

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant mitigated security concerns regarding criminal conduct concerning conviction for disorderly conduct growing out of alteration of a fine on a traffic ticket in 1998 by passage of time, prior good conduct, and clear evidence of rehabilitation. He failed to report this conviction at Question 26 on a 2002 SF 86 but had reported it on a 2000 SF 86. Security concerns mitigated by application of whole person doctrine in that Applicant had held security clearance for 30 years including 25 year career with same company, 27 years of Army active and reserve duty, and strong sense of family responsibility. Clearance is granted.

CASENO: 04-12648.h1

DATE: 01/26/2006

DATE: January 26, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12648

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns regarding criminal conduct concerning conviction for disorderly conduct growing out of alteration of a fine on a traffic ticket in 1998 by passage of time, prior good conduct, and clear evidence of rehabilitation. He failed to report this conviction at Question 26 on a 2002 SF 86 but had reported it on a 2000 SF 86. Security concerns mitigated by application of whole person doctrine in that Applicant had held security clearance for 30 years including 25 year career with same company, 27 years of Army active and reserve duty, and strong sense of family responsibility. Clearance is granted.

STATEMENT OF CASE

On August 11, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On August 26, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on September 22, 2005. A notice of hearing was issued on September 30, 2005, for a hearing on October 17, 2005, and held that day. The government offered eight exhibits into evidence at the hearing that were admitted in evidence. Applicant offered none at the hearing but the record was left open for 30 days and on October 26, 2005, Applicant submitted 22 exhibits that were admitted in evidence without objection. Applicant and one witness testified for Applicant. The transcript was received on November 9, 2005.

FINDINGS OF FACT

Applicant admitted the specific facts of the two SOR allegations but provided explanatory information. After a complete review of the record, I make the following findings of fact:

Applicant is a 49-year-old employee of a major defense contractor working in the communications field where he has been successfully employed since 1981 holding a security clearance. He was on active duty in enlisted status in the Army from 1974 until 1981 and since in the reserves with a security clearance. He has held a clearance for over 30 years with no security violations.

Applicant's criminal offense alleged in SOR¶2.b. occurred in 1998 when he was having financial difficulties. He received a traffic citation with a fine of \$130.00, but he paid only \$80.00 by creating a new citation and changing the numbers. He was charged with forgery, but the charge was reduced to disorderly conduct to which he pled guilty in 1999 (Exh. 6). He was sentenced to 25 hours of community service and fined \$250.00.

Three different security clearance applications (SF 86) were submitted in evidence. The first (Exh. 1) dated August 29, 2002, is an abbreviated form omitting questions 8 through 11 and 17 through 42. The second (Exh 2) is dated August 29, 2003, and includes answers to those omitted questions. These included Question 26 on arrests during the past seven years to which Applicant answered in the negative. This is the basis for the personal conduct allegation in SOR¶1.a. The third (Exh. 3) is dated July 13, 2000, and contains similar information, but also includes the information at Question 26 about the 1999 conviction for disorderly conduct.

There is confusion concerning the origins of these SF 86s. Applicant submitted a letter from his company attempting to explain the existence of the three documents and the origins of the requests for the documents (Exh. B). Since both the first and second documents are dated the same month and day but with different years, the government contended that they likely were both from the 2002 submission. Thus, I will treat the two as being from 2002. Despite the confusion, Applicant did omit the relevant information for Question 26 on the full 2002 SF86 even though he had included the information on his 2000 SF 86. He admitted that he did not want to disclose it for fear of jeopardizing his employment although he couldn't understand why since he had revealed the same information two years before.

Applicant was divorced in 1998 and has been financially responsible for his two children from the marriage. His son is a Ph.D. candidate at a mid-western university and his daughter is an adult practical nurse who lives with him. He has another daughter out of wedlock, age 15, whose mother has cancer. He is bringing their daughter to live with him. He has maintained contact with the daughter and her mother over the past 15 years taking his parental responsibilities seriously.

Applicant is well regarded by his company based on his performance evaluations (Exh. E-I). He had an excellent record in the Army while on active duty as shown by his evaluations (Exhs. N-T) and by his Army Reserve supervisors (Exhs. D and J-M) over the past five years of his service in the reserves. During his Reserve career, he has become a warrant officer and is expected to be promoted to WO6 in July, 2006.

Applicant's salary from his employment is \$67,000.00 per annum and he receives approximately \$10,000.00 to \$13,000.00 per annum for his reserve activities. He is financially stable and has none of the problems that existed in 1998.

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.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Directive, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. "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. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's failure to report his police record for his 1999 conviction at Question 26 on his 2002 SF 86 relating to all other offenses during the past seven years raises questions about his personal conduct. Under Guideline E such conduct might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.) Applicant admitted he deliberately withheld the information, because he feared loss of his security clearance, although could not understand why he was concerned since it had been revealed in 2000 without adverse consequences.

Guideline J (Criminal Conduct) is alleged both as a violation of 18 U.S.C. §1001 by failing to answer Question 26 on his 2002 SF 86 (SOR ¶2.a) and as to the conduct itself (SOR ¶2.b). The allegations could be mitigated if the criminal behavior was not recent (E2.A10.1.3.1), the crime was an isolated incident (E2.A10.1.3.2.), or there is clear evidence of successful rehabilitation (E2.A10.1.3.6.). I conclude that ¶2.b is mitigated for all three conditions.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Applicant has had a successful career with the same company for almost a quarter century. He has been on active duty and in the Army reserves for nearly 30 years where he is highly regarded for his skill and dedication to his assignments. He has successfully held a security clearance for over 30 years. He has shown strong family support for his older children and the care of his younger daughter as well as concern for her mother. Applicant's expression of remorse both for the criminal conduct and his failure to report the occurrence in 2002 on his SF 86 is persuasive of his changed conduct and rehabilitation. Applying the precepts of the whole person analysis, I conclude that Applicant should be granted a security clearance.

After considering all the evidence in its totality, including the whole person of Applicant, I conclude a security

clearance should be granted.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline E: FOR APPLICANT

Subparagraph 1.a.- For Applicant

1.cc:

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is granted.

Charles D. Ablard
Administrative Judge