

KEYWORD: Criminal Conduct; Personal Conduct

DIGEST: Applicant mitigated concerns over his teenage criminal conduct and concerns over his personal conduct in violating traffic laws. While he did not disclose any of these misdemeanor arrests in his questionnaire for public trust positions, he credibly established that he had no intent to falsify by omitting the 1998 incident as he never was required to appear in court and did not consider it an arrest. The government provided no arrest or court records to establish it was an arrest. Overall, he demonstrated clear evidence of successful rehabilitation. Eligibility is granted.

CASENO: 05-03624.h1

DATE: 04/21/2006

DATE: April 21, 2006

In Re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 05-03624

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated concerns over his teenage criminal conduct and concerns over his personal conduct in violating traffic laws. While he did not disclose any of these misdemeanor arrests in his questionnaire for public trust positions, he credibly established that he had no intent to falsify by omitting the 1998 incident as he never was required to appear in court and did not consider it an arrest. The government provided no arrest or court records to establish it was an arrest. Overall, he demonstrated clear evidence of successful rehabilitation. Eligibility is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on October 4, 2005, under Department of Defense Regulation [\(U\)](#) 5200.2-R, *Personnel Security Program*, (Jan. 1987), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant Applicant's request for a determination of trustworthiness because of security concerns arising under criminal conduct (Guideline J) and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on October 19, 2005, where he requested an administrative determination without a hearing.

Department Counsel on November 17, 2005, prepared a File of Relevant Material (FORM) which was sent to Applicant November 23, 2005. Applicant received the FORM on December 8, 2005, but did not respond or submit any additional information within 30 days of receipt. Consequently, on February 17, 2006, the case was assigned to me.

FINDINGS OF FACT

Applicant admitted the allegations in subparagraphs 1.a, 1.b, 1.c., 1.d, 1.f., and 2.a., 2.b., 2.c, and 2.d. After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 25 years old, has worked for his employer from May 2004 to present. He completed a SF-85P Questionnaire for Public Trust Position in May 2004. (Exhibit 4)

Applicant graduated from high school in 1998. He was married in April 2000 and has two children born in 2000 and 2002. (Exhibit 4)

Criminal Conduct and Personal Conduct

On his SF-85P Applicant did not disclose his arrest record as a minor nor his traffic offenses with fines under \$150. Question 20 on the requirement to disclose a police record advises that there is no need to include anything that happened before a 16th birthday or a traffic offense with under \$150 fine. He stated he did disclose his recent traffic offense on his company application. He admits all of the misdemeanor arrests and traffic offenses from 1992 to 2003, from ages 12 to 23, but denies he had any attempt to falsify the form as he has never had anything to hide. He believed all of the arrests occurred seven years prior to the time he completed the form in May 2004 or were under the \$150 threshold amount which is how he understood the question. In his Office of Personnel anagement (OPM) interview in November 2004, Applicant explained the March 1998 incident where he attempted to steal four or five packs of football cards when he was 17. Although he was apprehended by store security officials, Applicant stated he was released to his grandfather's custody and never heard anything more about the incident and never appeared in court. He said he never stole anything before or since that incident. He explained he did not list the arrest on his form as he was only 17 years old and did not believe he had been arrested. (SOR 1.e.) (SOR 2.e.) (Answer; Exhibits 4, 5) He made no admissions to OPM or in his answer that he had any intent to falsify.

Applicant states that he has now matured and is paying the fine for the suspended license in 2003. (SOR 1.f.) (Answer) There is no evidence⁽²⁾ in the file to establish whether or not the warrant from this charge is still active; Applicant did not admit this point.

POLICIES

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in DoD 5200.2-R. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that. . . assigning the person to sensitive duties is clearly consistent with the interests of national security." DoD 5200.2-R, ¶C6.1.1.1. Appendix 8 of the Regulation sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. An administrative judge must also 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 the 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

Based on a consideration of the evidence as a whole, I weighed relevant Adjudication Guidelines as set forth below :

Guideline J - Criminal Conduct

***The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.**

Guideline E - Personal Conduct

The Concern: 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.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. The Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the interests of national security. In reaching a fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Criminal Conduct

The Government established security concerns⁽³⁾ over Applicant's criminal conduct in that Applicant has admitted a series of misdemeanor matters from 1992, when he was 12 years old, which continued until 1998, when he was 17. He also admitted SOR 1.f., which involved a traffic matter where he failed to appear for arraignment on a driving with a suspended license charge. Although the government argues that he still has an outstanding warrant, no such evidence was offered. It is hard to evaluate the seriousness of this recent charge when no evidence is offered by the government.

Applicant provided mitigating evidence that the majority of these charges stemmed from his teenage years. Now 25 years old, Applicant is married and the father of two and is more responsible. He has reformed and provided clear evidence of successful rehabilitation. Applicant has changed for the better at work and at home. Also, I have considered his conduct under the whole person factors and considered his age and maturity at the time of the conduct when he was a teenager. Since then he has only faced traffic offenses. Given his commitment to his family, it is unlikely that this criminal conduct will recur. Thus, Applicant has mitigated⁽⁴⁾ his criminal conduct. Hence, I rule for Applicant on subparagraphs 1.a. through 1.f. incorporated under SOR Paragraph 1.

Personal Conduct

The Government established security concerns over Applicant's Personal Conduct over multiple traffic offenses from 1999 to 2003 under disqualifying condition (DC) (5): A pattern of dishonesty or rule violations. However, the government failed to establish his intent to falsify his SF 85-P. Applicant provided a credible explanation to OPM for his belief he was not arrested in 1998 when he was 17 years old as he was never required to appear in court on the charge. There is no evidence in the record that he was arrested or convicted of this charge alleged in 1.e. and incorporated as the sole falsification charge in 2.e. Thus, Applicant's explanations meet the mitigation⁽⁵⁾ guidelines as I consider his explanation in the OPM sworn statement reliable. Also, looking at Applicant as a whole person⁽⁶⁾ and considering the circumstances surrounding his conduct as a teenager, I conclude Applicant provided sufficient evidence of a current record of rehabilitation and pertinent behavioral changes. Overall, I conclude that he has provided sufficient evidence of reform over these personal conduct issues which involve only admitted minor traffic violations. Thus, I rule for Applicant under SOR Paragraph 2 under subparagraphs 2.a. through 2.e.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline J: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant's request for a determination of trustworthiness and eligibility for assignment to sensitive duties. Eligibility is granted.

Kathryn Moen Braeman

Administrative Judge

1. In ADP trustworthiness decisions, the procedural roles of the Directive and the substantive guidelines from the Regulations govern.
2. Only five exhibits were forwarded; none of the arrest records were included in the FORM.
3. **Conditions that could raise a security concern and may be disqualifying include:** 1 Allegations or admissions of criminal conduct, regardless of whether the person was formally charged.; 2. A single serious crime or multiple lesser offenses.
4. **Conditions that could mitigate security concerns include:** 1. The criminal behavior was not recent; 2. The crime was an isolated incident; 3. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life; 4. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur; 5. Acquittal; 6 There is clear evidence of successful rehabilitation.
5. **Conditions that could mitigate security concerns include:** 1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; 3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; 4. Omission of material facts was

caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided; 5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; 6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; 7. Association with persons involved in criminal activities has ceased.

6. In evaluating the relevance of an individual's conduct, the adjudicator 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 the 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; 9. The likelihood of continuation or recurrence.