

DATE: August 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-03934

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL H. LEONARD

APPEARANCES

FOR GOVERNMENT

J. Theodore Hammer, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is unable to explain, extenuate, or mitigate the false statements he made during the processing of his security-clearance application. Clearance is denied.

STATEMENT OF THE CASE

Applicant is challenging the Defense Department's action to deny or revoke his security clearance. Acting under the relevant Executive Order and DoD Directive, ⁽¹⁾ on March 16, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a statement of reasons (SOR) detailing the basis for its action. The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline G for alcohol consumption, Guideline E for personal conduct (falsification), and Guideline J for criminal conduct. Applicant replied to the SOR on April 5, 2006, and indicated he did not wish to have a hearing, but Department Counsel elected to request a hearing. ⁽²⁾ The case was assigned to another administrative judge on May 25, 2006, and it was reassigned to me on June 20, 2006. The next month a notice of hearing was issued scheduling the hearing for August 8, 2006. Applicant appeared without counsel and the hearing took place as scheduled. DOHA received the transcript August 16, 2006.

FINDINGS OF FACT

In his written reply to the SOR, Applicant admitted the factual allegations in the SOR, and his admissions are incorporated herein as findings of fact. In addition, after considering the record evidence as a whole, I make the following findings of fact.

1. Applicant is a 44-year-old senior field engineering associate employed by a contractor to the Defense Department. He has worked for this company since June 2000. He is a skilled and competent employee, and his 2005 performance evaluation indicates that his overall performance demonstrates a skill level exceeding requirements. ⁽³⁾ He has held a security clearance for many years as a sailor and as a defense contractor.

2. Applicant has been married since November 1986. He has an adult stepchild and two children, born in 1988 and 1993. He recently earned an associate's degree in electronics technology and vocational technical education.
3. Before his current employment, Applicant served on active duty as a sailor in the U.S. Navy from about June 1980 until his retirement in June 2000. He retired at the pay grade of E-6. For nearly 12 years, his primary speciality was serving as a submarine carry-on equipment maintenance technician.⁽⁴⁾ This duty required him to deploy onboard submarines. His military decorations include five Navy Achievement Medals, two Navy Expeditionary Medals, three Navy Commendation Medals, and five Good Conduct Awards.
4. Applicant has a history of alcohol-related incidents away from work. He was arrested for drunk driving or driving under the influence (DUI) in September 1983, July 2000, and July 2003. He pleaded guilty to all three offenses, paid fines, was required to attend instructional programs, and had his driver's license suspended. For the 2003 DUI, his driver's license was suspended for six months in the state where the offense took place, and his state of residence suspended his license sometime thereafter. He is yet to have the driver's license reinstated, apparently because he has not completed an instructional program. Without a driver's license, Applicant relies on his spouse for transportation.
5. In March 2004, Applicant completed a security-clearance application, although it was not signed.⁽⁵⁾ Question 24 asked if he had ever been charged with or convicted of any drug- or alcohol-related offenses. He answered the question in the negative. In June 2004, Applicant was required to certify the security clearance-application by signing and dating it.⁽⁶⁾ In signing the application, Applicant certified that his statements were true, complete, and correct to the best of his knowledge and belief and made in good faith, and that he understood that a false statement could be punished by federal law. Applicant completed the certification by signing and dating the application on June 9, 2004.
6. Applicant was interviewed in February 2005 as part of the background investigation in his case. During the interview, the investigator asked about drug- or alcohol-related offenses. Applicant mentioned his 1983 DUI offense, and said he thought it had been covered in previous investigations.⁽⁷⁾ In addition, when the investigator asked about any other alcohol-related incidents, Applicant said he had no other arrests or charges.⁽⁸⁾
7. About one year later, Applicant was re-interviewed by same investigator. He admitted he was dishonest or untruthful in the first interview.⁽⁹⁾ The investigator asked him why did not reveal the 2000 and 2003 DUI offenses, and he said that he made a decision not to bring it up because he was worried about being denied a security clearance and possibly losing his job.⁽¹⁰⁾ In his testimony, Applicant did not disagree with anything the investigator said in her testimony.⁽¹¹⁾ In addition, his appearance and demeanor during the hearing was serious, sincere, and contrite.
8. Applicant continues to drink alcohol. He consumes two to three beers once or twice a week.⁽¹²⁾ During a weekend while working in the yard or doing other things, he may have one or two six-packs of beer spread out over the course of a day or the weekend.⁽¹³⁾ Applicant has not been diagnosed as an alcohol abuser or alcohol dependent. While in the Navy, Applicant was required to undergo medical evaluations conducted by Navy medical personnel before deploying for submarine duty and he was never found unfit for duty.⁽¹⁴⁾ Likewise, during the medical evaluations, Applicant was never told that he was drinking too much alcohol.⁽¹⁵⁾

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's security clearance eligibility, including disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. In addition, each clearance decision must be a fair and impartial commonsense decision based on 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. A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.⁽¹⁶⁾ Instead, it is a determination that

the applicant has not met the strict guidelines the President has established for granting a clearance.

BURDEN OF PROOF

The only 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.⁽¹⁷⁾ There is no presumption in favor of granting or continuing access to classified information.⁽¹⁸⁾ The government has the burden of presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.⁽¹⁹⁾ An applicant is responsible for presenting witnesses and other evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.⁽²⁰⁾ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²¹⁾

No one has a right to a security clearance.⁽²²⁾ As noted by the Supreme Court in *Department of Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²³⁾ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

CONCLUSIONS

Personal conduct under Guideline E⁽²⁴⁾ 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. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance or in other official matters is a security concern. It is deliberate if it is done knowingly and willfully.

An omission of relevant and material information is not deliberate if the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported. Indeed, in this case, the personal conduct issues are the gravamen of the administrative complaint.

Here, based on the record evidence as a whole, the government established its case under Guideline E. Applicant admits lying on his security-clearance application when he deliberately omitted or concealed his 2000 and 2003 DUI offenses. Also, he admits lying during the official interview in February 2005 when he deliberately failed to disclose his 2000 and 2003 DUI offenses. What's noteworthy here is Applicant knew he made a false statement he made on his security-clearance application, yet he failed to do the right thing and correct the record during his February 2005 interview when he elected to omit or conceal his two most recent DUI offenses. Given these facts and circumstances, both DC 2⁽²⁵⁾ and DC 3⁽²⁶⁾ apply against Applicant. To sum up, his false statements show questionable judgment, lack of candor, unreliability, and untrustworthiness.

I reviewed the seven mitigating conditions (MC) under the guideline and conclude none apply. Making false statements during the security-clearance process is a serious matter, not easily explained away, extenuated, or mitigated, because it goes to the heart of the process--whether the government can rely on an applicant to do the right thing even when it might be against their own interests. The record evidence shows Applicant proved himself to be unreliable twice, and his explanations do nothing to lessen the case against him. Accordingly, Guideline E is decided against Applicant.

Under Guideline J, criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling classified information.

Here, based on the record evidence as a whole, the government established its case under Guideline J. Applicant has a history of criminal conduct based on his three DUI offenses and his two false statements made during the security-clearance process in violation of 18 U.S.C. § 1001 (making a false statement within the jurisdiction of a federal agency). Given these facts and circumstances, both DC 1⁽²⁷⁾ and DC 2⁽²⁸⁾ apply against Applicant. His history of criminal

conduct, both charged and uncharged, creates doubt about his judgment, reliability, and trustworthiness.

I reviewed the six MC under the guideline and conclude none apply. Three matters justify a brief discussion. First, his criminal conduct cannot be considered not recent⁽²⁹⁾ as he made his false statements in 2004 and 2005. Second, his criminal conduct cannot be considered an isolated incident⁽³⁰⁾ given his three DUI offenses and two false statements. Third, there is not clear evidence of successful rehabilitation given the recency of his false statement to the investigator in February 2005. The other three MC do not apply based on the facts and circumstances here. Accordingly, Guideline J is decided against Applicant.

Under Guideline G,⁽³¹⁾ a history of excessive alcohol consumption raises a security concern because of the potential for deliberate or inadvertent mishandling of classified information due to intoxication. The concern is that excessive consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Here, based on the record evidence as a whole, the government established its case under Guideline G. The record evidence shows Applicant has a history of excessive alcohol consumption, as evidenced by his three DUI offenses in 1983, 2000, and 2003. Given these facts and circumstances, DC 1⁽³²⁾--alcohol-related incidents away from work--applies against Applicant. His three DUI offenses are incidents of criminal conduct directly related to his use of alcohol.

I reviewed the four MC under the guideline and conclude the evidence is sufficient to mitigate the security concern. Specifically, MC 2⁽³³⁾--the problem occurred a number of years ago and there is no indication of a recent problem--applies in Applicant's favor. His last alcohol-related incident was the July 2003 DUI offense, which is more than three years ago. Although Applicant continues to drink, there have been no additional alcohol-related incidents. In addition, Applicant has not been diagnosed as either an alcohol abuser or alcohol dependent. If this was a concern, DOHA could have, as an interim action before issuing the SOR, required Applicant do undergo an alcohol evaluation by a credentialed medical professional or a licensed clinical social worker.⁽³⁴⁾ Accordingly, for these reasons, Guideline G is decided for Applicant.

To conclude, Applicant has not met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching my decision, I considered the record evidence as a whole--including

Applicant's exhibits and his many years of honorable military service--the whole-person concept, the clearly-consistent standard, and the appropriate factors and guidelines in the Directive.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

SOR Paragraph 1-Guideline G: For Applicant

Subparagraphs a-d: For Applicant

SOR Paragraph 2-Guideline E: Against Applicant

Subparagraphs a-b: Against Applicant

SOR Paragraph 3-Guideline J: Against Applicant

Subparagraphs a-b: 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.

Michael H. Leonard

Administrative Judge

1. Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive).
2. Directive, Enclosure 3, Item E3.1.7 (authority for Department Counsel to request a hearing).
3. Exhibit B.
4. Exhibit A.
5. Exhibit 1.
6. Exhibit 2.
7. R. 40-41.
8. R. 43.
9. R. 44-45.
10. R. 48-49.
11. R. 109, 117.
12. R. 90.
13. R. 91, 114.
14. R. 114-115.
15. R. 115.
16. Executive Order 10865, § 7.
17. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
18. ISCR Case No. 02-18663 (March 23, 2004) at p. 5.
19. Directive, Enclosure 3, Item E3.1.14.
20. Directive, Enclosure 3, Item E3.1.15.
21. Directive, Enclosure 3, Item E3.1.15.
22. *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988)("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) ("It is likewise plain that there is no 'right' to a security clearance, so that full-scale due process standards do not apply to cases such as Duane's.") (citations omitted).
23. 484 U.S. at 531.
24. Directive, Enclosure 2, Attachment 5.

25. Directive, Item 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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.
26. Directive, Item E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representatives in connection with a personnel security or trustworthiness determination.
27. Directive, Item E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged.
28. Directive, Item E2.A10.1.2.2. A single serious crime or multiple lesser offenses.
29. Directive, Item E2.A10.1.3.1. The criminal behavior was not recent.
30. Directive, Item E2.A10.1.3.2. The crime was an isolated incident.
31. Directive, Enclosure 2, Attachment 7.
32. Directive, Item E2.A7.1.2.1.
33. Directive, Item E2.A7.1.3.2.
34. Directive, Enclosure 3, Item E3.1.2.