valued between \$4300.00 and \$5700.00. His repeated incidents of petty theft indicate a pattern of dishonest conduct over a long period of time. He knew stealing was wrong, but consciously chose to take money or goods belonging to others. Although the value of the property taken and the amount of money stolen at any one time is small, the accumulated value is a significant. His conduct raises questions about his honesty and trustworthiness. He has not presented convincing evidence that he is rehabilitated or would not steal again. Thus, he has not mitigated the government's concerns about his security worthiness. Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to 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, Guideline E (Personal Conduct): 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

Subparagraph 1.g: Against Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Mary E. Henry

Administrative Judge

1. Item 3 (Response to SOR dated November 27, 2005) at 1-2.
2. Item 4 (Applicant's security clearance application, dated November 27, 2005) at 1-2.
  3. *Id.* at 2.
  4. *Id.* at 5; Item 3, *supra* note 1, at 2.
  5. Item 4, *supra* note 2, at 1.
  6. *Id.* at 2.
7. Item 5 (Applicant's signed statement, dated April 14, 2005) at 2.
  8. *Id.* at 2; Item 3, *supra* note 1, at 1.
    9. *Id.*
    10. *Id.*
    11. *Id.*
    12. *Id.*
    13. *Id.*
    14. *Id.*
    15. *Id.*
    16. *Id.*
    17. *Id.*
    18. *Id.*
    19. *Id.*
    20. *Id.*

21. *Id.*
22. Item 3, *supra* note 1-2, at 1; Item 5, *supra* note 7, at 2.
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.*
33. Directive, Enclosure 2, ¶ E2.2.1.1. through E2.2.1.9.
34. ISCR Case No. 96-0277 (July 11, 1997) at 2.
35. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
36. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
37. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
38. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
39. *Egan*, 484 U.S. at 531.
40. *Id.*
41. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
42. Executive Order No. 10865 § 7.