

KEYWORD: Criminal Conduct; Personal Conduct

DIGEST: Applicant, a 25-year-old employee of a security services firm, failed to mitigate multiple driving offenses some involving alcohol between 1997 and 2003 as well as drug use between 1992 and 1998. He did mitigate two personal conduct allegations concerning failure to list all of the many driving and drug offenses since he did list two on his SF86 and his drug use on his SF 86 questionnaire. He failed to mitigate two other allegations of personal conduct. Clearance is denied.

CASENO: 04-05487.h1

DATE: 02/22/2006

DATE: February 22, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-05487

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a 25-year-old employee of a security services firm, failed to mitigate multiple driving offenses some involving alcohol between 1997 and 2003 as well as drug use between 1992 and 1998. He did mitigate two personal conduct allegations concerning failure to list all of the many driving and drug offenses since he did list two on his SF86 and his drug use on his SF 86 questionnaire. He failed to mitigate two other allegations of personal conduct. Clearance is denied.

**STATEMENT OF CASE**

On June 21, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, 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 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On July 18, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on September 29, 2005. A notice of hearing was issued on November 8, 2005, for a hearing on November 29, 2005, and held that day. The government offered 13 exhibits into evidence and Applicant offered one. All were accepted. One witness testified for Applicant who also testified. The transcript was received on December 8, 2005.

## FINDINGS OF FACT

Applicant admitted all but one of the 19 specific SOR allegations concerning criminal conduct. He denied the allegations concerning personal conduct. The government conceded that the one allegation he denied (SOR ¶ 1.c.) was a duplication of another allegation. After a complete review of the record, I make the following findings of fact:

Applicant is a 25-year-old employee of a defense contractor performing security services. He has a long record of traffic and driving arrests and charges, some of them involving alcohol, between 1998 and 2003. One arrest in 1999 was for possession of marijuana and drug paraphernalia. He was convicted only on the second charge. In addition, he has had three other violations for speeding and reckless driving since the SOR was issued. He was on probation for driving violations at the time of the hearing.

Except for listing two offenses, Applicant did not list all of the charges in answer to Question 24 on his SF 86 relating to his police record for alcohol/drug offenses as he was required to do. He stated he had forgotten many of the incidents involving driving violations and that caused him to omit them on his SF 86. He also failed to list four offenses at Question 26 on other offenses resulting fines of \$150.00 or more answering in the negative to the question. Three of those four charges were the most recent in 2002 and 2003. He also denied use of drugs in response to Question 27 relating to illegal use of drugs. He offered evidence (Exh. A) that he had reported the drug use on a draft SF 86 but listed the end date for drug use as 1996, outside the seven year window provided in the question, whereas it was 1998.

Applicant was married recently and has a baby. Subsequently he sold a motorcycle and a sports car he drove when the various driving offenses occurred. He has vowed to change his driving habits and now owns only a van. He is well regarded in his work and is a reliable employee.

## POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. See Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information See *Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. See Executive Order No. 12968 § 3.1(b).

## CONCLUSIONS

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

Guideline J (Criminal Conduct) is alleged both as a violation of 18 U.S.C. §1001 by failing to answer question 24 (SOR ¶2.a) and as to the conduct itself (SOR ¶2.b). The allegations could be mitigated if the criminal behavior was not recent (E2.A10.1.3.1), the crime was an isolated incident (E2.A10.1.3.2.), or there is clear evidence of successful rehabilitation (E2.A10.1.3.6.). The intentions of Applicant to change his life style and driving habits are praiseworthy, and in view of his new family obligations, I believe he can change his conduct. However, the fact that he has had three driving offenses since the SOR was issued and is still on probation, it is premature to grant a clearance at this time. Proof of changed conduct over a greater period of time is required. No mitigating conditions apply. Only the one allegation of criminal conduct that is a duplicate of another one is mitigated.

Applicant's failure to report his police record for alcohol/drug offenses at Question 24, his other offenses resulting in fines of \$150.00 or more at Question 26, and his drug use at Question 27 on his SF 86 raises issues under Guideline E that might indicate questionable judgment, unreliability,

and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.)

In response to Applicant's failure to report the full extent of his arrests and charges of traffic and driving violations, he offered a plausible explanation for not listing all alcohol/drug offenses in response to Question 24 in view of the vast number of them over such an extended time and the fact that he did list one alcohol and one drug offense. Thus, I find in his favor on the allegations concerning falsification relating to Question 24 on his SF 86. However, his failure to acknowledge other offenses at Question 26 resulting in fines of \$150.00 or more when three of those offenses were the most recent of all his charges (two of them in the same year and only a few months before the SF 86 was filed) strains credulity and I find against him on that allegation.

Applicant has shown in Exh. A that he listed on his questionnaire for national security positions the two drug use charges (SOR ¶ 2.c.1.and 2.) but they did not appear on the final version of the SF 86 at Question 27 since he had given the concluding date of the activity as outside the seven year window requiring reporting which was inaccurate. He did report at Question 24 two 1999 offenses one of them involving the conviction for drug paraphernalia, one of his most serious offenses and the only one conviction involving drugs. The other was alcohol related. While the evidence could be interpreted as a wilful withholding, based upon his demeanor at the hearing, I accept his interpretation since he listed two of the offenses and alerted his security officer to his drug charges through information given on the questionnaire. Also alleged under personal conduct is his long record of arrests establishing a pattern of misconduct and I find against Applicant on that allegation.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality, including the whole person of Applicant, I conclude it is premature to grant him a security clearance.

## **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

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

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: Against Applicant

### **Paragraph 2. Guideline E: AGAINST APPLICANT**

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: Against 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 or renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge