

DATE: November 30, 2006

In re:

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SSN: -----

Applicant for Security Clearance

CR Case No. 04-11860

**DECISION OF ADMINISTRATIVE JUDGE**

**ERIN C. HOGAN**

**APPEARANCES**

**FOR GOVERNMENT**

John B. Glendon, Esq., Department Counsel

**FOR APPLICANT**

Scott A. Conwell, Esq.

**SYNOPSIS**

Applicant's decision to take excess government equipment (tools and a cabinet) and use a government van to transport these items to his home during duty hours raises security concerns under personal conduct. Although he was given approval to take the items home by the government equipment manager, he knew or should have known that this was not the proper procedures of disposing excess equipment. His inconsistent statements pertaining to his knowledge of disposing excess government equipment raises credibility issues. He has not mitigated the security concerns raised under personal conduct. Clearance is denied.

**STATEMENT OF THE CASE**

On February 18, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.<sup>(1)</sup> The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline E, Personal Conduct.

In a sworn statement signed April 19, 2005, Applicant responded to the SOR allegations and requested a hearing. Department Counsel was ready to proceed on January 30, 2006. The case was assigned to me on February 2, 2006. DOHA issued a notice of hearing on February 14, 2006, scheduling the hearing for March 22, 2006. The hearing convened on that date but was continued due to an issue that arose with two exhibits. On August 21, 2006, DOHA issued a notice of hearing on September 14, 2006, the hearing was conducted as scheduled.

At hearing, the government moved to amend the SOR ¶ 1.b to read as follows:

b. Your access to Sensitive Compartmented Information (SCI) was revoked, by another Government Agency, on January 28, 2002, as a result of your actions as set forth in subparagraph 1.a, above.

There being no objection, the SOR was amended.

The government submitted three exhibits that were marked as Government Exhibits (Gov Ex) 1-3. The exhibits were admitted into the record without objection. Applicant testified on his own behalf and submitted eight exhibits which were marked as Applicant Exhibits (AE) A-H and admitted without objection. The record was held open until October 16, 2005. Applicant submitted one additional exhibit which was marked as AE I and admitted without objection. DOHA received the hearing transcript (Tr.) on September 25, 2006.

### **FINDINGS OF FACT**

In his SOR response, Applicant admits to all of the allegations in the SOR. His admissions are incorporated herein. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 45-year-old electronics technician for a defense contractor who is applying for a security clearance. (2) He has an associate's degree. He is married and has two children, a boy, age 10, and a girl, age 9. (3)

Applicant has held a security clearance since 1992. (4) He worked for various defense contractors over the years, often working on classified projects requiring a TS/SCI clearance. From April 1996 to 2002, he worked for a defense contractor in the office of a government agency. (5)

In November 2001, a group of people in Applicant's branch were asked to clean out a space that was previously occupied by an individual who had recently retired. They cleared out work benches, chairs, rack-mounted systems, desks, tool cabinets, tools, shelves, and parts. When sorting out the equipment, the government employee in charge of equipment storage told everyone who was helping that if they wanted any of the tools to take them. She indicated they would be thrown out otherwise. Eight tool cabinets were among the items to be excessed. Applicant and his branch chief, who was a government employee, each took a tool cabinet since they would be useful in their garages. (6)

They decided the best way to transport the tool cabinets to their homes would be by using a government van. Applicant checked out a government van, loaded a tool cabinet, and drove to his home and placed the tool cabinet in his garage. He did this during duty hours. A day or so later, he and his branch chief checked out a government vehicle, loaded a tool cabinet and drove to his branch chief's home during duty hours to deliver a tool cabinet. A day or so later, they helped deliver another tool cabinet to the equipment manager's home during duty hours. Applicant did not take leave during the times that he transported the tool cabinets. (7)

Applicant also took several tools. They included a drill extension, pliers, wire splicer, socket drivers, Phillips head screwdrivers, flat head screwdrivers, wrenches, a flashlight, handsaw blades, electrical tape, utility knife, small containers and large containers. (8)

Another employee in Applicant's office reported the theft of government property to the Security Office. (9) On December 6, 2001, Applicant was interviewed by the security office. He admitted taking the equipment and volunteered he would return the property. He was asked to leave the government premises that same day. (10) On December 19, 2001, he returned the government equipment he took. (11)

On January 22, 2001, Applicant was terminated by his employer. His access to SCI was terminated on January 28, 2002. (12)

Since his termination, Applicant has worked for several defense contractors. On October 17, 2002, Applicant submitted a security clearance application, (SF 86) as part of a periodic reinvestigation. (13) He fully disclosed on his application his prior employment termination, the revocation of his SCI access, and the basis for the revocation of his SCI access. (14)

On May 14, 2003, Applicant was interviewed by a Special Agent of the Defense Security Service. He provide a signed, sworn statement pertaining to the events regarding the taking of the equipment. In this statement, Applicant states:

The reason I took the tool cabinet was that it was a nice tool cabinet that I could use and it was being excessed, which I thought meant that it would go to government auction and be auctioned off, so I was trying to sidestep that procedure. I thought the only thing I was doing wrong was side stepping the excess procedure. I know I did wrong, I apologized to the investigator and other government officials when the items were returned, as well as my boss. [\(15\)](#)

In his April 2005 answer to the SOR, Applicant made the following comments:

There were eight tool cabinets to be excessed. My branch chief and myself said that two of those cabinets would be useful in our garages, so we discussed a way to get them to our houses. The best way was to use the government van that is how I got one to my house and he received one to. The items I took were marked for excess. It was later explained to me by a family member that the items needed to be taken to a disposal unit on the base and removed from the agency's books and then they could offer it up for public auction. I only found out about this procedure after I had removed the items that were being excessed. [\(16\)](#)

At hearing, Applicant initially testified that the government equipment manager gave him authorization to take the tools and the tool cabinet home. He has never done anything like this before. The only reason he took the items is because he thought he was given permission by the government employee in charge of equipment. [\(17\)](#) Under cross examination, Applicant admitted that he understood the excess procedure involved auctioning off government property so that government could recover some monetary value for the equipment or they would donate it to organizations. [\(18\)](#) When asked whether he thought the stuff was actually going to be thrown away in the garbage can, he answered, "Maybe not the tool cabinet but the tools, yes." [\(19\)](#)

Under recross examination, Applicant admitted that when he was initially interviewed by the security office about the taking of the government equipment on December 6, 2001, he never mentioned that the government equipment manager had given him authorization to take the equipment. He did not mention her to the investigators because he did not want to get her in trouble. [\(20\)](#) As a side note, the government equipment manager was forced to retire early as a result of this incident. [\(21\)](#)

Applicant admits his actions were wrong. This mistake cost him a lot. He lost his job. It put a strain on his family, and he disgraced himself in the process. He has learned a valuable lesson from this one mistake. He asks that his entire life be considered and that he would never do anything like this in the future. [\(22\)](#)

Applicant worked as a contractor with the government agency for over ten years. He worked for several different contractors at the same location. During this ten year period, he was a model employee with no disciplinary actions taken against him. He received numerous accolades and letters of appreciation during his career. [\(23\)](#) He received merit increases based on his good performance. [\(24\)](#)

Applicant's supervisor at the time of the incident wrote a letter on his behalf. He is familiar with the basis for Applicant's termination. He believes Applicant took the property because he thought it was going to be thrown away. He admits that Applicant should have used better judgment and asked questions of other people before taking the property but believes he would never intentionally steal anything. He says he has strong moral values and is a family man. He found him to be honest and above board in his dealings with others. He describes him as "a dedicated, hard working technician who's work was preferred by most in our Division." He has complete faith and trust in Applicant and would hire him back without any reservations. [\(25\)](#)

## 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." [\(26\)](#) 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.

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 the disqualifying conditions 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 person may not properly safeguard classified information. [\(27\)](#)

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." [\(28\)](#) An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(29\)](#) 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. [\(30\)](#)

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. [\(31\)](#) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision. [\(32\)](#) Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. [\(33\)](#)

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. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

## CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. I make the following conclusions.

### **Personal Conduct**

Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.1: (*Reliable, unfavorable information provided by associates, employers, coworkers, neighbors and other acquaintances*) applies in Applicant's case. The other government agency for which he worked as a contract employee provided unfavorable information regarding the events which ultimately resulted in the revocation of Applicant's SCI access and job termination in January 2002. I do note that Applicant fully provided this information on his security clearance application dated October 17, 2002.

The overall concern under Personal Conduct is also relevant to Applicant's case since his actions showed extremely poor judgment. His actions also raised questions about his trustworthiness and reliability. Before taking the tools and the tool cabinet out of the government office, he should have asked more questions as to whether it was appropriate. Even more troubling is the means used to transport the tool cabinets to he and his co-worker's homes. Applicant and his co-workers used a government van to transport the tool cabinets to their homes. He should have been aware that government vehicles are to be used for official government business rather than for personal use. His actions are further aggravated by the fact that he transported the equipment during normal working hours without taking personal leave.

The Personal Conduct concern can be mitigated. I find that none of the Personal Conduct Mitigating Conditions (PCMC) apply. Only PC MC E2.A5.1.3.1 (*The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*) has the potential to apply. Applicant's past conduct is pertinent to determine his judgment, trustworthiness, or reliability. He abused the government's trust when he took excess government equipment home. He also abused the government's trust when he used a government vehicle during duty hours to transport the tool cabinets to his home and to the homes of two co-workers.

Although he admitted his actions when called in by the security office on December 6, 2001, he initially never mentioned that the government equipment manager gave him authorization to take the tools and the tool cabinet home. He did not mention her because he did not want to get her into trouble. In his May 14, 2003, signed, sworn, statement, he admits that he was aware that the tool cabinet would be auctioned off and that he tried to sidestep the procedure. In his answer to the SOR, dated April 19, 2005, he claims that he did not find out about the procedure for auctioning off excess government equipment until after he had removed the items. At hearing, he initially testified that he had approval to take the equipment from the government equipment manager. Under cross examination, he admitted that he was aware of the excess equipment procedures and that it was unlikely that the tool cabinet would be thrown away.

Applicant's inconsistent statements pertaining to his knowledge of procedures for disposing of excess equipment raise credibility issues. His testimony that he initially did not mention the equipment manager's name to the security investigators because he did not want to get her into trouble indicates that he had some knowledge that taking the tools and tool cabinet home was questionable.

As a result of this incident, Applicant lost his SCI access and his job. He had ten years of favorable employment as a contractor working for the government agency. Although five years have passed since the incident, issues pertaining to Applicant's credibility remain due to his inconsistent statements. His inconsistent statements create doubt as to whether it is clearly consistent with the national interest to grant or continue his access to classified information. The Directive requires that any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security.<sup>(34)</sup> Applicants have the ultimate burden of persuasion as to obtaining a favorable clearance decision.<sup>(35)</sup> Applicant has not met his burden.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has not met mitigated the security concerns raised by the personal conduct concern. Despite Applicant's favorable employment record, an issue remains pertaining to his judgment and credibility. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant or continue Applicant's security clearance.

### **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

### **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.

Erin C. Hogan

## Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended.
2. Gov Ex 1.
3. Tr. 89-90.
4. Tr. 18.
5. Tr. 36-37.
6. Tr. 38-42, 56-61; Gov Ex 2; Answer to SOR.
7. Tr. 42, 61-68; Gov Ex 2; Answer to SOR.
8. Gov Ex 3.
9. Tr. 91-92; AE H.
10. Tr. 69.
11. Gov Ex 3.
12. Tr. 38-39; 109.
13. Gov Ex 1.
14. *Id.* at questions 20, 32, and FSO Request for Investigation, #12.
15. Gov Ex 2 at 2.
16. Answer to SOR at 2.
17. Tr. at 52.
18. Tr. 74-75.
19. Tr. 75.
20. Tr. 95.
21. Tr. 96.
22. Gov Ex 2.
23. Tr. 107; AE A-G.
24. AE I.
25. AE H.
26. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).
27. Directive ¶ E2.A5.1.1.

28. Directive ¶ E2.2.1.

29. *Id.*

30. *Id.*

31. Directive ¶ E3.1.14.

32. Directive ¶ E3.1.15.

33. Directive ¶ E.2.2.2.

34. Directive ¶ E2.2.2.

35. Directive ¶ E3.1.15.