

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant is a 44-year-old executive and partner in a defense contractor. Applicant did not falsify his security clearance application as alleged. Applicant's facilities security officer mistakenly listed the incorrect college on Applicant's application. Applicant did not notice that the application contained incorrect information when he signed it. Clearance is granted.

CASENO: 05-04174.h1

DATE: 04/06/2007

DATE: April 6, 2007

In re:)	
)	
-----)	
SSN: -----)	ISCR Case No. 05-04174
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
EDWARD W. LOUGHRAN**

APPEARANCES

FOR GOVERNMENT

Gina Marine, Esq., Department Counsel
Richard Stevens, Esq., Department Counsel

FOR APPLICANT

Jerome H. Gress, Esq.

SYNOPSIS

Applicant is a 44-year-old executive and partner in a defense contractor company. Applicant did not falsify his security clearance application as alleged. Applicant's facilities security officer

mistakenly listed the incorrect college on Applicant's application. Applicant did not notice that the application contained incorrect information when he signed it. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On November 29, 2006, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense for SORs issued after September 1, 2006. Applicant answered the SOR in writing on December 14, 2006, and elected to have a hearing before an administrative judge. The case was assigned to me on January 23, 2007. A notice of hearing was issued on February 5, 2007, scheduling the hearing for February 28, 2007. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government offered three exhibits that were marked as Government Exhibits (GE) 1 through 3, and admitted without objection. Applicant testified and called three witnesses. DOHA received the hearing transcript (Tr.) on March 12, 2007.

RULINGS ON PROCEDURE

Department Counsel requested administrative notice be taken of 18 U.S.C. § 1001.² Applicant did not object, and I took administrative notice of that statute.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 44-year-old executive and partner in a limited liability company (LLC), which maintains defense contracts. He is married, with three minor children. He served two years active duty, two years in the reserves, and two years inactive reserves in the United States Army. He was honorably discharged as a Corporal (E-4). Applicant has maintained a security clearance since at least the late 1990s.³

Applicant received an associate's degree from a community college in about 1987. He attended a course at X University in about 2000, and another in about 2001, but did not complete that course. X University has multiple campuses, including one in Applicant's state of residence. In about 2003, Applicant applied for and received a bachelor's degree and a master's degree from Y University. Y University is an unaccredited online institution that awards diplomas based upon life

¹Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).

²Tr. at 13.

³Tr. at 15-16, 38; GE 1 at 5-6.

experiences. There is no campus, and students do not receive study materials, or attend on line classes. It is what is referred to as a “diploma mill.” The bachelor’s degree was dated as received in 2000, and the master’s degree was dated as received in 2003. Applicant paid \$750 for each degree.⁴

Applicant’s company offered him a partnership in 2003. Before joining this company, Applicant worked for other defense contractors. Applicant and the two senior partners in his company knew each other from working together on various projects prior to Applicant coming to the company. Applicant did not submit a resume or job application, and his education was not a factor in his hiring. The senior partner based his decision on his positive work experiences with Applicant. Although not part of the hiring process, Applicant maintained a resume that did include his degrees from Y University. There is no evidence that this resume was ever used to Applicant’s benefit. The LLC has four partners, including Applicant. The three partners testified that Applicant’s education was not, and is not, an issue to them, or in their business.⁵

In December 2003, Applicant submitted a security clearance application, Standard Form 86 (SF-86). Applicant wrote his information for the application by hand, and submitted it to his facilities security officer (FSO), who inputted the data electronically onto the form. Under education, Applicant wrote the information for both X University and Y University. The FSO called Applicant in the evening and asked him which college he received his degree from. He told her he did not finish the course at X University, and that she should delete that information, and only list the Y University data. The FSO either did not understand Applicant’s directions, or simply made a mistake, because she inputted that he attended X University, from September 2000 to the present, and that he was awarded an MBA in January 2003. The address listed for X University was the mailing address for Y University. It is in a state that X University does not have a campus. The street address contains the name of Y University. X University and Y University both begin with the same letter. X University contains seven letters in its name. Y University contains eight letters. When the form was printed for Applicant’s signature, he did a cursory review and did not notice the inaccurate information. Applicant signed the SF-86 in December 2003, with the inaccurate education information about where he received his degree.⁶ I find Applicant did not intentionally submit an inaccurate SF-86.

Sometime in about 2004, Applicant watched a television show about a school similar to Y University. Applicant realized that his degrees were tainted. Applicant removed any references to his Y University degrees from his resume, and has not included those degrees on anything since then. The web site of Applicant’s company contains his biography. It makes no reference to Y University or any degrees.⁷

Applicant was interviewed pursuant to his background investigation in 2004. The investigator told Applicant that there is no X University in the state listed on the SF-86. Applicant told the investigator he did not receive a degree from X University, and explained his degrees from Y

⁴Tr. at 29-33, 43-45; GE 2.

⁵Tr. at 30-31, 59-63, 72-73, 84-86.

⁶Tr. at 19-21, 34; Applicant’s response to SOR; GE 1 at 1.

⁷Tr. at 30-31, 35-36; GE 2, 3.

University. He told the investigator that X University was mistakenly listed on the SF-86, instead of Y University. I find Applicant told the investigator the truth about his mistake on the SF-86.⁸

Applicant is highly regarded by his business partners. He is described as a man of the highest moral standards, patriotic and loyal, someone who could be depended upon thoroughly and completely, and a truthful person.⁹

POLICIES

“[N]o one has a ‘right’ to a security clearance.”¹⁰ As Commander in Chief, 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.”¹¹ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”¹² An applicant has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.¹³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁴ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. 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.¹⁵

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in listed in the Directive and AG ¶ 2(a).

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

⁸Tr. at 36; Applicant’s response to SOR; GE 2.

⁹Tr. at 53, 66-68, 81, 88.

¹⁰*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹¹*Id.* at 527.

¹²Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

¹³ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁴*Id.*; Directive, ¶ E2.2.2.

¹⁵Exec. Or. 10865 § 7.

CONCLUSIONS

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

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.

As discussed above, Applicant incorrectly answered the education question. A finding that the answer was incorrect, however, is not dispositive of the issue of Applicant's falsification since the mere proof of an omission or an incorrect answer, standing alone, does not establish or prove an applicant's intent or state of mind when the omission or incorrect response occurred.¹⁶ Applicant testified that his FSO mistakenly left in X University on the SF-86, instead of Y University. He did not notice the slip when he signed the SF-86. That is reasonable under the circumstances. The names of the two schools are somewhat similar. The name of the correct school was in the address listed. Applicant had no motive to falsify the application, as it would have had no bearing on whether Applicant retained his security clearance, and his education had no impact on his job.

I observed Applicant during his testimony, and assessed his demeanor and credibility. I find Applicant's inaccurate answer on his SF-86 was unintentional. I further find that Applicant provided truthful information to the investigator in 2004, when he stated that the listing of X University was a mistake. No Personal Conduct Disqualifying Condition is applicable.

Guideline J, Criminal Conduct

Criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the

¹⁶See, e.g., ISCR Case No. 05-03472 at 6 (App. Bd. Mar. 11, 2007).

executive branch of the Government of the United States.¹⁷ A violation of 18 U.S.C. § 1001 is a serious offense as it may be punished by imprisonment for up to five years. Applicant did not knowingly and willfully make a materially false statement on his SF-86, as discussed above. His statement to the investigator was truthful. No Criminal Conduct Disqualifying Condition is applicable.

Whole Person Analysis

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating Applicant's case, I have considered the adjudicative process factors listed in the Directive. I have also considered every finding of fact and conclusion discussed above.

Applicant served in the U.S. Army and received an Honorable Discharge. He is very highly regarded by his partners. I do not find that he intentionally falsified his SF-86. He did not display the highest degree of judgment by paying \$1,500 for two essentially worthless degrees. Applicant realized they did not amount to anything, and has not used the degrees for any purpose in several years. The degrees were never a factor in his business. The only party harmed in any way by the receipt of the degrees is the Applicant, who is out \$1,500. Applicant's lapse of judgment in obtaining the two degrees is not sufficient to warrant a denial of his security clearance.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns based on his personal conduct and criminal conduct.

FORMAL FINDINGS

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

Paragraph 1. Guideline E:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2. Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

¹⁷See *Egan*, 484 U.S. at 527.

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Edward W. Loughran
Administrative Judge