

KEYWORD: Security Violations; Personal Conduct

DIGEST: Applicant has been a research engineer for the same defense contractor for over 35 years. In 1964, while on active military duty, Applicant's security clearance was revoked for soldier misconduct. In 1982, Applicant wrongly duplicated a drive-on security pass for his vehicle and was punished by his employer. In 2002, Applicant was given a package containing classified material to deliver to another of his employer's facilities. He took the material home over the week-end in violation of security procedures and delivered the package the next business day. There was no security compromise. Applicant was disciplined by his employer. Applicant has received awards and commendations from his employer for his work. Applicant has mitigated security concerns for security violations and personal conduct. Clearance is granted.

CASENO: 04-01642.h1

DATE: 10/13/2005

DATE: October 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-01642

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has been a research engineer for the same defense contractor for over 35 years. In 1964, while on active military duty, Applicant's security clearance was revoked for soldier misconduct. In 1982, Applicant wrongly duplicated a drive-on security pass for his vehicle and was punished by his employer. In 2002, Applicant was given a package containing classified material to deliver to another of his employer's facilities. He took the material home over the week-end in violation of security procedures and delivered the package the next business day. There was no security compromise. Applicant was disciplined by his employer. Applicant has received awards and commendations from his employer for his work. Applicant has mitigated security concerns for security violations and personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On January 31, 2005, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on February 10, 2005. The SOR alleges security concerns under Guideline K (Security Violations), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on February 16, 2005. He admitted the allegation under Guideline K, admitted two and denied one of the allegations under Guideline E, and provided an explanation for his actions. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on June 27, 2005. Applicant received a complete file of

relevant material (FORM) on July 19, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due August 20, 2005. As of August 22, 2005, he had not responded. The case was assigned to me on August 25, 2005.

FINDINGS OF FACT

Applicant is 59-years-old and has been a research engineer for the same defense contractor for over 35 years. He is married with three children. He attended college, but did not receive a degree. He served in the military and was honorably discharged upon completion of his enlistment in 1968. He has held a security clearance for over 18 years, last renewed in 1998. [\(1\)](#)

In July 2002, Applicant was given a packet of material to take to another plant of his employer. He knew the packet contained classified material, but he was not aware of the level of classification. Instead of immediately delivering the material to the other plant, which was a distance away, Applicant took the material home over a weekend, and delivered it on Monday morning. The packet was not tampered with, and was signed for at the new location. Applicant violated the security directives of his employer [\(2\)](#) and the Department of Defense [\(3\)](#) by taking the packet home and not keeping it in a secure container. Applicant was disciplined by his employer, and received one week off without pay. [\(4\)](#)

In April 1964, Applicant's security clearance was revoked when he was on active military duty. The revocation was based on three non-judicial punishments, an administrative reprimand, a civilian conviction for a minor offense, and an evaluation by a mental health professional recommending his separation from the military. [\(5\)](#) Applicant received an honorable discharge when he was separated from active military service. [\(6\)](#) There was no breach of security rules and procedures.

Applicant admits he improperly duplicated a drive-in-pass for his employer's facility. Applicant was a union shop steward at the plant and was provided a temporary pass for non-secure parts of the facility. He had a number of duplicates of the pass made after his expired, and provided some to other plant employees. When his employer learned of this actions, he was suspended for three months, and not permitted to enter his old secure area of employment for an additional nine months. [\(7\)](#)

Applicant attached letters and notice of commendation from his employer to his response to the SOR. He was commended for 5, 10, 20, 25, and 30 years of service to his employer. He received letters and certificates of commendation for achievement. He also received monetary rewards for exceptional work. [\(8\)](#)

POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information."⁽⁹⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽¹⁰⁾

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽¹¹⁾ An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 of recurrence.⁽¹²⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽¹³⁾ 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽¹⁴⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽¹⁵⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽¹⁶⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed

therein and an applicant's security suitability." ⁽¹⁷⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." ⁽¹⁸⁾

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

Guideline K - Security Violation: A security concern exists because noncompliance with security regulations raises doubt about an individual's trustworthiness, and willingness and ability to safeguard classified information.

Guideline E - Personal Conduct: A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR. The allegations under both guidelines are connected and will be discussed together.

The government has established its case under Guideline K. Applicant's action of bringing classified material home rather than immediately delivering it to his employer brings the matter under Security Violations Disqualifying Condition E2.A11.1.2.2 (*violations that are deliberate or multiple or due to negligence*). Applicant knew that the packet of material he received contained classified material, even though he did not know the level of classification of the material. While the classified material was not compromised, he deliberately took the material home in violation of procedure. He was also negligent in not delivering the material for safekeeping. The above disqualifying condition has been established.

The government has established its case under Guideline E. The revocation of Applicant's security clearance in 1964, and his improper duplication of a drive-in pass, and his deliberate and negligent taking of classified material home brings the matter under Personal Conduct Disqualifying conditions E2.A5.1.2.1 (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*). The information concerning Applicant's actions on security matters is unfavorable and provided by reliable sources. The above disqualifying condition has been established.

The security concerns for Guidelines K and E are similar in that they both concern Applicant's questionable judgment, trustworthiness, reliability and willingness and ability to safeguard classified information. The record shows that approximately every 20 years, Applicant does something to question his security worthiness. Each event should be considered separately, and then considered as a whole, to determine the effect on Applicant's security worthiness.

In regard to two of the Guideline E allegations, the revocation of a security clearance while on active military duty in 1964 and the duplicate pass in 1982, I have considered Personal Conduct Mitigating Condition E2.A5.1.3.1 (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*). The security clearance revocation was over 40 years ago and involved soldier misconduct rather than a security breach. Applicant's conduct as a soldier resulting in disciplinary action that raised concerns by his commander. The duplication of the pass was over 23 years ago, and appropriate actions by his employer were taken. Since these actions, Applicant has matured, performed exceptionally well for his employer, twice been granted access to top classified information, and held a security clearance for almost 20 years. These two events, while substantiated, no longer have a bearing on the determination of Applicant's judgment, trustworthiness, reliability, or security worthiness.

Applicant's action taking classified material home rather than delivering it to another office of his employer, which is an allegation under both Guideline E and K, does raise doubts under both guidelines as to Applicant's trustworthiness, reliability, judgment, and willingness and ability to safeguard classified information. In regard to the Guideline K allegations, I have considered Security Violations Mitigating Conditions, E2.A11.1.3.1 (*the actions were inadvertent*), E2.A11.1.3.2 (*the actions were isolated or infrequent*), and E2.A11.1.3.3 (*the actions were due to improper or inadequate training*). Since Applicant's employer disciplined Applicant for his actions, even though there is no evidence of a security compromise, I find there was a breach of security procedure by Applicant. While Applicant deliberately took the material home, he did it for convenience and not to compromise security. It is Applicant's only action that directly concerns the handling of security material. The previous incident of concern was 23 years earlier. I conclude the actions were inadvertent, isolated and infrequent. It is not clear what, if any, instructions, Applicant received when he was asked to deliver the package. Since Applicant has not presented evidence as to the instructions, I conclude his actions were not due to improper or inadequate training or instruction. Taken individually, the disqualifying conditions under both guidelines have been mitigated.

I have also considered the three actions as a group and under the "whole person" concept. The security violation allegations are over 20 years apart. The violations were not connected in any regard to time, motive, action, circumstances, and thus do not indicate a pattern of action. Applicant has established he is a trusted, dedicated, highly-valued employee. I conclude under the circumstances of this case that Applicant does exercise good judgment, is trustworthy and reliable, and has the ability and is willing to safeguard classified information. I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is eligible for access to classified

information.

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 fo the Directive, are:

Paragraph 1, Guideline K: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

DECISION

In light of all of the circumstances in 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.

Thomas M. Crean
Administrative Judge

1. Government Exhibit 4 (Security Clearance Application, dated Mar. 3, 2003).
2. Government Exhibit 5 (Security Manuel, dated Jan. 1996), at 5-100, 5-204, and 5-303.
3. Government Exhibit 6 (National Industrial Security Program Operating Manual, dated Jan. 1995), at Sec. 4.
4. Government Exhibit 9 (Applicant's Statement, dated Jul. 29, 2003), at 1.
5. Government Exhibit 7 (Notice of Revocation, dated Apr. 6, 1964).
6. Government Exhibit 3 (Applicant's Answer to SOR, dated Feb. 16, 2005) at attachment 1.
7. Government Exhibit 8, (Applicant's Statement, dated Apr. 12, 1984).
8. Government Exhibit 3 (Applicant's Answer to SOR, dated Feb. 16, 2005).
9. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
10. Directive ¶ E2.2.1.
11. *Id.*
12. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
13. *See* Exec. Or. 10865 § 7.
14. Directive ¶ E3.1.14.
15. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
16. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
17. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
18. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.