

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant deliberately falsified his January 2002 clearance application by omitting his drug abuse history. Clearance denied.

CASENO: 05-03050.h1

DATE: 01/31/2006

DATE: January 31, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-03050

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Jr., Esquire, Department Counsel

**FOR APPLICANT**

**SYNOPSIS**

Applicant deliberately falsified his January 2002 clearance application by omitting his drug abuse history. Clearance denied.

**STATEMENT OF THE CASE**

Applicant challenges the 18 July 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of personal conduct and criminal conduct.<sup>(1)</sup> He answered the SOR 9 August 2005, and requested a decision without hearing. He responded to DOHA's 25 October 2005 File of Relevant Material (FORM). The record closed 20 December 2005, when Department Counsel indicated no objection to the response. DOHA assigned the case to me 28 December 2005.

**FINDINGS OF FACT**

Applicant admitted the allegations of the SOR, but denied intent to falsify his clearance application when he misrepresented his criminal record. I incorporate his admissions as findings of fact. He is a 42-year-old heavy equipment mechanic employed by a defense contractor since January 2002. He previously held a clearance during part of the time he was in the U.S. Army (1981-1997).

When Applicant applied for a clearance in January 2002, he omitted his cocaine use in October 1997 and his marijuana use from October 1997 to April 1998. During a Defense Security Service interview in May 2003, he admitted deliberately omitting his drug abuse because he was afraid he would lose his job if he disclosed it on his clearance application.

On 6 January 1998, Applicant was charged with two counts of assault arising out of a domestic dispute with his wife on 27 October 1997. He had threatened to kill her if she did not let him leave the family home. He also pushed her during the argument. However, the charging document incorrectly alleges that he assaulted himself on that occasion. Applicant had been drinking at the time.

On 5 August 1998, Applicant was charged with two counts of assault arising out of another domestic dispute with his wife on 11 January 1998 when he hit both his wife and their 8-year-old son. Both Applicant and his wife had been drinking on this occasion.

Both assault incidents were adjudicated on 17 February 1999. The January 1998 assaults were dismissed. Applicant received probation before judgment for the August 1998 assault on his wife, conditioned on 36 months supervised probation and payment of fines and court costs; the assault on his son was nolle prossed.

On his clearance application, Applicant reported his probation before judgment (under the February 1999 adjudication date) under pending charges (question 23). He did not separately report the 27 October 1997 charges (under question 26). During his subject interview, he denied any intent to mislead the government, believing that because the two sets of charges were adjudicated the same day, they were all covered in his positive response to the pending charges question.

Applicant's supervisor considers him an excellent employee, and believes that he has learned his lesson from an otherwise unspecified "mistake he made in his personal life a number of years ago."

## **POLICIES**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. 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 for or against Applicant. However, specific adjudicative 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. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline E (Personal Conduct) and Guideline J (Criminal Conduct).

## **BURDEN OF PROOF**

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then 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.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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.<sup>(2)</sup>

## **CONCLUSIONS**

The government established a Guideline E case and Applicant did not mitigate the conduct. He deliberately concealed his drug history from the government.<sup>(3)</sup> He did so because he feared he would not get the job or his clearance if he was truthful. While he disclosed his drug history during his May 2003 interview, he did not disclose the information before then and no evidence suggests he voluntarily disclosed the information before questioning or confrontation.<sup>(4)</sup>

Applicant's conduct demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on in order to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline E against Applicant.

The government also established its case under Guideline J and the Applicant has only mitigated a portion of the security concerns.<sup>(5)</sup>

Applicant's deliberate falsification of his clearance application violates the provisions of 18 U.S.C. §1001, and he provided insufficient mitigation of his conduct. However, the two assault incidents are mitigated as remote and isolated, having both occurred within three months nearly seven years ago. I conclude Guideline J against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: For the Applicant

Paragraph 2. Guideline J: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the 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.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;
- 4.

However, I conclude that Applicant did not falsify his clearance application when he failed to separately disclose the October 1997 assault charges, because he lacked the intent to keep this information from the Government. Although he knew he had two sets of assault charges, he also knew that they had been adjudicated the same day. He might reasonably have believed that by reporting his probation before judgment he was reporting the full extent of his criminal conduct as required by the clearance application. Indeed, it would have been unreasonable for him to believe they would remain undiscovered once he reported the probation before judgment. Further, he reported two 1983 DUIs as required by the clearance application, the only other criminal conduct in his past.

5. E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged; E2.A10.1.2.2. A single serious crime or multiple lesser offenses.