

KEYWORD: Personal Conduct

DIGEST: Applicant's credibility is extremely suspect, as he has not been truthful or candid with information that he has furnished to the United States Government in two Security Clearance Applications (SCAs), regarding his employment history, his alcohol- related police record, and his marijuana usage. Mitigation has not been shown. Clearance is denied.

CASENO: 04-05411.h1

DATE: 12/15/2005

DATE: December 15, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-05411

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Esq., Department Counsel

## **FOR APPLICANT**

Pro Se

### **SYNOPSIS**

Applicant's credibility is extremely suspect, as he has not been truthful or candid with information that he has furnished to the United States Government in two Security Clearance Applications (SCAs), regarding his employment history, his alcohol- related police record, and his marijuana usage. Mitigation has not been shown. Clearance is denied.

### **STATEMENT OF THE CASE**

On December 15, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which 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, denied or revoked.

In a signed and sworn statement, dated January 6, 2005, Applicant responded to the SOR allegations. He requested that his case be decided on the written record in lieu of a hearing. On April 5, 2005, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any additional evidence. The case was assigned to this Administrative Judge on June 22, 2005.

In the FORM, Department Counsel offered seven documentary exhibits (Exhibits 1-7). No documents were offered by

Applicant.

### **FINDINGS OF FACT**

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline E (Personal Conduct) of the Directive. The SOR contains four allegations, 1.a. through 1.e. under Guideline E. Applicant admitted all of the SOR allegations. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and FORM, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 52 years old. He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. He is not currently married, and he has no children.

#### **(Guideline E - Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he furnished untruthful information to the Government.

Applicant completed a signed, sworn Security Clearance Application (SCA) on March 6, 2003, (Exhibit 4).

Question #20 of the SCA asks whether Applicant had lost any job in the last 10 years as a result of any unfavorable circumstances. He answered "No." Applicant knowingly and willfully failed to disclose that he was terminated from his employment on December 4, 2001, as a result of his showing positive for marijuana on two separate occasions after taking urinalysis tests.

Question #24 of the SCA asked, "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 your case has been sealed or otherwise stricken from the record." He answered "No." Applicant knowingly and willfully failed to disclose that he was arrested on March 5, 1987, and charged with Drinking in a Public Area. Applicant was found guilty of this charge. Applicant

also knowingly and willfully failed to disclose that he was arrested on October 7, 1997, and charged with Driving Under the Influence (DUI). Applicant was found guilty of this charge.

Question #27 of the SCA asked if, in the previous seven years, Applicant had use illegal drugs, including marijuana, etc? Applicant answered "No" to this question. Applicant knowingly and willfully failed to disclose that he used marijuana from the early 1970's until November 2001, which comes within the seven year period prior to his completing the SCA on March 6, 2003.

In the SOR, the Government alleges that Applicant also should have disclosed in his answer to question #27 the other drugs that he used, Crystal methamphetamine, LSD, downers, speed, and designer drugs. However, since all of these drugs were used by Applicant before the time period specified in the SCA, Applicant was not required to include these drugs in his answer to question #27 (Exhibits 1 and 5).

Question #29 of the SCA asked if in the last 7 years Applicant had been involved in the illegal purchase, manufacture, trafficking, or sales of any drugs for his own intended profit or that of another? Applicant answered "No" to this question. He failed to disclose that he had purchased small amount of marijuana with his friends (Exhibit 5). There is no indication that Applicant purchased the marijuana for profit. The evidence that Applicant purchased only small quantities with his friends seems to suggest that it was not for profit, so I cannot find that Applicant was inaccurate on question #29, by not including his marijuana purchases.

Applicant completed another SCA on February 27, 2005, (Exhibit 7), which was after the SOR was drafted on December 15, 2004. Although it was not alleged in the SOR, Applicant also misrepresented the information he furnished to the Government on that SCA, by again answering "No" to questions 20, 24, and 27, and not supplying truthful and complete information to the Government.

On October 23, 2003, Applicant gave a signed, sworn statement to a Defense Security Service agent. Applicant stated, "I did not list my drug use and counseling because I didn't want it to adversely effect (sic) my employment. I felt it was not relevant since I had already committed to not using drugs anymore and had no future intent to use." (Exhibit 5).

Applicant clearly was not honest with the information that he furnished to the Government on the SCAs, that he completed on March 6, 2003 and February 27, 2005. I do not find his explanations concerning his failure to give honest complete information to the Government credible

or reasonable. An individual may not arbitrarily fail to disclose information to the Government because he believes it could hurt his interest or he thinks it is not relevant. **POLICIES**

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents

its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case.

As set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of drug usage, alcohol abuse and criminal conduct, and that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future."

The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

## CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

### **(Guideline E -Personal Conduct)**

With respect to Guideline E, the evidence establishes that Applicant furnished to the Government less than complete, honest answers, regarding his employment history, his alcohol related police record, and his marijuana usage, in two SCAs, completed on March 6, 2003, and February 27, 2005.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts or fails to furnish relevant information to a Government investigator, it is extremely difficult to conclude that he nevertheless possesses the judgment, and honesty necessary for an individual given a clearance. In this case, I conclude that Applicant knowingly and willingly failed to give complete, honest answers to the Government.

In reviewing the Disqualifying Conditions (DC) under Guideline E, I conclude that DC (E2.A5.1.2.2.) applies because Applicant deliberately provided false and misleading information to the Government in two SCAs. No Mitigating

Condition applies under this Guideline. As a result of the misinformation that Applicant provided to the Government in two SCAs, his conduct exhibits questionable judgement, unreliability, and a lack of candor. I resolve Guideline E against Applicant.

### **FORMAL FINDINGS**

#### **Paragraph 1. Guideline E: AGAINST APPLICANT**

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant Subparagraph 1.d.: For 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.

Martin H. Mogul

Administrative Judge