

DATE: December 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-01261

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

As a senior enlisted man in the U.S. Navy, Applicant without authorization removed to his personal residence classified materials pertaining to his ship's nuclear propulsion system. After being punished through a summary court martial, he was given a general discharge under honorable conditions. While his violation of standing procedures was negligent, it was also an isolated event. He has demonstrated a positive attitude toward his security responsibilities, and he is unlikely to commit such a violation in the future. Clearance is granted.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On June 22, 2005, DOHA issued an SOR to Applicant regarding facts in his background that raise security concerns addressed in the Directive under Guideline K (security violations). Specifically, the SOR presented a single allegation Applicant had committed a security violation for which he was prosecuted, then discharged from the U.S. Navy. (SOR ¶ 1.a). Applicant timely answered the SOR, admitted with explanation the allegation, and requested a hearing.

The case was assigned to me on September 14, 2005, and I convened a hearing on September 21, 2005.⁽²⁾ The parties appeared as scheduled and the government presented four exhibits (GE 1 through 4), which were admitted without objection. Applicant testified in his own behalf and submitted five exhibits admitted into the record as AE A - E. DOHA received the transcript (Tr) on October 6, 2005.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 36 years old and employed by a defense contractor as an instrument test electrician. The contract to which he is assigned supports repair, maintenance, and overhaul of systems aboard U.S. Navy nuclear aircraft carriers and submarines. Applicant went to work for his current employer in December 2002. He transferred to his current assignment in January 2004. Applicant's supervisor, a 30-year company employee, values his work and regards him as a reliable employee who is well qualified for his assigned duties. When he transferred to his current position, Applicant was granted an interim clearance, access which he exercised without incident until his clearance was revoked pending the outcome of this adjudication.

Applicant served in the Navy from February 1990 until November 2002. He left the service as an electrician's mate second class (EM 2; paygrade E-5), but had earlier attained the rank of EM1. Applicant was trained to work in the Navy's nuclear power program and served in the reactor departments aboard a cruiser and three aircraft carriers. Applicant's last shipboard assignment was to the pre-commissioning unit (PCU) for a new aircraft carrier. He transferred to that assignment from another aircraft carrier in October 2000.

Personnel in the PCU reactor department were required to pass certain basic proficiency examinations as part of the ship's overall qualifications to put the reactor plant into service. Around the time Applicant transferred to the PCU, a cheating scandal occurred in that the answers to one of the qualification exams were e-mailed to various electricians, machinist mates, and others in the reactor department. Applicant would have received the information, some of it classified, had the sender had his correct home e-mail address. In March 2001, Applicant was among several enlisted members taken to Captain's Mast, but he was found not guilty of participating in the cheating conspiracy.

During the cheating scandal investigation, Applicant gave his command permission to confiscate and search his personal computer to see if he had received any of the aforementioned e-mails. An initial examination yielded nothing incriminating. However, after the Captain's Mast, his commanding officer wished to resolve discrepancies between what Applicant had said and what other accused had said about the misuse of classified information from the exams. Applicant agreed to a second, more expansive search of his belongings, including a search of his home.

In April 2001, this second search produced several documents related to in-rate training and reactor qualifications Applicant had taken with him when he left his previous command. The materials discovered consisted of 93 pages of training materials, systems diagrams, qualification checklists and signature pages, and handwritten notes Applicant had collected during his nuclear power training and onboard qualification studies. About 15 pages of the materials in Applicant's home were classified, and Applicant was not authorized to have the materials in his possession outside his command. Other materials, although themselves not classified, were taken from a classified document or publication. The majority of the materials were marked as "Unclassified - Navy Nuclear Propulsion Information (U-NNPI)," and were also subject to restrictions in use and dissemination. (3)

Over the next year, the Naval Criminal Investigative Service (NCIS) investigated the details and impact of the unauthorized removal from of these documents. The Navy determined Applicant's actions did not result in any adverse impact on national security; however, based on the results of that investigation, Applicant was charged with violating Article 92 (Failure to Obey an Order or Regulation), Article 121 (Larceny and Wrongful Appropriation), and Article 134 (General Article) of the Uniform Code of Military Justice (UCMJ). To avoid trial on these charges at a special court-martial, Applicant agreed to plead guilty to a single violation of Article 92 at a summary court-martial. On August 19, 2002, he was reduced in rank to E-5, and restricted to the ship for 45 days. On September 9, 2002, his commanding officer recommended Applicant be administratively separated from the Navy and given a general discharge under honorable conditions. Applicant was so discharged on November 8, 2002, and he was required to repay a large portion of the monetary re-enlistment bonus he received when he signed up for another 5-year tour in February 2000.

Applicant acknowledges he was well-trained in proper safeguarding, storage, and handling procedures for classified information. He insists he was unaware the materials he took with him from his previous command contained classified materials, but he admits he did intend to take with him materials that would help him get a head start on his qualifications when he reported aboard the PCU.

Statements taken for the summary court martial from officers and senior enlisted who worked with Applicant at the PCU and at his previous command reflect a dedicated, responsible senior enlisted man who was willing to help junior

shipmates in their studies to attain their shipboard qualifications. An officer for whom Applicant worked while the investigation was pending, noted Applicant's professionalism and honesty. He also recounted an incident where Applicant had reported a security violation after classified materials were mishandled.⁽⁴⁾ Applicant was generally rated as the #1 or #2 petty officer in his previous and the PCU reactor department assignments. Aside from this incident, Applicant's Navy career was devoid of anything other than conscientious, reliable, and knowledgeable performance. He held the Enlisted Surface Warfare Specialist (ESWS) qualification, received his third Good Conduct Ribbon in January 2000, and was named the PCU Reactor Department Sailor of the Quarter for the first three months he was aboard that command.

POLICIES AND BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽⁵⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽⁶⁾ 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 as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.⁽⁷⁾

To that end, the Directive sets forth adjudicative guidelines⁽⁸⁾ for consideration when evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guideline to be applied here is Guideline K (security violations).

CONCLUSIONS

The security concern addressed under Guideline K is that noncompliance with security regulations raises doubt about an individual's trustworthiness, willingness, and ability to safeguard classified information.⁽⁹⁾ Available information consisting of exhibits from both parties, as well as Applicant's own statements and admissions, supports the single allegation (SOR ¶ 1.a) that Applicant, without authorization, removed to his residence classified information. Applicant was punished by the Navy under the UCMJ and his Navy career was ended prematurely because of his actions. On the facts presented herein, Guideline K disqualifying condition (DC) 2⁽¹⁰⁾ applies. Specifically, Applicant's conduct was negligent in that he was a senior enlisted man with more than 10 years experience in handling and safeguarding the information in question. I accept Applicant's claim he was unaware the materials he removed from his previous command included classified and other protected materials. However, the issue here is whether he exercised a sufficient degree of care when handling his working papers and training materials. He clearly did not and was properly held accountable for his actions through a summary court-martial and administrative separation with a general discharge.

I have also reviewed the Guideline K mitigating conditions (MC) and conclude MC 2⁽¹¹⁾ and MC 4⁽¹²⁾ apply here. Taking into account all of the available information about Applicant's Navy and civilian careers, MC 2 applies because this is the only instance of this sort of conduct by Applicant. As to MC 4, from January 2004 until June 2005, Applicant held without incident interim access to classified information in his civilian job until the SOR was issued. While temporarily assigned to another command as he awaited the outcome of the NCIS investigation in 2001 and 2002,

Applicant reported a security violation. I have considered the vigor with which the Navy addressed Applicant's actions, the fact he has taken responsibility for his actions, the testimony of his supervisor regarding Applicant's reliability, and the positive statements from officers and senior enlisted personnel at Applicant's court-martial. Taken together with Applicant's candor about what happened and his apparent sincerity at hearing, I conclude Applicant has a deep appreciation for the gravity of his responsibilities should he be granted another security clearance.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guideline. A fair and commonsense assessment⁽¹³⁾ of Applicant's conduct in the context of all of the other information before me shows that, while Applicant's security violation was negligent and a clear violation of his security responsibilities and as a senior enlisted man, he is not at risk to repeat this conduct. The punishment already inflicted on him, his subsequent demonstrations of adherence to security procedures, his overall on-the-job performance in military and civilian classified environments, and the clearly isolated nature of this event all serve to satisfactorily resolve any doubts the government may have about his suitability to hold a clearance. On balance, I conclude Guideline K for the Applicant.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline K (Security Violations): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

DECISION

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

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Applicant waived his right to 15 days advance notice of hearing provided by Section E3.1.8 of the Directive. (Tr., 10)
3. AE A.
4. AE A; Tr., 81 - 82.
5. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
6. *See Egan*, 484 U.S. at 528, 531.
7. *See Egan*; Directive E2.2.2.
8. Directive, Enclosure 2.
9. Directive, E2.A11.1.1.
10. Directive, E2.A11.1.2.2. Violations that are deliberate or multiple or due to negligence.
11. Directive, E2.A11.1.3.2. Were isolated or infrequent;
12. Directive, E2.A11.1.3.4. Demonstrate a positive attitude towards the discharge of security responsibilities.

13. Directive, E2.2.3.