

KEYWORD: Personal Conduct

DIGEST: Applicant is a 26-year-old employee of a defense contractor. Applicant committed plagiarism in about 1999 or 2000 at one college, and cheated at another college in 2003. Both incidents were adjudicated against Applicant at academic discipline hearings. Applicant failed to mitigate the security concerns based on his personal conduct. Clearance is denied.

CASENO: 06-22400.h1

DATE: 07/30/2007

DATE: July 30, 2007

In re:)	
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SSN: -----)	ISCR Case No. 06-22400
)	
Applicant for Security Clearance)	
)	

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

APPEARANCES

FOR GOVERNMENT

Emilio Jaksetic, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 26-year-old employee of a defense contractor. Applicant committed plagiarism in about 1999 or 2000 at one college, and cheated at another college in 2003. Both incidents were

adjudicated against Applicant at academic discipline hearings. Applicant failed to mitigate the security concerns based on his personal conduct. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 22, 2006, DOHA issued a Statement of Reasons¹ (SOR) detailing the basis for its decision—security concerns raised under Guideline E (Personal 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. The revised guidelines were provided to Applicant when the SOR was issued. Applicant answered the SOR in writing on February 13, 2007, and elected to have a hearing before an administrative judge. The case was assigned to me on June 6, 2007. A Notice of Hearing was issued on June 7, 2007, scheduling the hearing for June 29, 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 one exhibit that was marked Government Exhibit (GE) 1, and admitted without objection. Applicant testified and offered 16 exhibits that were marked Applicant Exhibits (AE) A through P, and admitted without objections. DOHA received the hearing transcript (Tr.) on July 12, 2007.

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 26-year-old employee of a defense contractor. He is single with no children.² Applicant graduated high school in 1999. He attended a state university at their main campus that fall. During Applicant's first year at the college, he was required to write a paper about a television show for an English class. Part of his paper was very similar to an actual advertising piece that the show released. The advertising piece was available over the internet. Applicant testified he did not intentionally plagiarize the piece, and that he must have inadvertently copied similar lines from the piece. Applicant was found guilty of plagiarism at an academic discipline hearing, and was given a failing grade for the course. Applicant appealed the decision, but the appeal was denied.³

Applicant was accused of cheating by a faculty member of the same university in about September 2000. Applicant was scheduled for a hearing before the student honor council on September 19, 2000. Applicant retained an attorney who negotiated a settlement agreement and release of liability dated September 18, 2000. The university agreed not to seek a resolution of the allegation of academic dishonesty against Applicant. The grade for the course would be "NG" or no grade. Applicant agreed to immediately voluntarily leave the university, promising not to return for

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

²Tr. at 63-64, 110; GE 1.

³Tr. at 26-29, 65-66; Applicant's response to SOR.

future enrollment. The agreement specifically stated that it was not to be construed as an admission of liability by either party, and that both parties expressly denied liability.⁴

Applicant testified he did not cheat. He was a computer engineering student. Applicant was required to create a computer program. It was discovered that his computer program was very similar to another student's program. Applicant stated he did not know the other student and is not aware how this happened. He stated he accepted the agreement because he felt that because of his previous incident that he would be presumed guilty.⁵

Applicant enrolled as a computer engineering student in a college within the same state university system starting with the spring 2001 semester. During the fall 2003 semester, Applicant was accused of cheating. Applicant was afforded a hearing before an academic conduct committee. The professor who made the cheating allegation, several teaching assistants, and Applicant all testified at the hearing. On November 18, 2003, the academic conduct committee recommended that Applicant be expelled for academic misconduct. Applicant met with the university president on November 19, 2003. The president dismissed Applicant from the university effective immediately. Despite being told that he was expelled effective immediately, Applicant enrolled in the spring 2004 semester for the university on November 20, 2003. Several days later, the academic conduct committee and the president decided to allow Applicant to complete the fall 2003 semester. Applicant was advised of this on November 25, 2003, and told that his expulsion was to commence at the conclusion of the fall 2003 semester.⁶

Applicant stated the allegation of cheating was that he erased the red ink grade on a blue book test, and wrote a better grade. Applicant testified the allegation of cheating was in a Basic Circuit Theory class which he took the semester before, in the spring 2003 semester. Applicant denied cheating, and stated he believes he was accused of cheating as retaliation for filing a grievance against a professor about a grade he received in a class. Applicant also stated that he alerted a professor in another class to potential cheating by up to 20 students. According to Applicant, this professor was prevented from writing a recommendation on his behalf. Applicant also believes he made enemies at the university when he reported that the university accidentally released the names and social security numbers of more than 10,000 people on a web site. Applicant was not represented by counsel at the academic hearing because he stated he asked someone at the university about retaining a lawyer, and he was told that if he brought a lawyer, he would "be found guilty no matter what."⁷

Applicant states that when he met with the president, the president told him that he was expelled from the university because he was disrespectful to a teacher by accusing the teacher of arbitrary and capricious grading. In his response to the SOR, Applicant stated that when he was told by the university he could return to class, he was told that he "was allowed to come back and finish the semester and possibly more." Applicant testified that when he was told he could return to school,

⁴Tr. at 67-68; Applicant's response to SOR; AE G, H, K.

⁵Tr. at 29-32.

⁶Tr. at 70-74; Applicant's response to SOR; AE N.

⁷Tr. at 32-46, 70, 109-110.

that “[t]here wasn’t any stipulation on for how long or for anything like that.” It was simply that “[he] could return to class.” Applicant also testified that he was informed that he could return to school before he registered for the spring semester.⁸

As addressed above, Applicant enrolled in the spring semester for the university on November 20, 2003. His father wrote a check to the university in the amount of \$3,694 for Applicant’s tuition on December 23, 2003. Applicant attended a full schedule of classes during the spring 2004 semester.⁹

In about December 2003 or January 2004, Applicant requested the university to provide a transcript of his grades to another college. The university sent his transcript dated January 15, 2004, to this college. It was received by the college on January 21, 2004.¹⁰

Applicant retained an attorney after his academic hearing and after he was notified that he could return to school, in about late November or early December 2003. On April 2, 2004, Applicant’s attorney received written verification from the university’s registrar that Applicant was enrolled as a full-time undergraduate student at the university.¹¹ Applicant was asked at the hearing why he retained an attorney if he was told that he was permitted to return to the university without any restrictions. Applicant responded:

It’s America. I mean, people retain lawyers and I thought it was in my best interest in case something were to change - - since I received no documentation from them about being able to return, that it was in my best interest to get a lawyer.¹²

In about April 2004, Applicant was escorted off the university campus by the campus police. On April 19, 2004, the university’s general counsel sent Applicant a certified letter stating that Applicant was expelled the previous semester, effective at the conclusion of the fall 2003 semester. The letter stated that Applicant was not authorized to be a student at the university. Applicant’s tuition for the semester was refunded. Applicant was advised that if he entered the university’s campus that he could be charged with criminal trespass.¹³

I find that Applicant was informed that he was expelled from the university effective at the end of the fall 2003 semester. Applicant registered for the spring semester on November 20, 2003, the day after he was told by the president he was expelled, but before he was told he could finish the semester. I further find that Applicant’s ability, as an expelled student, to register, pay for classes,

⁸Tr. at 52-53, 58-59, 73-78; Applicant’s response to SOR.

⁹Applicant’s response to SOR; AE L, N.

¹⁰AE A.

¹¹Tr. at 78; AE M.

¹²Tr. at 79.

¹³Tr. at 85; AE N, O.

and attend classes for several months must have resulted from a failure of the university's tracking system.

Applicant is not a credible witness. His statements were contradictory, and counter to logic and common sense. I find Applicant committed plagiarism in about 1999 or 2000, and cheated in 2003. I further find that he intentionally provided false information about these incidents in his response to the SOR, and during his testimony at the hearing.¹⁴

Applicant's grades at the university he was expelled from were generally good, earning a cumulative grade point average (GPA) of 3.01. He had difficulties with certain classes. In the spring 2001 semester, he received Ds in Calculus and Analytic Geometry II and Introductory Physics II. He took both courses again in spring 2002, receiving another D in Calculus and Analytic Geometry II and a C in Introductory Physics II. He took Calculus and Analytic Geometry II for the third time in the fall 2002 semester, and received a C. Applicant testified he had problems with this class because the professor had a heavy accent that made it difficult to understand what he said. In the spring 2003 semester, Applicant received a D in Basic Circuit Theory and an F in Introductory Differential Equations. Applicant testified the Basic Circuit Theory class was the class with the cheating allegation, and Introductory Differential Equations was also taught by the professor with the strong accent.¹⁵

On August 3, 2004, Applicant received notification that he was awarded a \$4,000 per year scholarship to attend the college that received his transcript on January 21, 2004, as addressed above. Applicant attended this college and graduated Summa Cum Laude in May 2006, with a bachelor's degree in computer engineering.¹⁶

Applicant has worked for his current employer since October 2005. He submitted several letters from a professor and work supervisors praising him for his integrity, responsibility, leadership, initiative, judgment, maturity, professionalism, technical expertise, dedication, performance, reliability, loyalty, trustworthiness, persistence, and honesty. They recommended him for a security clearance.¹⁷

POLICIES

¹⁴Applicant's false testimony and statements in response to the SOR are not considered for disqualifying purposes, but may be considered in assessing Applicant's credibility, when analyzing the "whole person," and the potential application of mitigating conditions.

¹⁵Tr. at 111-112; AE A.

¹⁶Tr. at 62; AE B, P.

¹⁷Tr. at 64; GE 1; AE C-F, I, J.

“[N]o one has a ‘right’ to a security clearance.”¹⁸ 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.”¹⁹ 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.”²⁰ 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.²¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²² 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.²³

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 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.

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

¹⁸*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁹*Id.* at 527.

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

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

²²*Id.*; Directive, ¶ E2.2.2.

²³Exec. Or. 10865 § 7.

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.

The potential Personal Conduct Disqualifying Condition (PC DC) in this case are PC DC 16 (c) (*credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information*), PC DC 16 (d) (*credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information; . . . (3) a pattern of dishonesty or rule violations . . .*), and PC DC 16(e) (*personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing . . .*).

The allegations that Applicant committed plagiarism in 1999 or 2000, and cheated in 2003, were both adjudicated at academic discipline hearings, and he was found "guilty" on both occasions. Applicant graduated Summa Cum Laude from a third college, and argued that means he did not need to cheat. Applicant's academic record at this institution is commendable, but it does not detract from the fact that Applicant struggled in several of his classes at the second institution. I find there is credible information that Applicant committed plagiarism in 1999 or 2000, and cheated in 2003. PC DC 16(d) and PC DC 16(e) are applicable to SOR ¶¶ 1.a. and 1.c.

I do not find there is credible information that Applicant cheated in 2000. Applicant denied he cheated. This allegation of cheating was not adjudicated at a hearing. Applicant agreed to withdraw from the school. The agreement specifically stated that it was not to be construed as an admission of liability by either party, and that both parties expressly denied liability. There was no independent evidence submitted to prove that Applicant cheated. I conclude SOR ¶ 1.b. in Applicant's favor.

Applicant registered for his spring 2004 semester and attended classes, knowing that he had been expelled, effective at the end of the fall 2003 semester. It was clearly an administrative error on the part of the university to permit Applicant to enroll for that semester. I do not find this constituted criminal trespass on Applicant's part. It is apparent Applicant was hoping he would fall through the cracks, and that the university might reconsider his expulsion, as they previously did when he was permitted to finish the semester after initially being told he was expelled effective immediately. This was obviously not the most intelligent course of action by Applicant, as he was

refunded his tuition, but wasted several months in school. However, I do not find that it is sufficient to trigger a disqualifying condition. I conclude SOR ¶ 1.d. for Applicant.

I have considered all the Personal Conduct Mitigating Conditions (PC MC), and I especially considered PC MC 17 (c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*), PC MC 17(d) (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur*), PC MC 17(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*), and PC MC 17(f) (*the information was unsubstantiated or from a source of questionable reliability*).

The allegations against Applicant all occurred when he was in college. The most recent incident of cheating occurred in 2003. Applicant denied he intentionally plagiarized a paper or cheated. Applicant was less than totally candid in his response to the SOR and at his hearing. He has not taken responsibility for his actions. I find these actions are not minor, but go to the very core of security worthiness. Applicant had an opportunity to rehabilitate himself after the initial plagiarism incident. He did not. He was struggling with certain math and science classes, and chose to cheat. His willingness to break the rules by cheating when he was already on notice creates a very serious security concern. His lack of candor only heightens that concern. I conclude that no mitigating condition applies.

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 and AG ¶ 2(a). I have also considered all the evidence, and every finding of fact and conclusion discussed above.

Applicant plagiarized a paper in college in 1999 or 2000, resulting in an F for the class. He was accused of cheating at the same institution in 2000, and agreed to leave school rather than face a disciplinary hearing. There is insufficient evidence that Applicant actually cheated on this occasion. However, Applicant was on notice that cheating would not be tolerated. Despite the previous actions, Applicant cheated on another test in 2003, at another institution, resulting in his expulsion. Applicant graduated Summa Cum Laude from a third college, and received outstanding character letters on his behalf. I also considered that Applicant was less than totally candid in his response to the SOR and during his testimony. Applicant has a history of dishonesty that continued through his hearing. This raises serious doubts about his judgment and trustworthiness.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on his personal conduct.

FORMAL FINDINGS

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

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

DECISION

In light of all of 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 is denied.

Edward W. Loughran
Administrative Judge