

KEYWORD: Personal Conduct

DIGEST: Applicant's repeated falsifications, omissions, and concealments in October 2000, January 2002, and January 2004, made under certification or oath, on a security questionnaire and during two interviews, regarding his past illegal substance abuse, in light of his subsequent admission that he had deliberately lied out of concern for his security clearance, raise grave questions and doubts as to his security eligibility and suitability. Clearance is denied.

CASENO: 04-03017.h1

DATE: 03/18/2005

DATE: March 18, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03017

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's repeated falsifications, omissions, and concealments in October 2000, January 2002, and January 2004, made under certification or oath, on a security questionnaire and during two interviews, regarding his past illegal substance abuse, in light of his subsequent admission that he had deliberately lied out of concern for his security clearance, raise grave questions and doubts as to his security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On July 29, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, dated September 2, 2004, Applicant responded to the allegations in the SOR, and elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the government's case on November 2, 2004. A complete copy of the file of relevant material (FORM) [\(U\)](#) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He chose not to respond. The case was assigned to me on February 2, 2005.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to personal conduct under Guideline E (subparagraphs 1.a. through 1.d.). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 26-year-old employee of a defense contractor seeking to obtain a security clearance, the level of which has not been disclosed.

Applicant was a poly-substance abuser whose substances of choice were marijuana and hallucinogenic mushrooms. He started experimenting with marijuana in January 1994 while he was a high school student, essentially due to peer pressure and curiosity. (2) He generally used marijuana on two occasions per week at parties or out in the woods. (3) He ceased using marijuana in June 1995. (4) During the period of his marijuana use, Applicant purchased and sold marijuana on at least three occasions. (5) On at least one occasion in 1994-95, Applicant also experimented with hallucinogenic mushrooms. (6)

On October 30, 2000, Applicant completed his Security Clearance Application (SF 86), (7) and in response to an inquiry pertaining to ever ("since the age of 16 or in the last 7 years, whichever is shorter") having used a variety of illegal substances, including marijuana and hallucinogenics, (8) Applicant responded "yes," and referred to his experimental use of marijuana on approximately ten occasions. (9) He certified that his response was true, complete, and accurate. It was not, for he had omitted and concealed his use of hallucinogenic mushrooms, as described above. Applicant subsequently admitted that he had deliberately omitted and concealed the truth, and falsified the response. (10)

In that same SF 86, in response to an inquiry pertaining to ever ("in the last 7 years") being involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of a variety of illegal substances, (11) Applicant responded "no." (12) He again certified that his response was true, complete, and accurate. It was not, for he had omitted and concealed his purchase and sales of marijuana, as described above. Applicant subsequently admitted that he had deliberately omitted and concealed the truth, and falsified the response. (13)

In January 2002, Applicant was interviewed by a special agent of the Defense Security Service (DSS). That interview was concluded when Applicant signed a statement. In that sworn statement, Applicant denied ever contributing to the purchase of marijuana and stated "I have not been involved in any distribution, purchase, sale, or manufacturing of any

illegal drugs." (14) He swore and attested that his statement was accurate and complete as well as correct and true. (15) It was not, for he had deliberately falsified material facts and intentionally omitted and concealed his purchase and sales of marijuana, as described above. Applicant subsequently admitted that he had deliberately omitted and concealed the truth, and falsified the statement. (16)

In January 2004, prior to being administered a polygraph examination, Applicant was again interviewed by a DSS special agent regarding his past substance abuse. He reaffirmed his January 2002 statement in which he denied any past involvement in the purchase or sale, etc., of any illegal substances. (17) After that interview was concluded, Applicant signed a sworn statement (18) in which he admitted previously lying about his substance abuse out of concerns about his security clearance, (19) and acknowledged his purchases and sales of marijuana. (20) Applicant eventually expressed regret over not being fully candid in his earlier responses and statements. He attributed his actions to being "younger and very unwise about the way these things worked," (21) and because he "did not want to be ruled out for what happened in [his] past." (22)

Applicant attended a community college from January 1997 to at least October 2000, and has been employed by the same company as an installer since October 2000. The quality of his work performance has not been described.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

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 set forth in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (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 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.

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

Personal Conduct - Guideline E: 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.

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

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the "clearly consistent with the interests of national security" standard⁽²³⁾ or "clearly consistent with the national interest" standard. For the purposes herein, despite the different language in each, I have concluded those standards are one and the same. In reaching this Decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. Because of this special relationship 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. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions are predictive in nature and must often address potential, rather than actual, risk of compromise of classified information.

Finally, Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline E. Examination of Applicant's actions reveals a pattern of conduct involving questionable judgment, untrustworthiness, and unreliability. There is little dispute surrounding Applicant's pattern of deceptive actions, for he has admitted the essential elements of the allegations. Notwithstanding his certifications, oaths, and affirmations that his responses and statements were true and accurate, Applicant, on separate occasions within four years, willfully falsified, omitted, or concealed material facts pertaining to his history of substance abuse. In October 2000, he lied twice about his drug abuse while completing his SF 86. He did so again in January 2002, in a sworn statement. Having learned nothing about honesty and candor, he lied again in January 2004, prior to being administered a polygraph examination.

Applicant's actions fall within Personal Conduct Disqualifying Condition (PC DC) 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*), PC DC E2.A5.1.2.3. (*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*), PC DC E2.A5.1.2.4. (*personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail*), and 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 the agency*).

Applicant's ensuing forthrightness regarding his history of substance abuse, only when confronted with a DSS polygraph examination in January 2004, does not lessen or minimize, much less erase or nullify, the impact of his initial and recurring falsifications, omissions, and deceptions. That eventual admission was insufficient to activate Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.3. (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*).

Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate, meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions and activities therefore pose a serious potential risk to the nation's security precautions which go to the very heart of the nation's security system. An applicant's responsibilities associated with the granting of a security clearance are considerable in terms of protecting the national security and in maintaining appropriate personal conduct. Along with the responsibilities is accountability. In this instance, Applicant is now held accountable for those past actions and activities.

I do not take this position lightly, but based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, and my application of the pertinent factors and conditions under the Adjudicative Process, I believe Applicant has failed to mitigate or overcome the Government's case. The evidence leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegations 1.a. through 1.d. of the SOR are concluded against Applicant. For the reasons stated, I conclude Applicant is not 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 of the Directive, are:

Paragraph 1., Guideline E: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: 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. Clearance is denied.

Robert Robinson Gales

Chief Administrative Judge

1. The government submitted six items in support of its contentions.
2. Item 5 (Statement, dated January 19, 2002), at 2.
3. *Id.*
4. *Id.*
5. Item 6 (Statement of Subject, dated January 21, 2004), at 2.
6. *Id.*
7. Item 4 (Security Clearance Application, dated October 30, 2000), at 13.
8. *Id.*, Question 27.
9. *Id.*
10. Item 3 (Response to SOR, dated September 2, 2004).
11. Item 4, *supra* note 7, at 13, Question 29.
12. *Id.*
13. Item 3, *supra* note 10.
14. Item 5, *supra* note 2, at 2.

15. *Id.*, at 3.

16. Item 3, *supra* note 10.

17. *Id.*

18. Item 6, *supra* note 5.

19. *Id.*, at 2.

20. *Id.*

21. Item 3, *supra* note 10.

22. *Id.*

23. Exec. Or. 12968, "*Access to Classified Information*," as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.)