

KEYWORD: Security Violations; Personal Conduct

DIGEST: Applicant is 24 years old and works as a senior data entry technician for a defense contractor. On two occasions in 2003, Applicant failed to properly secure her computer hard drive which contained classified material. Applicant was young and new to the job at the time and has taken steps to prevent a security lapse in the future. Applicant mitigated the security concerns regarding security violations and personal conduct. Clearance is granted.

CASENO: 04-00591.h1

DATE: 11/15/2005

DATE: November 15, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-00591

**DECISION OF ADMINISTRATIVE JUDGE**

**SHARI DAM**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is 24 years old and works as a senior data entry technician for a defense contractor. On two occasions in 2003, Applicant failed to properly secure her computer hard drive which contained classified material. Applicant was young and new to the job at the time and has taken steps to prevent a security lapse in the future. Applicant mitigated the security concerns regarding security violations and personal conduct. Clearance is granted.

**STATEMENT OF THE CASE**

On March 14, 2005, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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, which is essentially an administrative complaint, detailed reasons under Guideline K (Security Violations) and Guideline E (Personal Conduct) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to the Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On April 5, 2005, Applicant answered the SOR in writing. She admitted the two allegations, and requested a hearing before an administrative judge. On September 20, 2005, the case was assigned to me. A Notice of Hearing was issued on September 27, 2005, and the hearing was held on October 18, 2005. At the hearing, the Government introduced six exhibits into evidence and Applicant introduced fifteen documents. The Government did not call any witnesses. Applicant called two witnesses. I received the Transcript (Tr.) of the proceeding on October 31, 2005.

## FINDINGS OF FACT

In her answer to the SOR, Applicant admitted the allegations contained in subparagraphs 1.a. and 1.b. under Guideline K, and those contained in subparagraph 2.a. under Guideline E. These admissions are incorporated into my findings of fact. After a complete review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 24-year-old single woman.<sup>(1)</sup> In September 1999, she began working for a federal contractor as an executive assistant and applied for a security clearance in December 2000, and received one on August 16, 2001.<sup>(2)</sup> On April 14, 2003, Applicant was scheduled to begin her vacation, but decided to work a half-day. Before leaving work, she forgot to properly secure her computer hard drive which contained classified information. On returning a couple days later Applicant received a Letter of Counseling from her employer advising her of the breach of security procedures.<sup>(3)</sup> In response to the letter, Applicant implemented "preventive measures to ensure that this lapse of judgement would not occur again."<sup>(4)</sup> In particular, she placed a security checklist on her office board to remind her to check out her computer at the end of the day.<sup>(5)</sup>

During her testimony Applicant explained that she had not worked with classified information prior to this position.<sup>(6)</sup> On that particular day she was also filling in for another administrative assistant who was out of the office, which caused her to be overloaded with work.<sup>(7)</sup> Applicant said the office did not provide any additional security training after this incident.<sup>(8)</sup>

Approximately six weeks later on May 29, 2003, Applicant again failed to remove and secure her classified hard drive before leaving work for her vacation. As a consequence, Applicant received a Letter of Reprimand.<sup>(9)</sup> She was also suspended without pay for two days and did not receive a \$200 bonus.<sup>(10)</sup> She subsequently participated in a counseling session and implemented three measures to prevent a recurrence in the future, which are as follows: (1) she took a security awareness course; (2) she set up an alert system on her computer to remind her to put her hard drive away after a certain time; and (3) she established a daily sign in/out form that records the location of her computer that is collected daily.<sup>(11)</sup>

In March 2004, Applicant took a position as a senior data entry technician.<sup>(12)</sup> At the hearing two of Applicant's supervisors testified. One of them has supervised her since November 2003 and is aware of the security incidents. He attributed some of the problems to her age at the time, coupled with performing jobs for two

different divisions. (13) At this time he considers her a "fantastic employee" and not a security threat. (14) Applicant's present manager of four months thinks she works hard and pays close attention to detail, such that she will not pose a security risk. (15) Applicant also submitted letters of appreciation and recognition for her work since the incidents, along with a certificate verifying the completion of a program in Security Awareness in December 2004. (16) In addition to these supportive managers, numerous colleagues and friends wrote letters attesting to her team spirit and capabilities.

After listening to Applicant testify, I find her to be credible, honest and mature. I find that the incidents were the result of being overloaded with work, insufficiently trained and careless, but not intentional. No classified information was compromised in either incident. As a result of the security measures that Applicant implemented, she has not broken security regulations since May 2003.

### POLICIES

Enclosure 2 of the Directive sets forth adjudication 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 (DC) and mitigating conditions (MC) applicable to each specific guideline. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, along with 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. 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.

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. (17) The government has the burden of proving controverted facts. (18) The burden of proof is something less than a preponderance of the evidence. (19) 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 her. (20) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. (21)

As noted by the Court in *Department of the Navy v. Egan*, 484 U.S. 518 (1988), "it should be obvious that no one has a right to a security clearance"<sup>(22)</sup> and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."<sup>(23)</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>(24)</sup> The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.<sup>(25)</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.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration relevant circumstances, and applying sound judgment, mature thinking and careful analysis.

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

**Guideline K - Security Violations: A security concern may exist when conduct involving the noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information.**

**Guideline E - Personal Conduct: A security concern may exist when 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.**

## CONCLUSIONS

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

## Guideline K: Security Violations

The government established a case under Guideline K. Based on the evidence, Security Violations Disqualifying Condition (SV DC) E2.A11.1.2.2. (*Violations that are deliberate or multiple or due to negligence*), applies. In this instance, Applicant's breach of security procedures in two instances was due to negligence and not the result of intentional misconduct.

In mitigation of the charges Applicant offered proof that at the time of these occurrences, she was young, unfamiliar with procedures, working for two bosses, and probably distracted by upcoming vacations, all of which contributed to her being careless. Since implementing several procedures and obtaining appropriate training, she has not violated security regulations over the past two years. All of this evidence, coupled with testimony from her supervisors and colleagues about her work ethic and attitude, sufficiently mitigates the allegations under Security Violations Mitigating Conditions (SV MC) E2A11.1.3.4. (*Demonstrates a positive attitude toward the discharge of security responsibilities*).

## Guideline E: Personal Conduct

The government also established its case under Guideline E. Based on Applicant's admissions that she violated security rules on two occasions, Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.5. (*A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and agency*), applies. However, Applicant's conduct in implementing preventive measures, which have been effective for more than two years, mitigates the disqualifying condition under Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.5. (*The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*).

I have considered all the evidence in this case and taken into account the "whole person" concept, in evaluating Applicant's risk and vulnerability in protecting our national interest. Included in my evaluation are factors such as Applicant's age, her explanation for the security breaches, her work history and achievements, and the outpouring of support from those who know and work with her, as well as the likelihood that similar breaches will not occur in the future, given the steps she has taken to prevent them. All of these factors clearly mitigate the security concerns regarding the security violations and personal conduct concerns raised by the government. Therefore, I am persuaded by the totality of the evidence that it is consistent with the national interest to grant Applicant a security clearance. Accordingly, Guidelines K and E are decided for 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 K (Security Violations) FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Paragraph 2: Guideline E (Personal Conduct) FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

### **DECISION**

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

Shari Dam

Administrative Judge

1. Government Exhibit 1 (Security Clearance Application, dated December 19, 2000) at 1.
2. *Id.* at 3; Department Exhibit 5 (Adverse Information Report, dated June 6, 2003).
3. Government Exhibit 3 (Letter of Counseling, dated April 18, 2003).
4. Government Exhibit 2 (Statement of Subject, dated October 28, 2003) at 2.
5. Tr. 27.
6. Tr. 25.
7. Tr. 26.
8. Tr. 27.
9. Government Exhibit 4 (Letter of Reprimand, dated June 13, 2003).
10. Government Exhibit 2, *supra* note 4, at 2.
11. Tr. 28.
12. Tr. 23.
13. Tr. 41.
14. Tr. 39.
15. Tr. 34-35.
16. Applicant Exhibit M (Certificate for Security Awareness, dated December 29, 2004).
17. ISCR Case No. 96-0277 at 2 (App. Bd., Jul. 11, 1997).
18. ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
19. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
20. ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
21. ISCR Case No. 93-1390 at 7-8 (App. Bd., Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
22. *Egan*, 484 U.S. at 528.
23. *Id.*



24. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.

25. Executive Order No. 10865 § 7.