

DATE: June 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-11008

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

John T. Hammer, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In 2001, Applicant was arrested for possession of marijuana. In 2003, he gave false answers on his Security Clearance Applicant about the arrest and his finances. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his personal conduct and criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On July 6, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On July 23, 2005, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On January 25, 2006, Applicant received a complete copy of the government's file of relevant material (FORM) dated January 18, 2006. Applicant was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. On February 24, 2006, Applicant's response to the FORM was due. No response has been received. On March 17, 2006, I was assigned the case.

FINDINGS OF FACT

The SOR alleges security concerns under the Guidelines for Personal Conduct and Criminal Conduct. Applicant admits to the following: not telling the truth when he answered question 24 on his August 13, 2003 Security Clearance Application, Standard Form (SF) 86. He also admits answering "no" in response to question 38, which asked Applicant if he had been more than 180 days delinquent on any debt during the prior seven years and question 39, which asked him if he was more than 90 days delinquent on any debt. He admits the allegations with explanation stating he must have answered the question without reading it thoroughly. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

Applicant is 29 years old, has worked for a defense contractor as an architect since July 1998, and is seeking to obtain a security clearance.

In August 2003, when Applicant completed his SF 86 (Item 4) he failed to list his arrest for marijuana possession in response to question 24, failed to indicate he had been more than 180 days delinquent on any debt in the previous seven years in response to question 38, and failed to indicate he was then more than 90 days delinquent on any debt in response to question 39. There is a certification just prior to Applicant's signature on his SF 86 which reads:

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).

In May 2004, he was interviewed by a special agent of the Defense Security Service (DSS) and asked about his debts and marijuana possession. At that time, he said he was making \$200 per month payments on a department store debt of approximately \$1,000, he had tried to pay his delinquent telephone bill but the creditor wanted their money immediately, and he would contact the other three creditors to arrange payment. His statement (Item 5) does not address why he failed to list the debts on his SF 86. In the same statement, Applicant states he was dishonest about his arrest for marijuana possession because he did not want it to hamper him getting a clearance. He stated the marijuana was not his, but belonged to a friend of his who had a number of prior arrests and was currently on probation. Applicant said the marijuana was his so his friend would not go to jail.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guidelines for Personal Conduct and Criminal Conduct.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of an applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. An applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽²⁾

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security.

Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions, in providing false information to multiple questions on his August 2003 SF 86 poses a serious potential risk to the nation's security precautions. Disqualifying Condition (DC) 2 (E2.A5.1.2.2. *The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies.

Personal conduct is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance or in other official matters is a security concern.

In August 2003, when Applicant completed an SF 86 he answered "no" to question 24, which asked if he had ever been charged with or convicted of any offense related to alcohol or drugs. Applicant admits he did not tell the truth on the form and did so because he believed revealing his arrest might hamper getting a clearance. He says it was his friend's marijuana which means he was lying to the police as a favor to his friend who was on probation. He not only lied on his SF 86, but lied to the police at the time of his arrest.

On his SF 86, he failed to indicate he had been more than 180 days delinquent on any debts in the previous seven years or was then more than 90 days delinquent on any debts. The only excuse he gives for his answers was he must have answered the questions without reading them thoroughly. Applicant is an architect, a fairly exacting job which requires a good deal of attention to detail. It is a job which requires careful review of minute details.

None of the mitigating conditions (MC) apply to his false answers. His drug related arrest and delinquent debts were pertinent to a determination of judgment, trustworthiness, or reliability. The falsifications were not an isolated incident because he gave false answers to three different questions on his SF 86. There is no showing the Applicant made a prompt, good-faith effort to correct the falsification before being confronted with the facts. There is no indication his omissions were caused by improper or inadequate advice from authorized personnel or based on advice from legal counsel. Because of the serious nature of his falsifications, I find against the Applicant as to Personal Conduct.

The Government has satisfied its initial burden of proof under Criminal Conduct, Guideline J. Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break the rules.

In addition to his arrest for marijuana possession, Applicant falsified his SF 86. 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. I find Applicant deliberately made materially false statements on his security clearance application in violation of 18 U.S.C. § 1001. Prior to signing the form, Applicant was put on notice that a knowing and willful false statement could be punished by a fine or imprisonment. Because of these incidents, Disqualifying Condition (DC) 1 (E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and 2 (E2.A10.1.2.2. *A single serious crime or multiple lesser offenses*) apply.

None of the mitigating conditions apply. MC 1 (E2.A10.1.3.1. *The criminal behavior is not recent*) does not apply

because he falsified his August 2003 SF 86, which is recent criminal behavior. MC 2 (E2.A10.1.3.2. *The crime was an isolated incident*) does not apply because there was one arrest and false answers to three questions on his SF 86. MC 3 (E2.A10.1.3.3. *The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life*) and 4 (E2.A10.1.3.4. *The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*) do not apply because the Applicant's conduct was not the result of pressure, coercion, or an involuntary act. The record is insufficient to conclude the factors leading to the violation are unlikely to recur. There was no acquittal, so MC 5 (E2.A10.1.3.5 *Acquittal*) is inapplicable. MC 6 (E2.A10.1.3.6. *There is clear evidence of successful rehabilitation*) does not apply because the record does not establish clear evidence of successful rehabilitation. I find against the Applicant as to criminal conduct.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Personal Conduct: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Paragraph 2 Criminal Conduct: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against 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. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15