

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant, a then post office employee, was convicted in March 2001 of converting postal funds to her own use. Clearance is denied.

CASENO: 05-04499.h1

DATE: 06/12/2006

DATE: June 12, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-04499

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a then post office employee, was convicted in March 2001 of converting postal funds to her own use. Clearance is denied.

STATEMENT OF THE CASE

On October 20, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline E (personal conduct) and Guideline J (criminal conduct). Applicant submitted a response to the SOR that was received by DOHA on November 4, 2005. She admitted all allegations and requested a decision based on the written record without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on January, 23, 2006, that was mailed to Applicant on January 24, 2006. Applicant acknowledged receipt of the FORM on February 15, 2006. She thereafter did not object to anything contained in the FORM or submit additional information for consideration within the 30-day period provided to her. The case was assigned to me April 10, 2006.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. Additionally, after a thorough review of the record, I make the following findings of fact:

Applicant is a 43-year-old woman who has been employed by a defense contractor as a preservation technician since March 2001. She was previously employed by the United States Postal Service from July 1992 until she resigned in May 2000. She was unemployed from May 2000 until November 2000, employed as a mail handler from November 2000 until December 2000, and unemployed again from December 2000 until March 2001. Applicant has been married since January 1992.

While employed by the Postal Service, apparently in a supervisory capacity,⁽²⁾ between May 1999 and May 2000, Applicant converted \$737.84 in postal stamp credits to her own use. Although the file contains very little information about the conversion, it appears Applicant on multiple occasions took cash from her drawer that she had received in payment for postage sold to customers.⁽³⁾ Her thievery was discovered during the course of an inventory conducted on May 25, 2000. Applicant admitted she stole the money to pay her personal expenses.

On November 6, 2000, Applicant was charged with misappropriating \$1,000 or less of postal funds in violation of Title 18, United States Code, Section 1711. She pled guilty to that offense on March 9, 2001, and was placed on two years probation. She was ordered to serve 120 days home confinement and pay a \$500 fine as terms of her probation. Applicant complied with all terms of her probation and was discharged therefrom on June 24, 2002.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline E, pertaining to personal conduct, and Guideline J, pertaining to criminal conduct, with their respective DC and MC, are most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁶⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁹⁾ Additionally, an

applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. ⁽¹⁰⁾

No one has a right to a security clearance ⁽¹¹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁽¹²⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security. ⁽¹³⁾

CONCLUSIONS

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information.

Applicant violated the trust placed in her by the Postal Service when she stole money from her work place to pay her personal expenses. Disqualifying Conditions (DC) 1: *Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*; and DC 4: *Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail* apply.

Once the government established a case against Applicant through her admissions and the evidence contained in the FORM, the burden shifted to her to present evidence of refutation, extenuation, or mitigation sufficient to overcome the case against her. To meet her burden, Applicant provided a letter accompanying her SOR response in which she stated she regretted her actions and that she is a responsible individual who has changed. She did not submit any evidence in support of her self-serving assertions.

Mitigating evidence that can be gleaned from the FORM includes: Applicant successfully completed her sentence of probation, she has been gainfully employed since March 2001, she has been married since January 1992, she has maintained a steady residence since at least June 1995, she openly disclosed her conviction in the SF 86 she submitted in May 2001, and she has apparently not committed any criminal conduct since May 2000.

Applicant's plea of guilty and successful completion of probation entitle her to application of Mitigating Condition (MC) 5: *The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress* to her case. However, considering the serious breach of trust evidenced by her multiple larcenous acts committed between May 1999 and May 2000, her failure to even attempt to explain why she engaged in such misconduct, and her failure to present any evidence in support of her claim that she is a changed person, I find she has failed to meet her burden of mitigating the personal conduct concerns that exist in this case. Guideline E is decided against Applicant.

Criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break rules.

Applicant was convicted of and sentenced for stealing money from the U.S. Postal Service. Although she was only charged with a misdemeanor, her conduct consisted of multiple individual thefts, spanned a one-year period of time, and exhibited an extreme breach of trust. For those reasons, DC 2: *A single serious crime or multiple lesser offenses* applies.

Although Applicant was convicted of a single offense, her criminal conduct was a continuing offense covering a one-year period of time during which she obviously stole money from the Postal Service on multiple occasions. Accordingly, she is not entitled to application of MC 2: *The crime was an isolated incident*. She failed to provide any information to explain why she engaged in criminal activity, to support her claim that she is a changed person, or to supplement what little mitigating evidence can be found in the record to show that she is rehabilitated and/or that her criminal conduct is unlikely to recur. Thus, she is not entitled to application of MC 3: *The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life*; MC 4: *The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*; or MC 6: *There is clear evidence of successful rehabilitation* to her case.

Applicant's last criminal act occurred in May 2000. MC 1: *The criminal behavior was not recent* applies. However, again considering the serious breach of trust evidenced by her larcenous conduct, her failure to explain why she engaged in such misconduct, and her failure to present any evidence in support of her claim that she is a changed person, I find this loan mitigating condition insufficient to mitigate her criminal conduct. Guideline J is decided against Applicant.

In all adjudications the protection of our national security is the paramount concern. 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. Indeed, the "whole person" concept recognizes we should view a person by the totality of their acts and omissions. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis. Once again, it must be noted that no one has a right to a security clearance⁽¹⁴⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁵⁾ After considering the evidence of record in this case, I find Applicant has failed to mitigate the security concern caused by her personal and criminal conduct.

FORMAL FINDINGS

SOR ¶ 1-Guideline E: Against Applicant

Subparagraph a: Against Applicant

SOR ¶ 2-Guideline J: Against Applicant

Subparagraph a: Against 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. Clearance is denied.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. In a security clearance application (SF 86) she submitted in May 2001 (Item 4), Applicant listed her position as PMP/OIC/PM. In response to question 20 in the SF 86 she stated she was in charge of "the office."

3. The amount of money taken, the source of the money, and the charging document stating the criminal activity occurred between different dates provides adequate evidence to establish that Applicant committed multiple smaller thefts that added up to the total amount discovered missing.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.
11. *Egan*, 484 U.S. at 528, 531.
12. *Id.* at 531.
13. *Egan*, Executive Order 10865, and the Directive.
14. *Egan*, 484 U.S. at 528, 531.
15. *Id.* at 531.