

KEYWORD: Criminal Conduct; Personal Conduct

DIGEST: Applicant is a 62-year-old communication specialist working for a federal contractor. He admitted that he intentionally falsified his answer on his 2003 Security Clearance Application relating to his criminal history. Applicant failed to mitigate security concerns arising from criminal and personal conduct. Clearance is denied.

CASENO: 04-04008.h1

DATE: 10/31/2005

DATE: October 31, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04008

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 62-year-old communication specialist working for a federal contractor. He admitted that he intentionally falsified his answer on his 2003 Security Clearance Application relating to his criminal history. Applicant failed to mitigate security concerns arising from criminal and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On May 6, 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 J (Criminal Conduct) 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.

Subsequently, Applicant answered the SOR in writing and elected to have the case decided on the written record.⁽¹⁾ On July 12, 2005, Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy.⁽²⁾ Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on July 28, 2005, and did not to submit any additional information. This case was assigned to me on September 14, 2005.

FINDINGS OF FACT

In his answer to the SOR, Applicant admitted the allegations contained in subparagraph 1.a. under Guideline J and in subparagraph 2.a. under Guideline E. These admissions are incorporated into my findings of fact. He did not answer subparagraph 1.b. under Guideline. After a complete review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 62-year-old communications specialist presently working for a federal contractor. From 1961 through 1983, he served in military reserve units. He applied for a security clearance in June 2003. [\(3\)](#)

In December 2000, Applicant was arrested and charged with Driving While Impaired. He was found guilty and sentenced to 24 months of unsupervised probation, ordered to perform 24 hours of community service, pay a fee and restitution, and obtain an alcohol assessment. [\(4\)](#)

On June 6, 2003, Applicant completed a Security Clearance Application (SCA). In executing that form and all subsequent documents related to his application, he certified that his answers were "true, complete, and correct" to the best of his knowledge and belief, and acknowledged that a knowing and willful false statement could be punished by fine and/or imprisonment. In response to Question 24 (*YOUR POLICE RECORD - ALCOHOL/DRUG OFFENSES: Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in you case has been "sealed" or otherwise stricken from the record. The single exception in this requirement is for certain convictions under the Federal Controlled Substance Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.*), Applicant answered "No." [\(5\)](#)

In February 2004, Applicant said "I admit I willfully omitted my DWI arrest from my security form. I was advised by friends/coworkers not to list this because the Army was known to fire people from their jobs for little or no reason and I needed my job. . . I now regret my omission of this arrest information and I am being fully truthful about the details of that arrest." [\(6\)](#)

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.⁽⁷⁾ The government has the burden of proving controverted facts.⁽⁸⁾ The burden of proof is something less than a preponderance of the evidence.⁽⁹⁾ 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.⁽¹⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹¹⁾

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"⁽¹²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁴⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁵⁾ 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 the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guidelines are pertinent to an evaluation of the facts of this case:

Guideline J - Criminal Conduct: The security concern is a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Guideline E - Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with the rules and regulations could indicate that the person may not properly safeguard classified information.

CONCLUSIONS

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

Guideline J: Criminal Conduct

The government established its case under Guideline J. Based on the evidence in this case, Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations or admission of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2. (*A single serious crime or multiple lesser offenses*) apply to this case. Applicant was convicted of a DWI and deliberately falsified information on his June 2003 SCA regarding

it, in violation of 18 U.S.C. § Section 1001.

I reviewed all of the mitigating conditions under Guideline J and determined that none apply under these circumstances, particularly in light of Applicant's most recent criminal conduct of 2003.

Guideline E: Personal Conduct

Based on his admission to Paragraph 2.a. in the SOR, the government also established its case under Guideline E, specifically, 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).*

I reviewed the mitigating conditions under Guideline E. None of the mitigating conditions are applicable to these facts.

After considering all of the evidence in this case including, Applicant's remorse and the "whole person" concept in my evaluation of Applicant's risk and vulnerability in protecting our national interest, I find Applicant has failed to mitigate the security concerns caused by criminal and personal conduct. Therefore, I am persuaded by the totality of the evidence in this case that it is clearly not consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline J and Guideline E are decided against the 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 J (Criminal Conduct) AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

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

Subparagraph 2.a.: Against the Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Shari Dam

Administrative Judge

1. Item 3 (Answer to SOR, undated).
2. The Government submitted five exhibits in support of its case.
3. Item 4 (Security Clearance Application (SCA), dated June 3, 2003) at 1.
4. Item 3, *supra* note 1, at 1.
5. Item 4, *supra* note 3, at 8; Item 5 (Statement of Subject, dated February 5, 2004) at 1.
6. Item 4, *supra* note 3, at 2.
7. ISCR Case No. 96-0277 at 2 (App. Bd., Jul. 11, 1997).
8. ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
9. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
10. ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
11. ISCR Case No. 93-1390 at 7-8 (App. Bd., Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
12. *Egan*, 484 U.S. at 528.
13. *Id.*
14. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
15. Executive Order No. 10865 § 7.