



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
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----- ) ISCR Case No. 10-04344  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: John N. Griffin, Esq.

September 14, 2011

**Decision**

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for a security clearance to work in the defense industry. The evidence shows he has five traffic-related offenses during 2000–2009. On three occasions, courts issued bench warrants for his arrest after he failed to pay fines. On one occasion during a traffic stop in 2006, he provided a false name to a police officer. He was arrested, charged, and pleaded guilty to the misdemeanor offense of providing false information to a peace officer, and he served about ten days in jail. He is still in the process of paying the fines from the 2006 and 2009 offenses. When he completed a security clearance application in January 2010, he disclosed his 2009 arrest, but he did not disclose his 2006 arrest. He provided multiple and conflicting explanations for his failure to disclose the 2006 arrest. Accordingly, as explained below, this case is decided against Applicant.

## Statement of the Case

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on January 24, 2011, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual basis for the action under the security guideline known as Guideline E for personal conduct.

Applicant answered the SOR and requested a hearing. The case was assigned to an administrative judge on April 20, 2011. It was reassigned to me June 10, 2011. The hearing took place August 2, 2011. The transcript (Tr.) was received August 17, 2011.

## Findings of Fact

The SOR alleged Applicant's five traffic-related offenses during 2000–2009, and it alleged he gave a deliberately false answer in response to a question about his police record when completing a security clearance application in 2010. In Applicant's reply to the SOR, he admitted all the allegations, but at hearing he explained that his omission of a 2006 arrest was not a deliberately false answer. In addition, the following findings of fact are supported by substantial evidence.

Applicant is a 32-year-old employee of a federal contractor. He is married and has two children. He is seeking a security clearance for his employment as a technical specialist for a company engaged in defense contracting. His spouse is employed by the same company. He began working for this company in December 2009. Before that, he worked for many years as an installer/supervisor in the tile, marble, and granite business. He held an interim clearance for several months until it was withdrawn pursuant to this action. He worked in Afghanistan in support of the U.S. military while he held the interim clearance.

Applicant does not dispute the five traffic-related offenses, and they are summarized as follows:

1. In 2000, he was cited for or charged with speeding and fined \$550. Subsequently, his driver's license was suspended and a bench warrant issued for his arrest when he failed to pay the fine.

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<sup>1</sup> This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines contained in Enclosure 2 to the Directive.

2. In 2001, he was cited for or charged with speeding and driving with a suspended or revoked license. He pleaded guilty and was fined \$528. Subsequently, a bench warrant was issued for his arrest when he failed to pay the fine.
3. In 2003, he was cited for or charged with driving with a suspended license and no registration. He pleaded guilty and was fined \$500. Subsequently, a bench warrant was issued for his arrest when he failed to pay the fine.
4. In 2006, he was cited for or charged with providing false information to a peace officer (a misdemeanor offense), driving with a suspended license, and no registration. He was arrested during the traffic stop and held in jail for about five days. He pleaded guilty and was sentenced to ten days in jail and fined \$500.
5. In 2009, he was stopped and then arrested pursuant to the 2003 bench warrant. He was taken into custody, appeared in court, pleaded guilty, and was fined about \$1,400.

Applicant has paid the fines for the 2000, 2001, and 2003 offenses, and is in the process of paying the fines for the 2006 and 2009 offenses. He has a valid driver's license issued by the state of his domicile.<sup>2</sup> He also presented proof of auto insurance.<sup>3</sup>

Applicant completed a security clearance application in January 2010.<sup>4</sup> It was the first time he completed such a document. In response to Question 22 concerning his police record, he answered "yes" to Questions 22a and 22b, thereby indicating that: (1) he had been issued a summons, citation, or ticket to appear in court in a criminal proceeding against him; was on trial or awaiting trial on criminal charges; or was currently awaiting sentencing for a criminal offense; and (2) he had been arrested within the last seven years. He then explained that he was arrested in 2009 on a bench warrant stemming from the 2003 traffic-related offense. He did not disclose his 2006 arrest in response to Question 22 or anywhere else on the application.

Applicant was interviewed for his background investigation in March 2011.<sup>5</sup> He provided additional details about his five traffic-related offenses and financial issues, which were not alleged in the SOR. Concerning his response to Question 22 of the security clearance application, he explained that: (1) he did not list certain offenses because they occurred outside the seven-year period; and (2) for those offenses he was required to disclose, he failed to do so due to oversight and he disclosed those that he

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<sup>2</sup> Tr. 111–113; Exhibit F.

<sup>3</sup> Exhibit R.

<sup>4</sup> Exhibit 1.

<sup>5</sup> Exhibit 2.

recalled.<sup>6</sup> Later in the interview, he stated that he did not list the 2006 arrest because he assumed he was not required to list it.<sup>7</sup>

At hearing, he denied deliberately falsifying his answers to Questions 22a and 22b.<sup>8</sup> He explained that although he disclosed the 2009 arrest, he did not disclose the 2006 arrest because the online application would not accept his answer without a ticket or case number, which was then unavailable to him.<sup>9</sup> He admitted he was aware of the 2006 arrest when he completed the online application, but was unable to input it.<sup>10</sup> He gave a non-verbal response to the question of why he was able to input the 2009 arrest, considering that a ticket or case number is not listed on the application for that arrest.<sup>11</sup>

### **Law and Policies**

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. The only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information. The Department of Defense takes the handling and safeguarding of classified information seriously because it affects our national security, the lives of our servicemembers, and our operations abroad.

It is well-established law that no one has a right to a security clearance.<sup>12</sup> 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.”<sup>13</sup> 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.

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<sup>6</sup> Exhibit 2 at 3.

<sup>7</sup> Exhibit 2 at 5–6.

<sup>8</sup> Tr. 117.

<sup>9</sup> Tr. 118–119; 135–136.

<sup>10</sup> Tr. 136–137.

<sup>11</sup> Tr. 137.

<sup>12</sup> *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 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

<sup>13</sup> 484 U.S. at 531.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.<sup>14</sup> An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.<sup>15</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>16</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>17</sup> An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>18</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>19</sup> In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.<sup>20</sup> The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.<sup>21</sup>

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant facts and circumstances, the pertinent criteria and adjudication factors, and the whole-person concept.

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.<sup>22</sup> Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

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<sup>14</sup> Directive, ¶ 3.2.

<sup>15</sup> Directive, ¶ 3.2.

<sup>16</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>17</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>18</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>19</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>20</sup> *Egan*, 484 U.S. at 531.

<sup>21</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>22</sup> Executive Order 10865, § 7.

## Analysis

Under Guideline E for personal conduct,<sup>23</sup> the suitability of an applicant may be questioned or put into doubt due to false statements and credible adverse information that may not be enough to support action under any other guideline. The overall concern under Guideline E is:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations [that may] raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.<sup>24</sup>

A statement is false when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if, for example, the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, or genuinely thought the information did not need to be reported.

This case presents two central issues under Guideline E. The first issue is whether Applicant made deliberately false statements when answering two questions about his police record on his 2010 security clearance application. Based on the evidence, to include his hearing testimony, I am persuaded he made deliberately false statements.<sup>25</sup> Initially, in his background interview, he claimed that he did not list the 2006 arrest due to oversight; he also claimed that he assumed he was not required to list it. At hearing, he claimed that he was aware of the 2006 arrest and tried to list it, but the online application did not allow it without a ticket or case number. But at the same time he was able to list the 2009 arrest without a ticket or case number. Given his multiple and conflicting explanations, I conclude that he deliberately omitted the 2006 arrest because he believed the misdemeanor offense of giving false information to a police officer would reflect poorly on him and might prevent him from obtaining a security clearance.

The second issue is whether Applicant's series of five traffic-related offenses raise questions about his security suitability. In addition to the offense of giving false information to a peace officer, of concern here is the multiple bench warrants issued for his arrest due to his failure to pay court-ordered fines. It is also notable that his five traffic-related offenses took place over a period of several years, which suggests a pattern of behavior rather than an isolated incident attributable to youthful inexperience. Taken together, these matters reflect reckless and irresponsible behavior as well as a

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<sup>23</sup> AG ¶¶ 15–17 (setting forth the security concern and the disqualifying and mitigating conditions).

<sup>24</sup> AG ¶ 15.

<sup>25</sup> AG ¶ 16(a).

certain level of disregard for the law. These matters also support a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, and unwillingness to comply with rules and regulations.<sup>26</sup> At present, it appears Applicant may have learned his lesson and he now takes responsibility for his actions. Indeed, he has a valid driver's license and is making progress in paying off his fines. Nevertheless, given his series of five traffic-related offenses, combined with the recent falsification of his security clearance application, it is too soon to tell if his history of questionable personal conduct is a thing of the past or a harbinger of things to come.

In reaching these conclusions, I considered all the mitigating conditions under Guideline E,<sup>27</sup> and none, individually or in combination, are sufficient to overcome and mitigate the security concerns. Indeed, making deliberately false statements to the federal government during the security clearance process is serious misconduct, and it is not easily explained away, extenuated, or mitigated.

To conclude, Applicant did not present sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns. In reaching this conclusion, I gave due consideration to the nine factors of the whole-person concept.<sup>28</sup> I also gave due consideration to his favorable evidence, which consisted of the testimony of five character witnesses and extensive documentation.<sup>29</sup> Although these matters weigh in his favor, they are insufficient to overcome the security concerns. Accordingly, I conclude that Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision.

### **Formal Findings**

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline E:	Against Applicant
Subparagraphs 1.a–1.i:	Against Applicant

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<sup>26</sup> AG ¶ 16(c).

<sup>27</sup> AG ¶ 17(a)–(g).

<sup>28</sup> AG ¶ 2(a)(1)–(9).

<sup>29</sup> Exhibits A–R.

## **Conclusion**

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Michael H. Leonard  
Administrative Judge