

DATE: February 26, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-21851

## DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

### APPEARANCES

#### FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant falsified his academic qualifications when applying for a position with a defense

contractor in June 2000, claiming a bachelor of science degree which he had not earned. Applicant repeated the falsification of his academic credentials on a security clearance application (SF-86), which he certified and signed on July 20, 2000. When questioned over one year later by a special agent of the Defense Security Service, Applicant voluntarily acknowledged the falsifications of his academic record. Because of the Applicant's deliberate falsification, clearance is denied.

### STATEMENT OF THE CASE

On October 15, 2002, pursuant to Executive Order No. 10,865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, that specified reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In the SOR the Government alleged that Applicant was disqualified from obtaining a security clearance because of personal conduct (Guideline E), based on his falsification of his academic credentials on his application for employment with a defense contractor and his Federal security application (SF-86), and criminal conduct (Guideline J), based upon a knowing and willful false statement on his Federal security application. See 18 U.S.C. § 1001 (2000).

By Memorandum dated December 3, 2002, Applicant responded to the allegations set forth in the SOR and requested that his case be determined on the record in lieu of a hearing. The Government submitted its File of Relevant Material (FORM) on January 14, 2003. By letter dated January 14, 2003, a copy of the FORM was forwarded to Applicant, with

instructions to submit additional information and/or any objections within 30 days of receipt. Applicant filed a response dated January 18, 2003, in which he indicated no objection and supplied further information about his career. On January 23, 2003, the case was assigned to me for a decision.

### FINDINGS OF FACT

Applicant is a 49-year-old merchant mariner who sought employment in June 2000 with a Government contractor as a ship's master. On June 16, 2000, he completed, by hand, and signed the contractor's printed application form for employment. In the section of the printed application form which requested information about his education, Applicant wrote that he had graduated from a specific state university with a bachelor of science degree. Also on June 16, 2000, Applicant completed, by hand, and signed a Questionnaire for National Security Positions, Standard Form 86 (SF-86). In the section of the SF-86 which requested information about his education, Applicant did not state that he had graduated from the state university with a bachelor of science degree.

In July 2000, Applicant completed and certified another SF-86, identified in the record

as "EPSQ Version 2.1, SECURITY CLEARANCE APPLICATION." The record indicates that this version of the SF-86 was signed by the Applicant on what appears to be July 20, 2000. In the section of the SF-86 which requested information about his education, Applicant stated that he had attended the subject state university from 1975 to 1978 and had been awarded a bachelor of science degree in September 1978. Applicant certified his responses to the SF-86, EPSQ Version by signing a statement which read as follows:

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See section 1001 of title 18, United States Code.)

The record indicates that Applicant was questioned about his academic record by a special agent of the Defense Security Service during an investigative interview conducted over a year after he filed his EPSQ Version 2.1 security clearance application. In a signed statement, dated July 31, 2001, made in the presence of the special agent, Applicant voluntarily stated that it was not true that he had been awarded a bachelor of science degree in 1978 from the subject state university. He stated that while he had attended the subject state university, he had left before completing sufficient academic work to qualify for a degree of bachelor of science. Applicant further stated:

I consider myself to hold a Bachelor's degree, based on my formal education, my life education & my professional development courses.

When I listed the Bachelors degree on my security application, I did so because I consider myself to have earned that degree, & because my resume reflects that I have a Bachelor's degree. I did not know who within my company would have access to my security application [filed June 20, 2000], & I did not want to raise questions about my educational background at work.

(Applicant's Statement, signed July 31, 2001, at 2.)

In his statement of July 31, 2001, Applicant responded to the concern expressed in Personal Conduct Guideline E2.A5.1.2.4 that his concealment of information about his educational history and his falsification of his academic record might make him vulnerable to coercion, exploitation, or duress. He stated that he did not believe that he could ever be blackmailed on the basis of his educational history or for any other reason. Applicant's Security Clearance applications indicated that the Department of Defense had awarded him a Top Secret clearance in 1972 and a Secret clearance in 1995.

### POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens. . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Order No. 12968, *Access to Classified Information*, §3.1(b) (Aug. 4. 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. *See* Directive, Enclosure 2, ADJUDICATIVE GUIDELINES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED INFORMATION.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Directive, E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Order No. 10865 § 2. *See* Exec. Order No. 12968 § 3.1(b).

Adjudicative Guidelines E, Personal Conduct (Attachment 5 to Enclosure 2) and J, Criminal Conduct (Revised Attachment 10 to Enclosure 2) are most pertinent to this case. The relevant provisions of Guideline E which apply to this case are:

E2.A5.1.1. *The Concern*: 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. *The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility*:

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.

E2.A5.1.3. Conditions that could mitigate security concerns include:

E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual

has subsequently provided correct information voluntarily.

(Italics in original.)

The relevant provision of Guideline J which applies in this case is:

E2.A10.1.1. *The Concern*: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

E2.A10.12. Conditions that could raise a security concern and may be disqualifying include:

2A10.1.2.1. *Allegations or admission of criminal conduct*, regardless of whether the person was formally charged.

Relevant conditions that could mitigate security concerns include:

E2A10.1.3.1. The criminal behavior was not recent.

E2.A10.1.3.2. The crime was an isolated incident.

E2.A10.1.3.6. There is clear evidence of successful rehabilitation.

(Italics in original.)

Under the provisions of the Directive, a decision to grant or to continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, the Administrative Judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. *See* Directive, reissued March 16, 1992, 5. RESPONSIBILITIES and 6.PROCEDURES.

### **Burden of Proof**

Initially, the Government has the burden of proving any controverted fact alleged in the Statement of Reasons. If the Government meets its burden and establishes conduct cognizable as a security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Directive, Enclosure 2, Section E2.2.2.

### **CONCLUSIONS**

The Government has satisfied its initial burden of proof under Guideline E (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. In order to make an accurate and meaningful security clearance determination of an applicant's eligibility for access to classified information, the Government must be assured of the applicant's complete candor and honesty. When applicants withhold or falsify relevant facts and information, the clearance decision is subject to error, putting national security in jeopardy. The nature of Applicant's actions and activities raise serious questions about his judgment and reliability.

The record indicates that Applicant allowed the falsification to go uncorrected for over a year, and when he did acknowledge the falsification of his academic record, he justified his conduct by saying that even though he had not in fact been awarded a bachelor's degree, he considered himself to hold such a degree based on his formal education, his life experiences, and his professional development courses.

Applicant's reasoning suggests a willingness to substitute his wishes for established academic rules and procedures. Additionally, because he feared his initial falsification to his employer would be discovered, he revised his SF-86 to include the falsification. Because his actions were deliberate falsifications of relevant and material facts on an application for employment and a security clearance application, Applicant has exhibited conduct involving questionable judgment, lack of candor, dishonesty, and an unwillingness to comply with rules and regulations. *See* Guideline E, Personal Conduct, E2.A5.1.1. Applicant's conduct could indicate that he would not properly safeguard classified information.

Under Guideline E, disqualifying conditions E2.A5.1.2.2 (the deliberate omission, concealment or falsification of relevant and material facts from any personal security questionnaire or personal history statement used to determine employment qualifications) and E2.A5.1.2.4 (personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation duress, or blackmail) must be considered in evaluating Applicant's security suitability. Additionally, by deliberately falsifying his academic qualifications on his July 2000 security clearance application, Applicant violated 18 U.S.C. § 1001 and this conduct must also be considered in adjudicating this case. Under Guideline J, Criminal Conduct, Disqualifying Condition a, the fact that Applicant has never been formally charged with a violation of the statute does not preclude its consideration for security purposes, as any criminal conduct has the potential to disqualify an individual from a security clearance.

The concerns for Applicant's judgment, reliability, and trustworthiness, engendered by intentional false statements may be mitigated if the record shows that the falsification was isolated, not recent, and corrected voluntarily (E2.A5.1.3.2);

that the individual made prompt, good faith efforts to correct the falsification before being confronted (E2.A5.1.3.3); or that the omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided (E2.A5.1.3.4.)

While Applicant voluntarily corrected his falsifications when he was confronted, his falsifications were recent and not isolated. The same false information was submitted on an application for employment and a security clearance application. There is no evidence in the record to indicate that Applicant's falsification of material facts resulted from improper or inadequate advice from authorized personnel. There is no evidence in the record to show that Applicant made a prompt, good-faith effort to correct the falsifications before being confronted with the facts. Applicant's voluntary correction of his falsifications when confronted is the only mitigating factor that might be applied to the facts of Applicant's case, and I find it of insufficient weight to overcome Applicant's personal conduct involving questionable judgment, untrustworthiness, lack of candor, and dishonesty.

Under Guideline J, Criminal Conduct, the security eligibility of an applicant is placed in question when the applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness. The Applicant gave false information on his SF-86. By certifying falsely that his responses were true, complete and correct to the best of his knowledge and belief, and made in good faith, the Applicant violated Title 18, Section 1001 of the United States Code. His false answers were felonious conduct under the laws of the United States.

Guideline J states that "[a]llegations or admissions of criminal conduct, regardless of whether the person was formally charged," could raise a security concern and could be disqualifying. Applicant denies culpability under Guideline J in his response to the SOR and asserts that his record contains no history or pattern of criminal activity and that the falsification of his educational background was an isolated incident. Applicant's statement in response to the FORM recites his military service and current responsibilities and asserts: "I am very proud of my country, and I am extremely sorry, if anything I have done would cause any one to believe that I would do anything that would harm her."

Relevant conditions under Guideline J that could mitigate security concerns include findings that the criminal behavior was not recent (E2.A10.1.3.1), that it was an isolated incident, (E2.A10.1.3.2), and that there is clear evidence of rehabilitation (E2.A10.1.3.6). While it may be claimed that Applicant's conduct in falsifying his educational background occurred only twice, and only once under certification pursuant to 18 U.S.C. § 1001, and thus is an isolated incident, the record also shows that the disqualifying conduct was recent and that there is no clear evidence of rehabilitation. Thus, I find that there is insufficient evidence to mitigate the Government's case.

In reaching my conclusions I have also considered the factors cited in the Directive at E2.2.1.

For the reasons stated, I conclude that Applicant is not eligible for access to classified information.

### **FORMAL FINDINGS**

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1, Personal Conduct (Guideline E): AGAINST THE APPLICANT.

Subparagraph 1.a.: Against the Applicant.

Subparagraph 1b.: Against the Applicant.

Paragraph 2, Criminal Conduct (Guideline J): AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

### **DECISION**

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 the Applicant. Clearance is denied.

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Joan Caton Anthony

Administrative Judge