

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant was terminated from two jobs under adverse conditions. She deliberately falsified her employment application for a defense contractor and a statement to a Defense Security Service agent. Applicant failed to mitigate security concerns raised under Guidelines E and J. Clearance is denied.

CASENO: 04-07350.h1

DATE: 01/26/2006

DATE: January 26, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07350

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was terminated from two jobs under adverse conditions. She deliberately falsified her employment application for a defense contractor and a statement to a Defense Security Service agent. Applicant failed to mitigate security concerns raised under Guidelines E and J. 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. ⁽¹⁾ On 17 May 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision ⁽²⁾-security concerns raised under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 7 June 2005, and elected to have a hearing before an administrative judge. The case was assigned to me on 12 October 2005. On 14 November 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. DOHA received the hearing transcript (Tr.) on 28 November 2005.

FINDINGS OF FACT

Applicant is a 25-year-old data analyst for a defense contractor. She is divorced and has a 21-month old child.

Applicant obtained a secret clearance in August 2000 while working for a defense contractor. Her employer terminated her employment and administratively terminated her security clearance for accepting collect, personal long-distance telephone calls on government telephones. Ex. 4. Applicant acknowledged accepting collect telephone calls from her husband on Government telephone lines, but asserts she mistakenly thought he was suicidal.

In January 2001, Applicant was hired as a computer/network technician for another company that was working as a subcontractor on a defense contract. As a result of a favorable annual performance review, Applicant received a salary increase in January 2002. In March 2002, Applicant was terminated. The letter issued to her does not state a reason for the termination. Ans. at 4. But Applicant admits she had been counseled by her supervisor on two previous occasions about being tardy to work and, that despite her salary increase, she had been warned during her performance review about unexcused absences from work. She admits being told the prime contractor no longer wanted her working on the contract because she had taken a two-hour lunch without authorization. [\(3\)](#)

Applicant was hired by another defense contractor in June 2003 for work on a classified project, causing an investigation of her security clearance termination in 2002. In December 2003, Applicant was interviewed by an agent of the Defense Security Service (DSS). She admitted to the agent she had been terminated in 2000 for misuse of a government telephone, but denied "any other terminations from any other jobs for adverse reasons." Ex. 2 at 3. She asserted she was terminated from her job in 2002 for reasons unknown. *Id.*

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 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 personnel 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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant was terminated from her employment in December 2000 for misuse of government equipment (§ 1.a); was terminated from her employment in March 2002 for poor attendance (§ 1.b); falsified her employment application in 2003 by failing to admit she had been terminated from her employment in December 2000 (§ 1.c); and falsified material facts in a signed sworn statement to a Department of Defense investigator by failing to admit she had been terminated from her employment (§ 1.d). Applicant admitted the allegations in §§ 1.a and 1.c. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive § E2.A5.1.1.

The Government's evidence established each of the allegations in § 1 [\(4\)](#) and potentially disqualifying conditions under Guideline E. The terminations for cause are reliable, unfavorable information provided by employers. DC E2.A5.1.2.1. By lying to her employer and the DSS agent, Applicant was involved in personal conduct, the concealment of which increased her vulnerability to exploitation (DC E2.A5.1.2.4) and demonstrated a pattern of dishonesty (DC E2.A5.1.2.5). Although none of the mitigating conditions listed under the Guideline apply, I considered her age at the time of her terminations and the circumstances under which she wrongfully accepted the collect telephone calls. Nevertheless, I am unable to find for Applicant. She still does not accept full responsibility for her deliberate omissions from her statement to the DSS agent. She admits she knew she was terminated because of her attendance problems, but refuses to acknowledge that she deliberately concealed this information from the DSS agent.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant committed a felony by deliberately falsifying material facts in a signed, sworn statement to a Department of Defense investigator, in violation of 18 U.S.C. § 1001. Applicant denied the allegation. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive § E2.A10.1.1.

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan*, 484 U.S. at 527. The reasons an applicant was terminated from previous employment is material to a determination of her security worthiness.

I conclude Applicant deliberately lied in the signed, sworn statement she completed for a DSS agent for the purpose of obtaining a security clearance. Although the letter of termination did not specify the reason for termination, she was specifically told the catalyst for her termination was her taking an unauthorized long lunch. I further conclude Applicant's conduct violated 18 U.S.C. § 1001.

An applicant may be disqualified if allegations of criminal conduct are raised against her regardless of whether the person was formally charged. DC E2.A10.1.2.1. In this case, the criminal offense was a serious crime-a felony punishable by confinement for five years. Although the criminal offense was an isolated incident (MC E2.A10.1.3.2), the evidence established Applicant also lied to her employer about the reasons for her 2000 discharge. After weighing the disqualifying and mitigating conditions, as well as the adjudicative process factors in Directive ¶ 6.3, I find against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge

1. Applicant was divorced in March 2001 and has since resumed using her maiden name, Cook.
2. As required by Exec. Or. 10865 (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6 (Jan. 2, 1992), as amended and modified (Directive).
3. Applicant insists she thought the extended lunch was permissible because she was with supervisory personnel.
4. Applicant objected to the admission of the four e-mails in Ex. 5. Although I admitted the documents into evidence, it was unnecessary to consider them as the Applicant admitted knowing the catalyst for her termination was her being tardy and taking an unauthorized long lunch.