

KEYWORD: Criminal Conduct; Personal Conduct

DIGEST: Applicant deliberately falsified his security clearance application by failing to list that he had been arrested and charged with felony theft and possession of marijuana. He presented no credible evidence to mitigate his falsifications. Clearance is denied.

CASENO: 04-06208.h1

DATE: 09/30/2005

DATE: September 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06208

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant deliberately falsified his security clearance application by failing to list that he had been arrested and charged with felony theft and possession of marijuana. He presented no credible evidence to mitigate his falsifications. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On April 5, 2005, under the applicable Executive Order [\(1\)](#) and Department of Defense Directive, [\(2\)](#) DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision—security concerns raised under Guideline J (Criminal Conduct) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on April 25, 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on June 27, 2005. On August 26, 2005, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. At the hearing, the Government offered five exhibits, which were identified as Exhibits (Ex.) 1 through 5 and entered in the record without objection. Applicant presented no exhibits. DOHA received the transcript (Tr.) of the proceeding on September 13, 2005.

FINDINGS OF FACT

The SOR contains five allegations of disqualifying conduct. Three allegations relate to conduct addressed by Guideline J, Criminal Conduct, and two allegations relate to conduct addressed by Guideline E, Personal Conduct. In his answer to the SOR, Applicant admitted to the omissions alleged under Guideline E of the Directive, but denied his answers were knowingly and willfully false. He admitted two allegations under Guideline J. His admissions are incorporated as findings of fact.

Applicant is 25 years old and seeks a security clearance for his job as a project control analyst with a government contractor. Applicant is unmarried and has no children. He lives with his maternal grandmother. (Tr. 29; 107.) He is a high school graduate, and he attended a state university for two years and a community college for 1½ years. (Tr. 30-31.)

In March 2004, Applicant's employer suspended him until the issue of his security clearance could be resolved. (Tr. 33-38.) He has supported himself in part since then by doing odd jobs for his grandmother and neighbors. (Tr. 106.) He was also employed at a fast food chain and earned \$6 to \$7 an hour. He stopped working at the fast food chain because he was "tired of working" there. (Tr. 126-127.)

From approximately April 2000 to April 2001, Applicant lived in an apartment with a girl friend. The lease to the apartment was in the girl friend's name. (Tr. 42; 95.) In January 2001, the girl friend invited a friend of hers, another young woman, to stay in the apartment. When the young woman arrived, she brought some of her belongings with her. Applicant reported the young woman brought clothing, a radio, a DVD player, and a large jewelry chest, which he estimated weighed about 70 pounds. (Tr. 45-48.)

The young woman moved out of the apartment in approximately March 2001. According to Applicant, she took all of her possessions except the jewelry chest, which he said contained a ring. Applicant said his girl friend called the young woman several times to ask to her to come and retrieve her ring, but was unsuccessful in reaching her. (Tr. 25.)

In April 2001, Applicant and his girl friend moved from the apartment and went to live in separate locations. When they left the apartment, they left the young woman's jewelry box on the sidewalk. (Tr. 46-49.) Applicant kept the young woman's ring and pawned it without her permission in October 2001. He received \$150 for the ring, which was valued at \$1,900. (Ex. 3, at 3.) Applicant said he pawned the ring to obtain money for rent. (Ex. 2, at 3.) He defended his conduct by saying the young woman had "abandoned" her ring. (Tr. 52; 77-78.)

The young woman learned Applicant had pawned her ring without her permission and reported this information to the police. In February 2003, Applicant was arrested. He appeared with counsel in court in March 2003 and was charged with felony theft. The case was put on the court's "stet" docket because the complainant did not appear. (Ex. 3; Tr.54-

58; 109.)

In February 2003 Applicant and a male friend were riding in the friend's new car. Police stopped the car when they discovered the tags on the car were stolen. They searched the car and found a bag containing approximately 20 grams of marijuana. Applicant was arrested and charged with possession of marijuana. (Tr. 65.) He was represented by counsel and appeared in court to answer charges in March 2003. The case was placed on the "stet" docket for one year and Applicant was awarded a week of community service. (Ex. 4; Tr. 65-67; 109.)

Six months later, in September 2003, Applicant was hired by a government contractor and asked to complete a security clearance application (SF-86). Applicant completed and certified his SF-86 on September 15, 2003.

Question 21 on the SF-86 asks applicants if they have "ever been charged with or convicted of any felony offense." Applicant answered "yes" to Question 21 and listed a case in which he had been found to be an innocent victim of identity theft. In his response, he provided such specific details as his prison number, the docket number of the case, the name of the chief judge, and the date of the adjudicative hearing. (Tr. 75-76.) He failed to list his February 2003 arrest and felony theft charge.

Question 24 on the SF-86 asks if an applicant has ever been charged with or convicted of any offenses(s) related to alcohol or drugs. Applicant responded "no" to Question 24 and failed to list his February, 2003 possession of marijuana charge.

Under Item 43, identified as the General Remarks section of the SF-86, Applicant stated he had no contacts with childhood friends and had therefore "used [his] family's information" when he responded to Question 7 on the SF-86. Question 7 asked the applicant to provide the names and addresses of "People Who Know You Well." At his hearing, Applicant stated that two of the three people he listed in response to Item 43 were family members. He further indicated he had no friends who knew him well. (Tr. 91-92.)

Applicant was interviewed by a investigator of the Defense Security Service on November 14, 2003. In a signed, sworn statement, he admitted the marijuana possession charge and pawning the young woman's ring without her permission. (Ex. 4.) In his answer to the SOR, he admitted the felony theft charge but denied he had stolen the ring from the young woman. At his hearing he asserted his conduct was not criminal because the young woman had "abandoned" her ring when she left the apartment. (Tr. 52.) He also admitted the possession of marijuana charge but denied knowing his friend had marijuana in the car. Applicant admitted he did not include the felony theft charge in his response to Question 21 of the SF-86. He also admitted falsifying his answer to Question 24 on the SF-86 by denying he had ever been charged with an offense related to alcohol or drugs. He claimed he thought placing criminal charges on a "stet" docket rendered the charges null and thus he was under no requirement to report them.

Applicant signed and dated certifications when he completed his SF-86 on September 15, 2003, and when he gave his written statement to the Defense Security Service investigator on November 14, 2003. Those certifications read as follows:

I certify that the following statement is true, complete and accurate to the best of my knowledge and belief and is made in good faith. I understand that a knowing and willful false statement can be punished by fine or imprisonment or both. (See U.S. Code, Title 18, Section 1001).

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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information Within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

CONCLUSIONS

Guideline J, Criminal Conduct

In the SOR, DOHA alleged Applicant was charged with felonious theft (§ 1.a.) and possession of marijuana (§ 1.b.) Additionally, DOHA alleged under Guideline J that Applicant deliberately falsified his SF-86 by failing to report the criminal charges in his responses to Questions 21 and 24 and that these omissions constituted felonious criminal conduct under section 1001 of Title 18 of the United States Code. (§ 1.c.)

A history or pattern of criminal activity raises doubts about a person's judgment, reliability, and trustworthiness. Disqualifying conditions include allegations or admissions of criminal conduct, regardless of whether the person was formally charged (§ E2.A10.1.2.1.), and a single serious crime or multiple lesser offenses (§ E2.A10.1.2.2.). Applicant admitted the criminal conduct alleged by the Government in §§ 1.a. and 1.b. of the SOR, which raises security concerns under §§ E2.A10.1.2.1. and § E2.A10.1.2.2. of Guideline J.

Security concerns under Guideline J recognize that an individual's history or pattern of criminal activity raises doubts about his judgment, reliability and trustworthiness. A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. Where the facts proven by the Government or admitted by the applicant raise doubts about the applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nevertheless security worthy.

Applicant's admitted felony theft and marijuana possession occurred in 2001 and 2003. These criminal acts were recent, and they were not isolated events. They demonstrate a pattern of criminal conduct. Thus, the mitigating conditions at §§ E2.A10.1.3.1. and E2.A10.1.3.2 of Guideline J do not apply in this case and the allegations at §§ 1.a. and 1.b. of the SOR are concluded against the Applicant.

Applicant denied the criminal conduct alleged by the Government in § 1.c. of the SOR. He admitted falsifying his answers to Questions 21 and 24 on his SF-86, but denied his falsifications were deliberate.

The record reflects that Applicant completed his responses to certain items on his SF-86 with apparent punctiliousness and care. In his response to Question 21 on the SF-86, he identified his only criminal conduct as being the unfortunate victim of the crime of identity theft. He cited the specifics of the adjudication that found him innocent, thereby inviting close scrutiny. At the same time, he failed to reveal that he had been arrested and charged with felony theft and that this charge had been adjudicated only six months earlier, in March 2003.

In response to Question 24 on the SF-86, Applicant denied ever being charged with or convicted of any offenses related

to alcohol or drugs, even though he had been arrested and charged with possession of marijuana in March 2003. Applicant was also careful to point out in the General Remarks section that he had no childhood friends or contemporaries who could be identified as people who knew him well and contacted by investigators for information about him. Of the three names he provided of people who knew him well, two were family members. Applicant's conduct in filling out his SF-86 by reporting some information in great detail and completely omitting other material facts suggests a lack of good faith

When he completed his SF-86, Applicant signed and dated the following statement:

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See section 1001 of title 18, United States Code)

Under section 1001 of title 18 of the United States Code, it is a felony to make a writing or document, knowing it contains a materially false, fictitious, or fraudulent statement. Applicant is a high school graduate and has several years of college education. The record reflects he has a clear knowledge of language and knew what he certifying with his signature on the SF-86. He offered no credible evidence to rebut the Government's allegation that his falsifications on his SF-86 were knowing and willful and deliberate. Accordingly, the SOR allegation at ¶ 1.c. is concluded against the Applicant.

Guideline E, Personal Conduct

In the SOR, DOHA alleged Applicant raised concerns under Guideline E, Personal Conduct, when he failed to list his February 13, 2002 felony charge in his Answer to Question 21 on his SF-86 (¶ 2.a.) and when he denied and failed to list his February 2003 possession of marijuana charge in response Question 24 on the SF-86 (¶ 2.b.). Guideline E conduct, which involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

With respect to the Guideline E conduct alleged in the SOR, the Government has established its case. The Government established and Applicant admitted that he had omitted, concealed and falsified relevant and material facts from his personnel security questionnaire. ¶ E2.A5.1.2.2. His concealment of information he considered embarrassing or professionally damaging could make him vulnerable to coercion and blackmail. ¶ E2.A5.1.2.4. His conduct raises additional concerns under E2.A5.1.2.5. because it suggests a pattern of dishonesty or rule violation. Applicant's reticence to reveal the truth about his conduct suggests that, under some circumstances, he may put his interests before those of the Government.

Mitigating condition E2.A5.1.3.1 does not apply to the facts of this case: The information Applicant withheld is pertinent to a determination of his judgment, trustworthiness, and reliability. Only one other mitigating condition under Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsification was an isolated incident, was not recent, and if the Applicant subsequently provided the correct information voluntarily. ¶E.2.A.5.1.3.2. Applicant acknowledged the correct information when confronted by an investigator of the Defense Security Service in November 2003. His falsifications are recent, and they are not isolated incidents. Accordingly, allegations in subparagraphs 2.a. and 2.b. of the SOR are concluded against the Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: 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 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.