



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



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

**Appearances**

For Government: Julie. R. Edmunds, Esquire, Department Counsel  
For Applicant: *Pro se*

February 29, 2008

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**Decision**

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METZ, John Grattan, Jr., Administrative Judge:

On 27 April 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines J and E.<sup>1</sup> Applicant answered the SOR 13 November 2007, and requested a hearing. DOHA assigned the case to me 3 January 2008, and I convened a hearing 14 February 2008. DOHA received the transcript (Tr.) 22 February 2008.

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<sup>1</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

## **Findings of Fact**

Applicant admitted the SOR allegations. Accordingly, I incorporate his admissions as findings of fact. He is a 33-year-old computer technician employed by a defense contractor since September 2003. He seeks to retain the security clearance he obtained while in the military in 1995.

In 1998, Applicant was arrested for DUI, and ultimately convicted. Aside from its significance as adverse information required to be disclosed to the government, the 1998 arrest has no independent security significance as criminal conduct or alcohol consumption.

When Applicant applied for a security clearance in September 2001 (G.E. 1), he deliberately concealed his DUI conviction by answering “no” to question 24 (alcohol/drug arrests). He repeated this false answer on an October 2002 clearance application (G.E. 2). In January 2003, Applicant was polygraphed by another government agency because he was seeking access to Sensitive Compartmented Information (SCI). In August 2003, he was denied access to SCI for reasons largely irrelevant to his current application. However, he appears to have retained his security clearance.

In July 2004, Applicant deliberately concealed his DUI arrest and his SCI access denial by answering “no” to questions 23(d) (alcohol/drug arrests) and 26(b) (clearance/access denied/suspended/revoked) (G.E. 1). In his September 2004 sworn statement (G.E. 4), he acknowledged that he purposely omitted this information because he did not want to have his clearance revoked, because he needed it to retain his job. At hearing, he suggested—incredibly—that he omitted the information because he thought the government already had it. He acknowledged that the clearance applications were not being sent anywhere that the information was known.

Applicant expresses remorse for his falsifications. His character references, who include his wife, a coworker, and a supervisor, extol his work ethic and integrity. None but his wife appear aware of the issues in this case.

## **Policies**

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating 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 circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and

the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline J (Criminal Conduct) and 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 something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security 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.<sup>2</sup>

### **Analysis**

The government established a case for disqualification under Guideline J and E, and Applicant did not mitigate the security concerns. He deliberately concealed his DUI arrest (and later his access denial) from the government.<sup>3</sup> He did so knowing that these issues were of security concern to the government, and believing that his clearance was at risk if he told the truth.

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant's falsifications kept the government from evaluating his DUI arrest (and access denial) in a timely fashion, and at a time when the arrest particularly might have raised significant security concerns. Applicant did not disclose the arrest until his polygraph.<sup>4</sup> But he continued to conceal the arrest on his clearance application in July 2004.

Record evidence clearly establishes that Applicant intended to conceal his DUI arrest and later access denial from the government and effect the course of his

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>¶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. . . ;

<sup>4</sup>¶17.(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

background investigation. This conduct violated 18 U.S.C. §1001,<sup>5</sup> whether or not he was successful in effecting the course of his investigation. However, in this case his falsifications did alter the investigation, as it appears he was granted his clearance at least twice because of it.

Applicant's failure to disclose his DUI arrest and access denial 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 timely fashion, not when it is perceived 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. I resolve Guideline J and E against Applicant.

Beyond the specific guidelines alleged by the government, the generally applicable disqualifying and mitigating conditions lead to the same result. Falsifications are a core security concern [RAG ¶2(a)(1)]. His behavior was deliberate and not due to circumstances beyond his control [RAG ¶2(a)(2); RAG ¶2(a)(5)]. His misconduct was both recent and frequent [RAG ¶2(a)(3)]. Applicant was not a neophyte when he made his falsifications, and as a military member had better reason than most to know the necessity of being truthful on his clearance applications [RAG ¶2(a)(4).]. Rehabilitation or behavioral changes are difficult to measure under these circumstances [RAG ¶2(a)(6)]. He clearly sought to mislead the government about his DUI arrest and later access denial, or was at least willing to benefit from his misconduct [RAG ¶2(a)(7)]. Applicant's willingness to put his personal needs ahead of legitimate government interests increases his potential vulnerability and he has not demonstrated that the misconduct is unlikely to recur [RAG ¶2(a)(8); RAG ¶2(a)(9)]. The concern is whether Applicant would disclose situations or circumstances, whether deliberate or inadvertent, that raise security concerns. Overall, the record evidence leaves substantial doubt about Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude Applicant has not mitigated the security concerns arising from his falsifications.

### **Formal Findings**

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph a: For Applicant  
Subparagraph b: Against Applicant

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<sup>5</sup>¶31.(a) a single serious crime or multiple lesser offenses; (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant  
Subparagraph b: Against Applicant  
Subparagraph c: Against Applicant  
Subparagraph d: Against Applicant

**Conclusion**

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 denied.

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JOHN GRATTAN METZ, JR  
Administrative Judge