

DATE: August 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-17664

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esquire, Department Counsel

FOR APPLICANT

August Bequai, Esquire

SYNOPSIS

Applicant provided inaccurate employment information on a resume and employment application in June 2000. She subsequently corrected that information during a job interview with her current employer and on her application for clearance. Her falsification was not deliberate, not recent, and the information has subsequently been corrected. Further, there is insufficient evidence to conclude she deliberately made false representations in her written statement to a government investigator about her resume and application. Clearance is granted.

STATEMENT OF THE CASE

On January 13, 2003 the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns under Guideline E (Personal Conduct). The SOR informed Applicant that, based on information available to the Government, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. [\(1\)](#)

On February 24, 2003, Applicant answered the SOR (Answer) and requested a hearing. The case was assigned to me on April 8, 2003. On April 16, 2003, DOHA issued a Notice of Hearing setting this case to be heard on May 13, 2003. Thereafter, Applicant requested a continuance to which Department Counsel did not object. I granted Applicant's request and re-scheduled the hearing for May 22, 2003. All parties appeared as scheduled and the government presented 11 exhibits (GE 1 through 11). Applicant relied on five exhibits (AE A through E), which were admitted without objection, and on her own testimony. DOHA received the transcript (Tr) on June 2, 2003.

PROCEDURAL ISSUE

At the close of Applicant's case-in-chief, Department Counsel sought to present a rebuttal witness. For the reasons I stated at hearing, I did not allow Department Counsel to present a rebuttal case. [\(2\)](#)

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact:

Applicant is 29-years-old and works as an administrative assistant in the security office of a defense contractor. She joined the Navy after graduating high school in 1992 and received an honorable discharge when she left the service as a Petty Officer Second Class (E-5) in October 1999. After taking time off in connection with the birth of her second child in October 1999, Applicant found her first civilian job in January 2000 with a staffing company, also referred to as a "temp agency." Temp agencies provide manpower for a fee to client companies and government agencies. Temp agency employees (temps) work in the customer's office and are managed on a daily basis by the customer much the same as the customer's regular employees. This was the case with Applicant. Once assigned to the customer - a federal agency - she reported to that office exclusively and reported only to her agency supervisor.⁽³⁾

Applicant worked as temp at one federal agency from January 2000 until March 2000, then hired on at another temp agency and reported for work at a different federal agency. While at the second agency, a friend told her about an opening at a defense contractor. In preparation for an interview in June 2000, Applicant created her first resume, in which it appeared that she actually worked for the aforementioned federal agencies. There was no mention in that resume of the temp agencies.⁽⁴⁾ Applicant brought that resume to her interview and reviewed her background and qualifications with the interviewer. The same day, she filled out an employment application for that company. In the application, she again listed the federal agencies where she worked, but also listed one of the temp agencies in parentheses.⁽⁵⁾ During the interview, she made clear that she was not a government employee, but the interviewer never expressed any concern about the information in Applicant's resume. Applicant subsequently received a verbal offer of employment from the contractor and began working there in July 2000. She attributes any misunderstanding on this point to her inexperience in writing resumes, an explanation I find credible.⁽⁶⁾

In July 2000, Applicant submitted a Security Clearance Application (SF-86) to obtain a clearance as required by the contract she was working under. In that document, she clearly disclosed that she was employed by two temp agencies before she was hired by the defense contractor. In fact, there is no mention of the federal agencies where she worked.⁽⁷⁾ Further, in her last two resumes she has been consistent in accurately representing that she worked for temp agencies.⁽⁸⁾

A DSS investigator interviewed Applicant twice during her background investigation. During the first interview the investigator challenged Applicant regarding possible falsification of her first resume. Applicant has denied throughout her investigation and in response to the SOR that she deliberately falsified her resume.⁽⁹⁾

Applicant is well-regarded by her current co-workers and superiors. She has also been recommended by former co-workers and supervisors, and by several government customers with whom she has worked in the personnel security field. A constant theme in these recommendations is her superior reliability and trustworthiness.⁽¹⁰⁾

POLICIES

The Directive sets forth adjudicative guidelines⁽¹¹⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude Guideline E (Personal Conduct) is the relevant adjudicative guideline to be applied here.

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽¹²⁾ for an Applicant to either receive or continue to have access to classified information. The Government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to 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.⁽¹³⁾ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her 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.⁽¹⁴⁾

CONCLUSIONS

Guideline E (Personal Conduct). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. ⁽¹⁵⁾ Here, the concern centers on a perceived question about Applicant's truthfulness. The initial concern expressed in the SOR is that Applicant, in her signed, sworn statement ⁽¹⁶⁾ "deliberately denied falsifying material facts when [she] listed federal agencies rather than a temporary agency as [her] employer on [her] application and resume..." The gravamen of this allegation is not that she deliberately denied something to an investigator; she concedes she denied the investigator's accusation that she tried to mislead a potential employer, and she has continued to deny that she tried to mislead her employer. Rather, the crux of the allegation is that what she denied was that she had deliberately falsified material facts within the meaning of Guideline E Disqualifying Condition (DC) 2. ⁽¹⁷⁾ If she did not so falsify in the first place, then her representations in her statement to DSS, otherwise disqualifying under Guideline E DC 3, ⁽¹⁸⁾ lack any security significance.

Specifically alleged is that she deliberately falsified her resume and application in June 2000. There is no question that the resume was inaccurate when it represented that she worked for two federal agencies. However, I accept as credible Applicant's explanation that the error stemmed from her inexperience in the civilian workplace. Alternatively, even if she deliberately misrepresented her employment history, her conduct in this regard, in light of all the record evidence lacks security significance. She did not use the resume to gain any advantage as she had already been referred to the company for an interview and brought the resume with her to the interview. She and the interviewer discussed her past employment, and there is no evidence to suggest anyone was concerned at that time about her truthfulness. Her subsequent resumes and, more importantly, her SF-86, have consistently and accurately represented her employment history since January 2000.

To be disqualifying, the alleged falsification must be intentional and the information be "so substantial and important as to influence the party to whom made." ⁽¹⁹⁾ The information Applicant provided to her potential employer did not trick that employer into hiring Applicant. Further, Applicant did not intentionally provide incorrect information. Even if she did, her conduct in this regard is mitigated as it was an isolated event, occurred over three years ago, and she subsequently corrected the information in each of her subsequent resumes and another job application. Again, when she applied for her clearance, she provided complete and accurate information about her employment history. Therefore, Guideline E Mitigating Condition (MC) 1, ⁽²⁰⁾ MC 2, ⁽²¹⁾ and MC 3 ⁽²²⁾ apply. On balance, I conclude that any misrepresentation by Applicant was harmless and that the Government's ability to assess her suitability for a clearance was not harmed by it as she had provided the correct information at the outset of her investigation. I conclude Guideline E for Applicant.

I have carefully weighed all of the evidence in this case, and I have applied the aforementioned disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Personal Conduct (Guideline E): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

DECISION

In light of all 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 the Applicant.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Tr., p. 69 - 78.

3. Tr., p. 24 - 25.

4. GE 5.

5. GE 3.

6. Answer; Tr., p. 27 - 31, 53 - 54.

7. GE 1.

8. AE C, AE D.

9. Answer; GE 2; Tr., p. 51 - 55; AE E (Letter from Mr. Gary Scher).

10. AE E.

11. Directive, Enclosure 2.

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

13. *See Egan*, 484 U.S. at 528, 531.

14. *See Egan*; Directive E2.2.2.

15. Directive, E2.A5.1.1.

16. GE 2.

17. E2.A5.1.2.2. The *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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; (emphasis added).

18. E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;

19. Definition of "material" in Black's Law Dictionary, 5th Ed.

20. E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;

21. E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

22. E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;