

KEYWORD: Criminal Conduct; Personal Conduct

DIGEST: Applicant is a technical writer for a defense contractor, and has held a security clearance since 1985. He has five criminal convictions from 1976 to 2000 for illegal possession of drugs, and driving under the influence of intoxicants. He has a conviction in 2001 for driving on a suspended driver's license. He admitted to only listing one of his convictions on his security clearance application because he feared the true information would affect his security clearance and job. Clearance is denied.

CASENO: 04-04509.h1

DATE: 10/13/2005

DATE: October 13, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04509

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant is a technical writer for a defense contractor, and has held a security clearance since 1985. He has five criminal convictions from 1976 to 2000 for illegal possession of drugs, and driving under the influence of intoxicants. He has a conviction in 2001 for driving on a suspended driver's license. He admitted to only listing one of his convictions on his security clearance application because he feared the true information would affect his security clearance and job. Clearance is denied.

STATEMENT OF THE CASE

On March 28, 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 April 4, 2005. The SOR alleges security concerns under Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on April 4, 2005. He admitted all of the allegations under both guidelines, 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 July 25, 2005. Applicant received a complete file of relevant material (FORM) on August 10, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. He provided a response to the FORM on August 11, 2005, highlighting his good service in the military and his good performance for his employer. The case was assigned to me on August 25, 2005.

FINDINGS OF FACT

Applicant is 51-years-old and has been a technical writer for a defense contractor for over 20 years. He is divorced, and has three children. He has an associate's degree from a technical college, and has held a security clearance since 1985.

(1)

Applicant admits to being arrested and charged with possession of marijuana in 1976. There is no information concerning the disposition of these charges, and Applicant does not remember the disposition. Applicant admits he was arrested and charged with possession of marijuana and drug paraphernalia in 1989. He was found guilty of the possession of marijuana charge and sentenced to probation for one year and to pay a fine. Applicant admits he was charged with and convicted of consuming alcohol in a vehicle in 1994, and sentence to pay a fine. Applicant admits he was charged with and convicted of driving under the influence of alcohol in 1994, and sentenced to a fine. Applicant admits he was charged with and convicted of driving under the influence of alcohol in November, 2000. He was sentenced to pay a fine, perform community service, attend alcohol and driving classes, and his driver's license was suspended. In December 2001, Applicant was charged with and found guilty of driving with a suspended license, and sentenced to a fine and an additional year suspension of his driver's license.

(2)

Applicant was involved in a motor vehicle accident in November 2000, which led to the driving under the influence charges. After the accident, he informed police he only consumed a few beers. He later informed security investigators that he also consumed mixed drinks at his home prior to the accident.

(3)

(4)

Applicant listed only one driving while intoxicated offense, the December 2000 offense, in response to question 24 on his security clearance application asking if he had ever been charged with or convicted of an offense involving alcohol or drugs. In fact, Applicant had been charged with five alcohol or drug offenses. Applicant answered "NO" to question 26 on his security clearance application asking in the last 7 years had he been arrested, charged, or convicted, of any other offense not already listed on the form. In fact, Applicant had been arrested for driving on a suspended license. Applicant admitted: "When I completed my security questionnaire, I only listed the one alcohol related offense. I did not list my other alcohol or drug related offenses as I feared losing my security clearance and possibly my job." Applicant has modified his drinking habits since December 2000, and now only drinks in social settings and has not been intoxicated since his last driving under the influence offense.

(5)

(6)

(7)

It is a federal felony criminal offense to provide false information on a security clearance application.

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

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 government has established its case under Guideline J. Applicant's arrests and convictions for drug possession, driving under the influence of intoxicants, driving on a suspended driver's license, consuming alcohol in a motor vehicle, and false answers on a security clearance application brings the matter under Criminal Conduct Disqualifying Conditions E2.A10.1.2.1 (*allegations or admission of criminal conduct, regardless of whether the person was formally charged*), and E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*). Applicant's admissions to the criminal offenses establishes the above disqualifying conditions.

I have considered Personal Conduct Mitigating Conditions E2.A10.1.3.3 (*the criminal behavior was not recent*), E2.A10.1.3.2 (*the crime was an isolated incident*), and E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*). While some of the criminal offenses are old, going back as far as 1979, the criminal activity is constant and occurring as recent as 2002. The criminal behavior is recent. There is a series of criminal activity from illegal drug use, driving while intoxicated, other alcohol offenses, and false statements. The criminal activity is not isolated. While Applicant seems to have stopped using drugs, he has only modified his alcohol consumption and still drinks alcohol. His

continued criminal behavior through 2002 by falsifying a security clearance application shows he has not been successfully rehabilitated. I conclude Applicant has not mitigated the security concerns for criminal conduct.

The government has established its case under Guideline E. Applicant's false answers to questions 24 and 26 on his security clearance application brings the matter under Personal Conduct Disqualifying Condition E2.A5.1.2.3 (*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 security clearance eligibility or trustworthiness*).

Applicant's admission in his statement that he deliberately omitted some of his criminal convictions on the security clearance application because he was concerned about losing his security clearance and job establishes the above disqualifying condition. I have considered Personal Conduct Mitigating Conditions E2.A5.1.3.1 (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*), and E2.A5.1.3.3(*the individual made prompt, good-faith efforts to correct the falsification before confronted with the facts*). Lack of honesty in answering questions on a security clearance application has a direct bearing on a determination of a person's judgment, trustworthiness, and reliability. Applicant admits to the false statements in his statement to the security investigators, but he did not promptly correct the false statements and did so only after being confronted by the investigators. Applicant has not mitigated the security concerns for his false statements.

I carefully considered all of the circumstances in light of the 'whole person' concept. I have taken into consideration the good character information provided by Applicant, his performance evaluations, and his supervisor's evaluation. 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 J: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

DECISION

In light of all of the circumstances in 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.

Thomas M. Crean

Administrative Judge

1. Government Exhibit 3 (Security Clearance Application, dated Sep. 30, 2002).
2. Government Exhibit 2 (Applicant's Answer to the SOR, dated, Apr. 4, 2005); Government Exhibit 5 (Applicant's Statement, dated May 21, 2003), at 2-4.
3. Government Exhibit 7 (Police Accident Report, dated Dec. 10, 2000) at 9.
4. Government Exhibit 5 (Applicant's Statement, dated May 21, 2003) at 2.
5. Government Exhibit 1 (Security Clearance Application, dated Sep. 30, 2002).

6. Government Exhibit 5 (Applicant's Statement, dated May 21, 2003) at 4.
7. *Id.*, at 5.
8. 18 U.S.C. § 1001.
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.