

KEYWORD: Security Violations; Personal Conduct

DIGEST: Applicant is a 63-year-old engineer with an outstanding personal and professional reputation. He has held access to classified information for approximately 15 years. Between 2000 and 2001, he was negligent and committed three security violations. Since 2001, Applicant demonstrated a positive attitude toward his security responsibilities. He received additional training and displayed a heightened awareness of security rules. Additionally, his employer closely monitors and regulates his access to classified information. He mitigated the security violations and personal conduct concerns raised by his actions. Clearance is granted.

CASENO: 03-27131.h1

DATE: 06/07/2006

DATE: June 7, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-27131

**DECISION OF ADMINISTRATIVE JUDGE**

**JUAN J. RIVERA**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

## **FOR APPLICANT**

Alexander J. Brittin, Esq.

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## **SYNOPSIS**

Applicant is a 63-year-old engineer with an outstanding personal and professional reputation. He has held access to classified information for approximately 15 years. Between 2000 and 2001, he was negligent and committed three security violations. Since 2001, Applicant demonstrated a positive attitude toward his security responsibilities. He received additional training and displayed a heightened awareness of security rules. Additionally, his employer closely monitors and regulates his access to classified information. He mitigated the security violations and personal conduct concerns raised by his actions. Clearance is granted.

## **STATEMENT OF THE CASE**

On March 7, 2005, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline K (Security Violations) and Guideline E (Personal Conduct). The SOR informed Applicant that, based on information available to the government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant him access to classified information.<sup>(1)</sup>

Applicant answered the SOR on April 12, 2005, and requested a hearing. The case was assigned to me on October 17, 2005. On November 2, 2005, I convened a hearing at which the government presented seven exhibits, marked GE 1-7, and one witness to support the SOR.<sup>(2)</sup> Applicant testified on his own behalf, and presented the testimony of five witnesses and one exhibit that was admitted without objection and marked AE A<sup>(3)</sup>. DOHA received the transcript (Tr.) on November 18, 2005.

## FINDINGS OF FACT

In his answer to the SOR, Applicant admitted SOR allegations 1.a, 1.b, and 1.c. He denied allegations 2.a and 2.b. Although he admitted the underlying facts alleged in subparagraphs 2.a and 2.b, he claimed his actions did not demonstrate questionable judgement, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. His admissions are incorporated herein as findings of fact. After a thorough review of the pleadings, Applicant's statement, and the evidence, I make the following additional findings of fact:

Applicant is 63 years old, married, and has two adult children. In 1969, he enlisted in the U.S. Navy. After serving one year as a sailor, he attended Officer Candidate School and was commissioned as a Navy officer. He was honorably discharged in 1973 as a lieutenant. Applicant is a professional engineer. His extensive education includes an A.B. in Physics and Mathematics, a B.S.E. in Naval Architecture and Marine Engineering, and a Ph.D. in Naval Architecture. (4)

Applicant has been working for his employer, a company doing business with the Department of Defense (DOD), since 1990. He has been the lead technical expert in the development of futuristic ship hulls, propeller design, and ship acoustics. (5) According to his supervisors, Applicant is recognized in the scientific community as a gifted hydrodynamicist and an acoustic expert. He requires access to classified information to perform his job. He is highly regarded by his supervisors for his technical competence and experience. Applicant's two supervisors characterized him as an extraordinary, hard-working person, who is honest, trustworthy, and a dependable member of the organization. They wholeheartedly endorse Applicant's access to classified information.

Applicant was first granted access to classified information while serving in the Navy. In 1991, he was granted access again as a result of his current job. Applicant's security concerns arose as a result of three security violations he committed within a one-year period. In August 25, 2000, Applicant opened a safe, used it, and logged it closed. The safe drawer was later discovered ajar and unattended. Applicant acknowledged to security personnel that he was distracted and did not secure the safe. The safe was vulnerable for 17 minutes. Because of the location of the safe, the possibility of compromise was considered remote. Company security personnel counseled Applicant concerning his security responsibilities.

On July 11, 2001, Applicant opened a safe and failed to secure it properly. He closed the safe drawer, documented his use of the safe, but failed to spin the safe tumbler. The safe was later discovered open. The safe was vulnerable for 55 minutes, however, because of the location of the safe, the possibility of compromise was considered remote. In July 2001, Applicant was working with documents classified "confidential." At the end to the day, he left the documents on the top of his desk and went home for the weekend. The documents were exposed from Friday afternoon to Monday morning. All three violations occurred in an area considered to have "security in depth," - i.e., the safe was in a secured access building, within a secured access federal exclave housing a nuclear plant.

Applicant was forthright and honest during the investigation of his security violations. As a result of these violations, Applicant was counseled, received training on his security responsibilities, and ultimately, he was reassigned to a job which did not require access to classified information. Applicant fully cooperated with security personnel in the implementation of corrective measures to avoid further security violations. His access to classified information was reinstated in July 2003.

At his hearing, Applicant was contrite. He admitted responsibility for the security violations and recognized there was no good excuse for his actions. He testified his actions reflected not a lack of training, but a lack of care on his part to follow security procedures, to be focused, and to treat classified information with more respect. Applicant received security training while in the Navy. He also received annual security training, semiannual reminders, and emails concerning security since joining his company in 1990. In 2003, when his access to classified information was reinstated, Applicant received an additional debriefing of his security responsibilities. Since then, he has continued to participate on the company's security training programs.

Applicant explained that during 2000 - 2001 the company went through a very hectic period of time during which everyone was working long hours in the preparation of four different contract proposals. All personnel, including Applicant, worked very long hours, six days a week on the different proposals. He explained that the long work hours, coupled with the hectic environment, caused his distractions and led to the security violations.

Since his last security violation, Applicant made a commitment with his employer to become more security conscientious. Over the last four years, Applicant has attended every single security briefing, and related training offered by the company. He also has been proactive in his approach to security matters raising possible issues with his supervisors and security personnel. Whenever in doubt, Applicant has asked questions ahead of time concerning the handling of information to ensure compliance with security policies. He is now considered a model employee concerning security matters. He takes his security obligations seriously, and has the reputation of being very careful handling classified information. Applicant has not been involved in any security violations or caused the compromise of classified information since July 2001.

Applicant's employer also changed its security procedures to ensure Applicant does not commit any additional security violations. Applicant's supervisors and company's security personnel closely monitor Applicant's access to classified information. Applicant no longer has direct access to safes or classified information. He has to request the assistance of supervisors or security personnel to access classified materials. They, in turn, are responsible for obtaining and securing the classified information.

## **POLICIES**

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. The administrative judge must take into account both disqualifying and mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. The guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive, and the whole person concept.<sup>(6)</sup> Having considered the record evidence as a whole, I conclude Guideline K (Security Violations) and Guideline E (Personal Conduct), are the applicable relevant adjudicative guidelines.

### **BURDEN OF PROOF**

The purpose of a security clearance decision is to determine whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.<sup>(7)</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.

The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish, by substantial evidence,<sup>(8)</sup> a prima facie case that it is not clearly consistent with the national interest for the applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion.<sup>(9)</sup> The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.<sup>(10)</sup>

### **CONCLUSIONS**

Under Guideline K (security violations), the noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information.<sup>(11)</sup> The significance of a security violation does not depend on whether the information was actually compromised. It depends on the intentions and attitudes of the individual involved. The government established its case under Guideline K by showing that Applicant committed three security violations within a one-year period of time - one in August 2000, and two in July 2001. Disqualifying Condition (DC) 2: *Violations that are deliberate or multiple or due to negligence*<sup>(12)</sup> applies.

Applicant has had access to classified information for approximately 15 years. During that period of time, he has received adequate training concerning his obligations while handling classified information. With the exception of the three violations alleged in the SOR, there is no evidence Applicant has committed any other security violations. The evidence shows Applicant has a solid reputation for being an honest, dependable, and trustworthy individual. His three security violations seemed the result of the hectic environment and the long hours he was working during a crucial period or time in his company. Nevertheless, those circumstances do not excuse his failure to exercise the degree of care that a reasonable person would have exercised under the same circumstances. In light of Applicant's age and extensive education, and experience he clearly knew, or should have known, of his responsibilities and the probable adverse consequences of compromising classified information.

Applicant's witnesses lead me to believe that Applicant did not have a cynical attitude toward his security obligations before his three violations. After the security violations he took responsibility for his actions and fully cooperated with security investigators assessing the damage of his violations. Applicant also willingly participated in additional security training and took corrective measures to prevent the future compromise of classified information.

After the administrative termination of his clearance, Applicant took concerted effort to change his attitude toward his security obligations. By all accounts he is a new employee with a heightened awareness for his security responsibilities. At the hearing, Applicant was complimented by facility security officers for being now the ideal employee - the poster child for security issues. He was complimented for his frequent proactive contact with security personnel, for his willingness to ask questions concerning the best way to handle classified information, and for his positive attitude and desire to participate in training, and to ensure compliance with security procedures.

I also considered in my decision making process the company's efforts to ensure Applicant does not engage in additional violations. From the beginning, company officials were on top of their responsibilities by investigating and reporting the security violations. More important, they took remedial action against the Applicant by counseling and training him. Ultimately, Applicant's access was administratively terminated and he was reassigned to a position that did not require access to classified information. After reinstating Applicant's clearance in 2003, the company took extra efforts to provide additional security training, and it now controls and monitors Applicant's access to classified information.

In light of the totality of the circumstances, I find that it is not likely Applicant will engage again in security violations or compromise classified information. He has learned from his mistakes and his behavior shows a responsible attitude toward his security responsibilities. He has demonstrated he is willing and able to safeguard classified information. Mitigating Condition (MC) 4: *Demonstrate a positive attitude toward the discharge of security responsibilities*, applies. Applicant has mitigated the security concern. Guideline K is decided for Applicant.

Under Guideline E, personal conduct is always a security concern because it asks the ultimate question - whether a

person's past conduct instills confidence the person can be trusted to properly safeguard classified information. An applicant's conduct is a security concern if it involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Such behavior could indicate that the person may not properly safeguard classified information. [\(13\)](#)

The government established its case under Guideline E by showing that Applicant's negligence led to his three security violations within a one-year period. Further, Applicant committed two back-to-back security violations in July 2001. He committed the third security violation only days after being counseled and reminded of his security responsibilities. Applicant was careless and failed to exercise the level of diligence and responsibility expected from a person of his age, education, and experience. Personal Conduct DC 5: *a pattern of . . . rule violations* applies.

For the same reasons discussed above under Guideline K, incorporated herein, I do not believe Applicant's conduct was intentional or that he had an unacceptable attitude toward his security obligations. Applicant has an outstanding reputation as a trustworthy, reliable, and honest person. He admitted his mistakes, and cooperated with the investigation of his security violations. The evidence shows he has learned from his mistakes, participated in additional security training, and demonstrated a positive change in his attitude toward his security responsibilities. I find that it is not likely Applicant will engage again in security violations or compromise classified information. Guideline E is decided for Applicant.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. Considering all relevant and material facts and circumstances present in this case, including Applicant's testimony, his behavior, the whole person concept, and the adjudicative factors listed in the Directive, I find Applicant has mitigated the security concerns. Applicant's clearance is granted.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Security Violations (Guideline K) FOR APPLICANT

Subparagraph 1.a -1.c For Applicant

Paragraph 2, Personal Conduct (Guideline E) FOR APPLICANT

Subparagraph 2.a and 2.b For Applicant

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Juan J. Rivera

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992) (Directive), as amended.
2. I marked the government's exhibit list as GE 1 for Identification. GE 7 for Identification was offered and considered for administrative notice purposes only.
3. Applicant submitted a binder composed of 19 documents identified in Tabs A through S.
4. AE A (J).
5. AE A (S); Tr. 79-126.
6. Directive, ¶ E2.2.1. "The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ."
7. *See Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
8. ISCR Case No. 98-0761, at p. 2 (December 27, 1999)(Substantial evidence is more than a scintilla, but less than a preponderance of the evidence.); ISCR Case No. 02-12199, at p. 3 (April 3, 2006)(Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in



the record.); Directive, ¶ E3.1.32.1.

9. *Egan*, 484 U.S. 518, at 528, 531.

10. Directive, ¶ E2.2.2.

11. Directive, ¶ E2.A11.1.1.

12. Directive, ¶ E2.A11.1.2.2.

13. Directive, ¶ E2.A5.1.1.