



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



In the matter of:)	
)	
XXXXXX, Xxxxx Xxxxxx)	ISCR Case No. 11-03287
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: Leslie McAdoo Gordon, Esquire

05/31/2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant's clearance.

On 21 November 2011 the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, Personal Conduct.² Applicant timely answered, requesting a hearing. DOHA assigned the case to me 21 February 2012, and I convened a hearing 28 March 2012. DOHA received the transcript 5 April 2012.

¹Consisting of the transcript (Tr.), Government's exhibits (GE) 1-4, and Applicant's exhibits (AE) A-E.

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted falsifying his September 2003 clearance application (SOR 1.a) but denied falsifying his February 2007 clearance application SOR (1.b). He is a 31-year-old associate employed by a defense contractor since August 2010. He seeks to retain the clearance he was issued in March 2004.

Applicant graduated from an academically-rigorous high school in May 1998. He obtained his undergraduate degree with honors in May 2002. He later obtained a graduate degree with honors in December 2009. While in college, he used and purchased marijuana from about September 1998 to fall 2002. His marijuana use was with college friends, and the purchases were typical user-amount purchases. Sometimes he would contribute to the group purchase and sometimes he was collecting for the group purchase. The purchases were from other friends who had marijuana.

Applicant deliberately falsified his clearance application in September 2003 when he failed to disclose this marijuana use. Although not alleged in the SOR, he also falsified his clearance application when he failed to disclose his marijuana purchases. Applicant knew that falsifying his clearance application was wrong, but he did so anyway because he was afraid he would not get his clearance. He falsified his clearance application even though his then-girlfriend, now-fiancee, told him to tell the truth (Tr. 79). She has never had a clearance, but she thought he would come to regret his falsification (Tr. 92). Applicant attributed his falsifications to being young, immature, and unfamiliar with the security clearance process (Tr. 29). As a result of his falsifications, Applicant obtained his clearance without incident in March 2004.

After Applicant obtained his clearance in March 2004 and continued working in a cleared environment, he realized how wrong he was to have falsified his clearance application and resolved to never lie again on any security form or in any security situation (Tr. 34). However, he did not report his earlier falsification to his company security officer or any Government officials.

In February 2007, Applicant completed another clearance application (AE A). Applicant answered "no" to a two-part question designed to elicit his past history of illegal drug involvement. The portion of the question dealing with actual use of illegal drugs had a one-year look back; the portion of the question dealing with purchase and other kinds of transactions had a seven-year look back. However, there was also a supplemental questionnaire (GE 3) that asked Applicant to report any illegal drug use within the last seven years. Applicant claims that he read this question as containing the same one-year look back as the basic application, and so answered "no" to this question as well.

Applicant applied for an upgrade to his clearance in November 2010 (GE 1). All of his relevant drug involvement was now more than seven years old, so his "no" answers to the pertinent drug involvement questions were now correct. Later in November 2010, Applicant was interviewed by a Government investigator who asked

him if he had ever falsified any Government applications. Applicant disclosed his September 2003 falsifications. He claims he was stunned when he saw the falsification allegation relating to his February 2007 clearance application, because he was sure he had been truthful with the Government after 2003 (Tr. 36).

Applicant has excellent employment evaluations (AE B), exemplary character references (AE C), and an impressive array of continuing security awareness certificates (AE E). He is considered honest and trustworthy.

Policies

The adjudicative guidelines (AG) list factors to be used to evaluate an applicant's suitability for access to classified information. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline E (Personal Conduct).

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 substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to Applicant to refute, extenuate, or mitigate the Government's case. As no one has a right to a 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.³

Analysis

The Government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. Applicant deliberately falsified his drug involvement on his September 2003 clearance application because he feared he would not get his clearance. He did so despite advice from his girlfriend to tell the truth. Attributing his falsifications to his unfamiliarity with the security process is not credible. There is nothing complicated in a requirement to answer the questions truthfully. And when he became more familiar with working in a cleared environment and realized that

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

his drug use might not necessarily be disqualifying, he took no steps to advise either his company or the Government of his past drug involvement.⁴ Applicant's falsifications were made to obtain the clearances necessary for his employment with a Government contractor. The falsifications were enough to shift the burden of persuasion to Applicant to refute or mitigate the Government's information,⁵ regardless of the second alleged falsification.

Applicant claims that he did not intentionally falsify his clearance application in February 2007, because he misread the respective look-back periods on the three drug questions. The claim is not credible for a number of reasons. First, the language of the questions is quite clear and Applicant is an intelligent, well-educated person. Second, he comes to this application as an established, if not yet discovered, liar. Why should he be believed when he still has relevant and material drug involvement in his past that he has yet to disclose to the Government? Finally, his claim is wholly inconsistent with his stated resolve from 2004 to be truthful in all security situations. Nothing in the February 2007 application precluded him from disclosing his past drug involvement, none of which he had disclosed. Instead, he's parsing the questions to his own advantage. For that matter, nothing in the November 2010 application precluded him from revealing his past drug involvement. And he disclosed neither the drug involvement nor his past falsification until he was specifically asked about falsifying Government documents in November 2010, when both the drug involvement and the original falsification were quite aged.

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant did not disclose this adverse information until November 2010, long after the events.⁶ The argument that this constitutes a prompt, good-faith disclosure defies credibility. Applicant further argues that because the full extent of his drug history is now known to the Government, he has no reason to falsify that drug history in the future. Applicant urges too narrow a view of the evidence. Applicant has demonstrated that he is willing to falsify, omit, or misrepresent adverse information in his background in order to obtain or retain employment and clearances. Applicant's failure to disclose this information 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 in a

⁴¶ 16(a) 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. . . ; (b) deliberately providing false or misleading information regarding relevant facts to an . . . investigator . . . ;

⁵The falsifications and omissions that were not alleged in the SOR may not be considered on the merits of the Guideline E allegations, but may be considered as relevant to the Applicant's credibility, his whole person analysis, and to establish absence of mistake on the falsifications that were alleged.

⁶¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

timely fashion, not when they perceive disclosure to be prudent or convenient. 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 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. And while his whole-person evidence is very strong, it is insufficient to overcome the security concerns raised by his past conduct, particularly where Applicant has no track record of reporting potentially uncomfortable information about himself in a timely manner. Accordingly, I resolve Guideline E against Applicant.

Formal Findings

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraphs a-b: Against Applicant

Conclusion

Under 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 denied.

JOHN GRATTAN METZ, JR
Administrative Judge