

KEYWORD: Personal Conduct

DIGEST: Applicant deliberately provided false information on his security clearance application in an attempt to conceal a felony charge in 1996 and two other arrests in 1996 and 1997. He also lied to a security investigator about his criminal record. Applicant failed to mitigate the security concerns arising from his falsifications. Clearance is denied.

CASENO: 04-11583.h1

DATE: 04/13/2006

DATE: April 13, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-11583

**DECISION OF ADMINISTRATIVE JUDGE**

**MICHAEL J. BRESLIN**

**APPEARANCES**

**FOR GOVERNMENT**

Eric Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

**SYNOPSIS**

Applicant deliberately provided false information on his security clearance application in an attempt to conceal a felony charge in 1996 and two other arrests in 1996 and 1997. He also lied to a security investigator about his criminal record. Applicant failed to mitigate the security concerns arising from his falsifications. Clearance is denied.

**STATEMENT OF THE CASE**

On January 31, 2003, Applicant submitted a security clearance application. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (the "Directive"). On August 5, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns under the Directive, Guideline E, Personal Conduct.

Applicant answered the SOR in writing by letter dated August 31, 2005. He elected to have a hearing before an administrative judge.

I received the case assignment on January 9, 2006. With the concurrence of Applicant and Department Counsel, I convened the hearing on March 8, 2006. The government introduced Exhibits 1 through 10. Applicant provided Exhibits A through C, presented the testimony of one witness, and testified on his own behalf. DOHA received the final transcript of the hearing (Tr.) on March 16, 2006.

**FINDINGS OF FACT**

Applicant denied the allegations in the SOR. (Applicant's Answer to SOR, August 31, 2005.) After a complete and thorough review of the evidence in the record, I make the following findings of fact.

Applicant was born in November 1949. (Ex. 1 at 1.) He graduated from high school in 1969 and was married for the first time that same year. (Ex. 1 at 3; Tr. at 61, 69.) One child was born of the marriage. (Tr. at 69.) He attended college between June 1969 and February 1970. (Ex. 1 at 2; Tr. at 61-62.)

He enlisted in the U.S. Marine Corps in February 1972. (Ex. 1 at 3.) He worked as a combat engineer handling explosives and served in Vietnam. (Tr. at 62.) After his first re-enlistment, he cross-trained into aviation supply. (Tr. at 37, 62.) During his military service, he held a security clearance and attained the rank of Gunnery Sergeant (E-7). (Ex. 1 at 3; Tr. at 35-36, 37.)

After leaving the Marine Corps in January 1985, Applicant entered civil service as a GS-9, working in aviation supply. (Tr. at 36, 37.) Over the years, he was promoted to GS-12. (*Id.*) Later, his agency had a reduction-in-force and laid off Applicant. (Tr. at 36.)

In September 1990, Applicant began working for his present employer, a government contractor handling aviation supply. (Ex. 1 at 2; Tr. at 36.) A co-worker testified that Applicant's duty performance was outstanding. (Tr. at 94.) His supervisor praises Applicant's trustworthiness, judgment, and dedication. (Ex. B.) His recent performance evaluations reflect that his work "Exceeds Expectations." (Ex. C.)

He divorced his first wife in July 1993. (Ex. 1 at 3.) Applicant was married for the second time in June 1995, when he was 45 years old. (Ex. 1 at 3.) His second wife was 19 years younger. (Tr. at 34.) According to Applicant, she deceived him throughout the relationship in several ways. He asserted she told him she had two children when she actually had five children, each with a different father. He claimed she concealed her criminal record, including drug and prostitution offenses (Tr. at 56), and did not disclose that she was under psychiatric care. (Tr. at 34, 45.) He also asserted that she had sexual relations with many men outside the marriage. Applicant testified that on multiple occasions he came home from work early to find his wife locked in her bedroom with another man. (Tr. at 34, 67-68.) Frequently this led to physical altercations with the other man-at times, his wife would become involved in the fracas. (Tr. at 51-52, 67-68.) Applicant recalled three instances when he was arrested after altercations with his wife and her paramours. (Tr. at 53, 68.)

In about November 1995, Applicant returned home to find his wife with another man. (Tr. at 46.) He confronted the individual, and it escalated into pushing and shoving. According to Applicant, his wife got into the middle of the struggle. (*Id.*) In July 1996, Applicant's wife filed criminal charges against Applicant for aggravated assault. (Ex. 4.) The police arrested Applicant, took him to the police station, and booked him on the charge. In September 1996, authorities decided not to prosecute the charge. (Ex. 4 at 2.)

Applicant was arrested following similar incidents on two other occasions. He was arrested on July 18, 1996, and charged with Spousal Abuse. (Ex. 9.) The charge was dropped in August 1996. He was arrested again on July 8, 1997, and charged with assault and battery upon a family member. (Ex. 7 at 1.) The court found Applicant guilty of the offense and sentenced him to a \$50.00 fine and court costs. (Ex. 7 at 2; Tr. at 49.) At the hearing, Applicant claimed that during one of these incidents his wife attacked him with a knife and cut him under his arm. (Tr. at 66.)

On a fourth occasion, Applicant discovered his second wife's brother had taken a license plate off of a car he bought for her, and was using it on his vehicle. He confronted his brother-in-law and it ultimately led to an altercation and Applicant's arrest. (Tr. at 88-89.)

After living together for about one and one-half years, Applicant moved out of the family home. (Tr. at 42.) He divorced his second wife in October 1997. (Ex. 1 at 3.)

Applicant married for the third time in August 2000. (Ex. 1 at 2.) They separated for 90 days in early 2001, but later reconciled. (Ex. 2 at 2.) They separated again from September 2002 until March 2003. (Ex. 2 at 2.) Applicant's wife filed for an Emergency Protective Order requiring Applicant to stay away from her. (Tr. at 48-49.) Applicant later testified that when brought before the judge on this matter, he asked that the order be extended for the maximum allowable two-year period. (Tr. at 48-49.) He was divorced from his third wife in October 2004. (Tr. at 39.)

On January 31, 2003, Applicant completed a security clearance application. (Ex. 1 at 1.) The company sent the form to him electronically, and he filled it out on his computer at work over two or three days. (Tr. at 73.) He had to check records at home to obtain certain information. (Tr. at 74.) In response to Question 8, he listed the names and dates of marriage for each of his three wives. (*Id.* at 3.) Question 21 inquired whether Applicant had ever been charged with or convicted of any felony offense. He answered "No." (Ex. 1 at 5.) Question 26 asked whether Applicant had been arrested for, charged with, or convicted of any other offenses within the preceding seven years. Applicant again answered "No." (Ex. 1 at 5.)

On December 17, 2003, a security investigator interviewed Applicant about his security clearance application. (Tr. at 75; Ex. 2.) The investigator confronted Applicant with a report indicating Applicant had been arrested for Felony Assault in February 1996, and was arrested for Domestic Assault in July 1997. (Tr. at 75; Ex. A.) Applicant denied any criminal record. (Tr. at 75.) He later prepared a hand-written statement, executed under oath, stating he had no recollection of these arrests. (Ex. 2 at 2.) He specifically denied ever being charged with a felony offense, and denied ever threatening or harming any of his three wives. (Ex.2 at 4.)

At the hearing Applicant claimed that at the time he completed the security clearance application, he did not recall any

of the incidents involving his second wife. (Tr. at 55.) He asserted that he completely blocked out all memories of fighting, being arrested, and going to court. (Tr. at 56.) He testified that he did not remember the incidents even after the interview with the security investigator. (Tr. at 56.) However, immediately after the interview, he called the county clerk's office and the clerk advised him that he had a criminal record. (Tr. at 56, 76; Ex. A.) He stated he then remembered the incidents. (Tr. at 56, 86-87.) According to Applicant, he then composed and sent an e-mail message to the security investigator about his criminal history. (Tr. at 78; Ex. A.)

## 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." (*Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. 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. Ord. 10865, § 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as potentially disqualifying and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline E, Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. (Directive, ¶ E2.A5.1.1.)

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, are set forth and discussed in the conclusions below.

"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." (Directive, ¶ E2.2.1.) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. (*Id.*) An administrative judge should consider the following factors: (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 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 pertinent 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. (*Id.*)

Initially, the Government must produce evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, ¶ E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, ¶ E3.1.15.) 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 (App. Bd. Dec. 19, 2002).) "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.)

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 a determination as to the loyalty of the applicant. (Exec. Ord. 10865, § 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Paragraph E2.A5.1.2.1 of the Directive state that it may be disqualifying where "reliable, unfavorable information" shows questionable judgment, untrustworthiness or unwillingness to comply with rules and regulations. Paragraph 1.c of the SOR alleges a restraining order was issued against Applicant in September 2002 following his third wife's complaints that he had threatened her. Applicant admitted the restraining order was issued, but denied ever threatening his third wife. Department counsel provided no documentary evidence surrounding these circumstances. Considering all the available evidence, I conclude it is insufficient to raise this potentially disqualifying condition.

Under ¶ E2.A5.1.2.2 of the Directive, "[t]he deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" may be disqualifying. When he completed the SF 86 on January 31, 2003, Applicant denied that he had ever been charged with a felony (Question 21) or that he had been arrested or charged with any other offense within the preceding seven years (Question 26). Clearly, these answers were not correct. The only issue is whether Applicant deliberately intended to provide misleading information, or whether, as he claimed, he simply did not recall the incidents because he blocked them from his mind.

I considered carefully all the facts and circumstances. After serving in the military and working for a defense contractor, Applicant knew the significance of a security clearance. He also knew that his record of criminal involvement was a potential obstacle to receiving a clearance; therefore, questions about his criminal record would have had a special significance. Applicant admitted taking the time to consult his records at home to obtain certain information, including the dates of his marriage and divorce from his second wife. I also note that the incidents in question included many events that would have made them very memorable, including physical altercations (especially being stabbed by his wife), being arrested and transported to a police station, being charged with several offenses, facing possible trial, informing his supervisor of some incidents, and being convicted of one crime. Under the circumstances, it is not believable that Applicant simply forgot these incidents when completing his security clearance application. I find Applicant deliberately provided false information in response to Questions 21 and 26 by failing to report his criminal incidents. This potentially disqualifying condition applies.

Under ¶ E2.A5.1.2.3 of the Directive, "deliberately providing false or misleading information concerning relevant and material matters to an investigator" may be disqualifying. During the interview with the security investigator in December 2003, Applicant denied ever being arrested or charged with any offense that should have been reported on his SF 86. For the reasons discussed above, I find Applicant deliberately provided false information to the security investigator. This potentially disqualifying condition applies.

Under the Directive, ¶ E2.A5.1.3, an applicant may mitigate the security concerns arising from questionable personal conduct. Under ¶ E2.A5.1.3.1, it may be mitigating where "[t]he information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability." The incidents about which Applicant was untruthful are substantiated by documentary evidence and his later admissions. His record of criminal conduct reflects on his character and stability, and is pertinent to a determination of his judgment and reliability. I find this mitigating factor does not apply.

The potentially mitigating condition in ¶ E2.A5.1.3.2 of the Directive arises where "the falsification was an isolated incident, was not recent, and the individual subsequently provided correct information voluntarily." Applicant falsified the information on his SF 86, and made additional false statements to the investigator. I find his falsifications were not an isolated incident, and they were recent. I conclude this potentially mitigating condition does not apply. I also considered carefully the other potentially mitigating conditions and conclude they do not apply.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. Applicant is an experienced individual with years of service to this country as a Marine, a civil servant, and an employee of a government contractor. After his many years of service, he understood the significance of a security clearance and the importance of the application process. Nonetheless, he deliberately and repeatedly provided false information in an attempt to conceal several arrests and criminal charges. I conclude Applicant has not mitigated the security concerns arising from his falsifications in his security clearance application and his security interview.

## **FORMAL FINDINGS**

My conclusions as to each allegation in the SOR are:

Paragraph 1, Guideline E: 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

## **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.

Michael J. Breslin

Administrative Judge