

DATE: May 5, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 03-25381

DECISION OF ADMINISTRATIVE JUDGE

Barry M. Sax

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 48-year-old engineer has alcohol-related arrests in 1987, 1993, and 2001. He deliberately did not tell the complete truth on his 2002 security clearance application and in a 2003 sworn statement given to a DoD agent. Each falsification was intentional and constitutes a violation of 10 U.S.C. 1001, a felony. Mitigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On January 27, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On February 23, 2005, Applicant submitted a Response to the allegations set forth in the SOR (RSOR), and elected to have a decision made by a DOHA Administrative Judge based on the written record; i.e., without a hearing. A File of relevant Materials (FORM) was issued on November 23, 2005. Applicant was notified that any response to the FORM had to be submitted within 30 days of receipt. The response was due by January 4, 2006, but no response has been submitted. The matter was referred to me for decision on January 25, 2006.

FINDINGS OF FACT

Applicant is a 48-year-old engineer for a defense contractor. The SOR contains three allegations under Guideline E (Personal Conduct); and one allegation under Guideline J (Criminal Conduct) (Item 1). In his response, Applicant admits Guideline E allegations 1.a.(1) and 1.a.(2), and denies 1.b and 2.a. The factual admissions are accepted and incorporated as Findings of Fact.

After considering the totality of the evidence of record, I make the following Findings of Fact as to each SOR allegation:

Guideline E (Personal Conduct)

As cited in the SOR:

1.a. - Applicant falsified material facts on his security clearance application (SF 86) of October 31, 2002 when in response to Question **24 Your Police Record-Alcohol/Drug Offenses**, [Have you ever been charged or convicted], Applicant stated "Yes" and listed an April 2001 Driving While Intoxicated (DWI) charge, and deliberately omitted any mention of

1.a.(1) an arrest in January 1993 for DWI- 1st Offense; and

1.a.(2) an arrest in September 1987 for DWI while serving in the U.S. Army.

1.b. - In a signed sworn statement, made on September 30, 2001 to an investigator of the Department of Defense, Applicant stated that he had been arrested for DWI in January 1993 and April 2001, but deliberately omitted any mention of the 1987 DWI arrest cited in 1.a.(2), above.

Guideline J (Criminal Conduct)

2.a. - The falsifications alleged in SOR 1.a.(1) and 1.a.(2) constitute violations of 10 U.S.C. 1001, a felony.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Applicant is a 40-year-old (born in 1965) employee of a defense contractor. Applicant's explanations appear in his Sworn Statement (Item 6) and his Response to the SOR (RSOR) (Item 2). Based on all of the information in the record, I conclude the following:

Guideline E

In his sworn statement (Item 6), Applicant states that he did not list all of his alcohol-related arrests because he was afraid he might not get a security clearance if he admitted he had two DWI arrests. In his answer to the SOR (Item 2), he

admitted that shortly after the interview that resulted in the sworn statement, in which he claimed the falsification was due to negligence, that he remembered the 1987 arrest while in the military.

Applicant admitted that he should have gone back to the agent and corrected the falsification, but he did not do so. I conclude that Applicant had three alcohol-related arrests, in 1987, 1993, and 2001; he remembered all three arrests, and he deliberately failed to tell the truth, with the specific intention of deceiving DoD, and of obtaining a security clearance he did not think he would receive if he told the truth.

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.

Disqualifying Conditions

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;

3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;

Mitigating Conditions: None that are established by the record; e.g. (2). The falsification was not an isolated incident, was recent, and the individual did not subsequently provided correct information voluntarily; and (3) The individual did not make prompt, good-faith efforts to correct the falsification before being confronted with the facts;

GUIDELINE J (Criminal Conduct) - The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Disqualifying Conditions: (1) Allegations or admission of criminal conduct, regardless of whether the person was formally charged; and (2) A single serious crime or multiple lesser offenses.

Mitigating Conditions: None that are established by the record; e.g., (1) The overall criminal conduct (falsifications) remain recent; and (2) The crimes were not an isolated incident.

Overall, I conclude that the Government has provided evidence supporting all SOR allegations, but Applicant has not provided substantive evidence in mitigation. Consequently, the evidence compels the conclusion that Applicant does not currently possess the judgement, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 1.a.(1). Against the Applicant

Subparagraph 1.a.(2) Against the Applicant

Subparagraph 1.b. Against the Applicant

Guideline J (Criminal Conduct) Against the Applicant

Subparagraph 2.a. 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE