

DATE: November 30, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25310

ECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's deliberate falsification of his 5 March 2003 clearance application and his 31 October 2003 sworn statement, and the criminal conduct he concealed, makes him unsuitable for a security clearance. Clearance denied.

STATEMENT OF THE CASE

Applicant challenges the 17 May 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of criminal conduct and personal conduct.⁽¹⁾ Applicant answered the SOR on 27 June 2005 and requested a hearing. DOHA assigned the case to me 12 December 2005, and I heard it 21 February 2006. DOHA received the transcript 1 March 2006.

FINDINGS OF FACT

Applicant admitted the allegations of paragraph 1 of the SOR. I incorporate his admissions as findings of fact. He denied intending to falsify his criminal record (SOR, paragraph 2). He is a 35-year-old logistics manager employed by a defense contractor since January 2003. He previously had a clearance between 1988 and 2002 while he was in the military.

When Applicant applied for an industrial clearance in March 2003, he deliberately concealed his criminal conduct between August 1992 and January 1999 by answering "no" to questions 24 (drug/alcohol offenses, ever), 25 (military offenses, last seven years), and 26 (other offenses, last seven years). In fact, he had been arrested and charged with public intoxication, resisting arrest, and disorderly conduct in August 1992 (\$750 fine), received non-judicial punishment (NJP) in January 1999 for assault (\$353 forfeiture, 14-days restriction and extra duty), and been arrested and charged with assault in July 1996 (\$100 fine). In addition, in November 1995, he was arrested and charged with 2nd degree forgery and fined \$500.⁽²⁾ In October 2003, Applicant was interviewed by the Defense Security Service (DSS) and provided a sworn statement (G.E. 3) describing his financial difficulties. He failed to disclose any of the arrests

listed above. At hearing, he stated he did not think any of the arrests would show up on his record.

Applicant provides varying explanations for his criminal conduct. Regarding his November 1995 forgery arrest, ⁽³⁾ his answer states that he was just the driver for his cousin, suggesting that he was never in the store. Yet he was fined \$500 for this offense. At hearing, he stated that he could not remember if he put any items in the shopping cart of electronics equipment his cousin tried to buy with a forged check, suggesting that he was in the store with his cousin. In any event, Applicant knew that the check his cousin intended to use to pay for the equipment was for a checking account that did not belong to his cousin (Tr. 41). Applicant characterized his July 1996 arrest for assault as one of a continuing string of brawls he used to have with his younger brother because Applicant felt the need to discipline him for what Applicant perceived as disrespect to their mother (Tr. 43). Similarly, he describes his January 1999 NJP for assault as the result of a bar fight he got into with a female friend, who he claims instigated the altercation (Tr. 45).

Notwithstanding his non-judicial punishment for assault, Applicant received good evaluations during his military service, was awarded two Army Achievement edals and two Army Commendation Medals, and was honorably discharged. Applicant's supervisor from November 2005 to the date of the hearing considered him a good worker and would trust him with classified information.

POLICIES AND BURDEN OF PROOF

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) and Guideline E (Personal Conduct).

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. ⁽⁴⁾

CONCLUSIONS

The government established a case for disqualification under Guideline J and E, case and Applicant did not mitigate the conduct. He deliberately concealed his criminal conduct from the government. ⁽⁵⁾ He has given varied and conflicting explanations for his conduct, but has acknowledged that he did not think his arrests would show up on his record. I conclude he intended to conceal this information from the government. This conduct violated 18 U.S.C. §1001. ⁽⁶⁾ The underlying criminal conduct also bespeaks poor judgment and untrustworthiness as well as a willingness to take matters into his own hands in inappropriate ways. Ordinarily, the comparatively minor nature of the misconduct, as well as the passage of time since the last incident, might serve to mitigate the conduct. However, I conclude that the conduct has not been mitigated. Although Applicant claims that he is a new person, there is little evidence to support that claim. Further, his various, sometimes inconsistent, explanations reveal a common thread of failure to accept full responsibility for his conduct.

Applicant's failure to disclose his arrests demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government 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. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline J and E against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against Applicant

Subparagraph e: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: Against 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 denied.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. An offense outside the reporting period for that level of criminal offense.
3. Applicant and his cousin were arrested when his cousin attempted to use stolen checks to pay for electronics equipment at the electronic store where his cousin worked.
4. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
5. 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. . . ;
6. 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.

