

DATE: September 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06577

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 25-year-old consultant for a defense contractor. Applicant, while attending college, worked part-time for a medical practice. After graduating from college and working for the defense contractor, he forged a prescription at the medical practice to obtain a drug for himself. When the doctor in the medical practice learned of the forged prescription, Applicant's part-time employment was terminated. When questioned about his employment by a security investigator, Applicant did not reveal the forgery or the real reasons for his termination. Clearance is denied.

STATEMENT OF THE CASE

On April 25, 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 May 4, 2005. The SOR alleges security concerns under Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive.

Applicant answered the SOR in writing on May 15, 2005, admitting 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 June 27, 2005. Applicant received a complete file of relevant material (FORM) on July 2, 2005, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due August 1, 2005. As of August 23, 2005, he had not responded. The case was assigned to me on August 24, 2005.

FINDINGS OF FACT

Applicant is a 25-year-old consultant working for a defense contractor. He is a college graduate with a degree in

emergency health. He is not married.⁽¹⁾

In August 2003, Applicant had just graduated from college and started working for the defense contractor. He had worked part-time for physicians in a medical office while a college student, and continued occasionally working for them after being employed by the defense contractor. While at the medical office to pick up a colleague from work, Applicant forged a prescription for medication on a physician's prescription pad. He had written prescriptions for this doctor in the past, but for other patients and not for himself. He did not have the doctor's permission to write the prescription. Applicant had the prescription filled at a local pharmacy. After taking some of the pills, he decided they were not good for him, and he disposed of the remaining pills. Shortly thereafter, he decided he needed the medication, and requested a refill from the pharmacy. The pharmacy became suspicious of the request for refill and checked with the doctor. After learning of the forgery, the medical practice terminated Applicant's part-time employment with them. He continues to work for the defense contractor.⁽²⁾

Applicant was interviewed by a security investigator from the Department of Defense on November 8, 2003. He admitted he told the investigator he terminated his employment with the medical practice because of a busy schedule and medical problems. In fact, he was terminated for prescription forgery.⁽³⁾ In a statement made to investigators on December 31, 2003, Applicant discussed the incident but never stated he was terminated for prescription forgery. He hinted that was the reason for his termination, but never directly stated the reason.⁽⁴⁾

It is a violation of law to forge a prescription. Falsification of material facts to a government investigator for a security clearance is a violation of 18 U.S.C. § 1001.

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."⁽⁵⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.⁽⁶⁾

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.⁽⁷⁾ 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.⁽⁸⁾

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.⁽⁹⁾ 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.⁽¹⁰⁾ Thereafter, Applicant is responsible
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for presenting evidence to rebut, explain, extenuate, or mitigate facts. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." (12) "[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." (13) "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." (14)

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 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.

Guideline J - Criminal Conduct: A security concern exists because a pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

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 E. Applicant's forgery of a prescription, his misrepresenting to security investigators the reasons for his termination of employment, and his termination for prescription forgery brings the matter under Personal Conduct Disqualifying Conditions E2.A5.1.2.1 (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*), and E2.A5.1.2.3 (*deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination*). Applicant's admission that he forged the prescription, which was the reason for his termination of employment, and his deliberately false statement to the security investigator establishes the above disqualifying conditions.

The government has established its case under Guideline J. The criminal conduct alleged is the same conduct alleged under Guideline E, the forgery of the prescription and the false statement to the investigator. Applicant's admission to the criminal conduct of forging a prescription and providing false information to a security investigator in violation of 18 U.S.C. § 1001 establishes the 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 presented no information to raise any mitigating conditions under either guidelines. He does ask:

"... that this isolated incident in my life be taken in consideration with who I am and the rest of my actions as a whole. This investigation has surely demonstrated that I am an upstanding citizen with no criminal background (save one moving violation). My entire life I have worked hard to better myself and the people around me; I have strived to be actively involved in my community; I have volunteered hundreds of hours to social causes in which I believe; and have otherwise consistently demonstrated sound, responsible judgement.

I have since come to terms with the mistake I made, and therefore would not be vulnerable to coercion, exploitation, or blackmail. It has been over a year and a half since I last saw the physicians at (. . .) and I have not attempted to engage in any questionable or criminal behavior since my termination. I have been steadily employed with (*defense contractor*) for almost two years without incident in my personal or professional life." (15)

I have carefully considered all of the circumstances in light of the "whole person" concept. I considered Applicant's above statement as a factor to consider in his favor in examining the whole person. Applicant deliberately forged a prescription when he felt he needed the medication. He then tried to hide the fact by providing false information to an investigator. Applicant has not met his heavy burden to establish it is in the national interest to grant him access to classified information. While Applicant may be performing well for his employer and while he may be a good member of his community, he has not demonstrated that he would not follow the same type of false action with security information that he did with prescription forgery. His actions demonstrate dishonesty, questionable judgment, untrustworthiness, and a lack of candor. He has not demonstrated that he would not pursue such a course of conduct in the future. I have considered all of the factors raised by Applicant under the "whole person," and 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 E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2, Guideline J: 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. Item 4 (Security clearance application, dated Aug. 14, 2003).
2. Item 5 (Applicant's statement, dated Dec. 31, 2003), at 4-5.
3. Item 3 (Applicant's answer to the SOR, dated May 15, 2005).
4. Item 5 (Applicant's statement, dated Dec. 31, 2003).
5. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. Directive ¶ E2.2.1.
7. *Id.*
8. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
9. *See* Exec. Or. 10865 § 7.

10. Directive ¶ E3.1.14.

11. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

12. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

13. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

14. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

15. Item 3 (Applicant's answer to the SOR, dated May 15, 2005).