

KEYWORD: Personal Conduct

DIGEST: Applicant is a junior analysis for a defense contractor. In completing his security clearance application and in responding to interrogatories asked during the clearance process, Applicant deliberately did not provide correct information concerning his use of illegal drugs and a driving while intoxicated arrest and detention. Clearance is denied.

CASENO: 06-24528.h1

DATE: 08/31/2007

DATE: August 31, 2007

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| In Re: |) | |
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| SSN: ----- |) | ISCR Case No. 06-24528 |
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| Applicant for Security Clearance |) | |
| |) | |

**DECISION OF ADMINISTRATIVE JUDGE
THOMAS M. CREAN**

APPEARANCES

FOR GOVERNMENT

James F. Duffy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a junior analysis for a defense contractor. In completing his security clearance application and in responding to interrogatories asked during the clearance process, Applicant

deliberately did not provide correct information concerning his use of illegal drugs and a driving while intoxicated arrest and detention. Clearance is denied.

STATEMENT OF THE CASE

On December 7, 2006, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), using the new Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. Applicant was provided copies of the new guidelines. Applicant acknowledged receipt of the SOR on December 14, 2006. The SOR alleges security concerns under Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on January 2, 2007. He admitted three and denied two of the allegations with explanation. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on May 31, 2007. Applicant received a complete file of relevant material (FORM) on June 5, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due July 5, 2007. As of August 13, 2007, he had not responded. The case was assigned to me on August 15, 2007.

FINDINGS OF FACT

Applicant is 31 years old and has been a junior analyst for a defense contractor since December 2003. He received a college degree in August 2003, and is married with three children. He submitted a security clearance application in 2004.¹

Applicant admitted that in July 1996, as a 20-year-old dependant of a military member, he was apprehended by military police for driving under the influence of alcohol following an automobile accident. Applicant was taken to the military police station, refused to take a Breathalyzer test, and released to his father's custody. His driving privilege for military installations was revoked for a year.² Applicant admitted the incident happened but that he was not arrested or detained. He was not required to appear in court. The revocation of his driving privileges was

¹Item 5, at 1-5.

²Item 10, at 6.

processed by administrative action.³

Applicant admits that in 2002, while on active duty, he was apprehended for driving under the influence. He was sentenced by civilian authorities to jail, serving three days, and was fined.

His license was revoked, he attended alcohol awareness classes, and he was placed on probation for three years.⁴

Applicant completed a security clearance application on April 13, 2004. He listed only his 2002 conviction for driving while intoxicated in response to question 24 asking if he had ever been charged with or convicted of an offense(s) related to alcohol and drugs.⁵ In response to interrogatories from DOHA, Applicant admitted he failed to list the offense on the application, but denied that he tried to hid the incident. He stated that he freely admitted to the offense in the past and had listed it on a previous security clearance application submitted in November 1997 while in the Army.⁶ He explained that it was not included on the 2004 security clearance application because he simply forgot about the offense.⁷

In response to interrogatories from DOHA, Applicant stated he never used illegal drugs.⁸ However, the Government presented a statement concerning Federal Bureau of Investigation (FBI) automated records showing that an individual with Applicant's name, social security number, date of birth, but a different place of birth, submitted an on-line application on December 16, 2003, for a special agent position with the FBI.⁹ On the application, the individual applying for the special agent position answered "YES" to questions asking if he used any illegal drug(s) or combination of illegal drugs, other than marijuana, more than five times during his lifetime or in the last ten years.¹⁰ Applicant stated he does not recall ever applying to be a special agent for the FBI. He submitted applications to numerous agencies during this time. He does not know the steps to apply for employment with the FBI and never spoke with an FBI recruiter. He does not remember receiving any mail from them.¹¹

Applicant stated that his answers to the interrogatories that he never used drugs were correct.

³Item 4, at 2.

⁴*Id.* at 1.

⁵Item 4 at 8.

⁶Item 4, and Item 12.

⁷Item 4 at 2-3.

⁸Items 6 and 7.

⁹It is noted that the initial security clearance application submitted by Applicant in 1997 listed his place of birth as the same location noted in Item 9.

¹⁰Item 9.

¹¹Item 7 at 3.

Applicant had always received negative results from randomly drug tested during his six years in the Army. He attended alcohol and drug prevention classes because of his driving while intoxicated offense, was tested, and was never positive for drug use. He had friends offer him drugs in the past, but he always declined the offers.¹²

POLICIES

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”¹³ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.¹⁴

The Directive sets out the adjudicative guidelines for determining eligibility for access to classified information, and lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive.¹⁵

The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.¹⁶ An administrative judge should consider: (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 applicant’s age and maturity at the time of the conduct; (5) the voluntariness of 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 of recurrence.¹⁷

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.¹⁸ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

¹²Item 6 at 6.

¹³*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

¹⁴Directive ¶ E2.2.1.

¹⁵Directive ¶ 2(a)6.3.1 through ¶ 6.3.6.

¹⁶AG ¶ 2(a).

¹⁷*Id.*

¹⁸*See* Exec. Or. 10865 § 7.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.¹⁹ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.²⁰ An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”²¹ The government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating condition, and an administrative judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.²² “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.”²³ “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.”²⁴

Based upon a consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline E - Personal Conduct: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can 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.²⁵

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the factors in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Applicant’s detention in 1996 for driving under the influence, and his arrest and conviction for driving under the influence in 2002 were raised as Personal Conduct allegations under Guideline E.

¹⁹Directive ¶ E3.1.14.

²⁰ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

²¹ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²²ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

²³ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

²⁴*Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

²⁵AG ¶ 15.

These offenses are not of the nature considered as Personal Conduct security concerns under Guideline E. The offenses are properly security concerns under Guideline G (Alcohol Consumption). The offense of driving while intoxicated is an example in the disqualifying conditions under Guideline G of alcohol-related incidents away from work. However, the mitigating conditions under both Guideline E and Guideline G are similar. Under Guideline E, Personal Conduct Mitigating Condition (PC MC) ¶ 17(c) (the offenses is no minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) is the same as Guideline G Alcohol Consumption Mitigating Condition (AC MC) ¶ 23(a) (So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances, that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment). As such, Applicant has presented sufficient information to mitigate any security concerns for the offenses under both Guidelines E and G. The offenses are 11 and 5 years ago. There were only two offenses in a 11 year period. There has not been any other alcohol-related offense and five years have passed since the last offense. Alcohol-related incidents away from work under the circumstances are not likely to recur. In addition, the offenses do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment because of the infrequency of the offenses and the amount of time that has passed since the last offense. Applicant has mitigated security concerns for the two driving while intoxicated offenses, listed as SOR allegations 1. a, and 1.b.

Applicant's false response to questions concerning drug use on interrogatories and on a security clearance application, and his failure to list his 1996 driving while intoxicated offense on both his 2004 security clearance application and in response to interrogatories, raises Personal Conduct Disqualifying Condition (PC DC) ¶ 16(a) (the deliberate omission, concealment, or falsification of relevant and material facts from the personal security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness). Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be trusted to properly safeguard classified information. The security clearance system depends on an individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. A deliberate omission or false statement on a security clearance application is a criminal offense under federal law.²⁶

The information concerning Applicant's drug use was contained in an on-line application to be a FBI special agent. The application was for an individual with the same name, social security number, and date and place of birth as Applicant. It was submitted on December 16, 2003, shortly after applicant had either received a college degree or left college. It was submitted during the time Applicant was seeking employment. He started employment with his present company in December 2003. I find that the FBI on-line application was submitted by Applicant. He answered "yes" to the questions concerning illegal drug use. An applicant for a position with the FBI would not list his use of illegal drug unless it were true. Applicant's admission that he used illegal drugs on the FBI application is sufficient to establish he used illegal drugs. At the time he completed the security clearance application and answered the interrogatories, Applicant knew he had used illegal drugs and his answers that he did not use illegal drugs were deliberately false and misleading. Similarly,

²⁶10 U.S. C. § 1001.

Applicant knew he had been charged with an alcohol-related offense in 1996. He may not have been convicted of the offense because the only consequence to the offense was the revocation of his on-post driving privileges, but he was apprehended and taken to the military police station. This was similar to an arrest. Applicant listed this offense on an earlier security clearance application, indicating he knew it was a security concern. Applicant deliberately failed to provide accurate and truthful answers to the alcohol and drug questions involved in determining security worthiness.

I have considered all of the Personal Conduct Mitigating Conditions. Applicant has never acknowledged his illegal drug use so PC MC ¶ 17(a) (The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts) does not apply. Applicant deliberately did not provide correct information on a security clearance application completed in 2004, and interrogatories signed in August 2005 and January 2006, so PC MC ¶ 179(c) (The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) does not apply. The deliberately false answers were provided during the most recent security clearance process, the false answers were provided on two separate documents, and there is no information indicating that it would not recur. Applicant has not presented sufficient information to rebut the allegation of deliberately providing false information on his security clearance application or in response to interrogatories.

I have considered Applicant's conduct under the "whole person" concept. Applicant deliberately did not provide requested information in response to questions asked during the security clearance process. If he cannot be trusted to provide accurate information, he cannot be trusted to safeguard classified information. I find he is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive are;

| Paragraph 1, Guideline E: | AGAINST APPLICANT |
|---------------------------|-------------------|
| Subparagraph 1.a.: | For Applicant |
| Subparagraph 1.b.: | For Applicant |
| Subparagraph 1.c.: | Against Applicant |
| Subparagraph 1.d.: | Against Applicant |
| Subparagraph 1.e.: | Against Applicant |

Thomas M. Crean
Administrative Judge