

DATE: June 17, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25262

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Rita O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant provided a false resume to his employer knowing that resume would be used as part of his employer's bid proposal on a federal contract. Because of the Applicant's deliberate falsification, clearance is denied.

STATEMENT OF THE CASE

On December 7, 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 14, 2001, the Applicant answered the SOR and requested a hearing. The case was assigned to me on January 30, 2002. A Notice of Hearing was issued on February 8, 2002, and for good cause a second Notice of Hearing was issued on March 5, 2002, scheduling the hearing which was held on March 8, 2002. The Government's case consisted of ten exhibits (Gov Ex). The Applicant relied on his own testimony. A transcript (tr.) of the hearing was received on March 15, 2002.

PROCEDURAL MATTERS

Department Counsel moved to amend the SOR to include at the end of paragraph 1.a. the words, ", or to meet the requirements of a bid proposal." There being no objection to the amendment, the SOR was so amended. Information concerning the Applicant's driver's license, (Gov Ex 7) driver improvement program, (Gov Ex 8) and license reinstated (Gov Ex 9) was presented. These matters not being alleged in the SOR were therefore not relevant nor considered in reaching my decision.

FINDINGS OF FACT

The SOR alleges personal conduct (Guideline E) which the Applicant admitted the allegations in part and denied the allegations in part. The Applicant denies that he provided a falsified resume to secure employment and denies he

intentionally falsified his Security Clearance Application, Standard (Std) Form 86.

The Applicant is 49 years old, has worked for a federal contractor since November 1997, and is seeking a security clearance. As a "certified executive housekeeper," he is responsible for contract management and administration. (tr. 55)

From September 1969 to June 1970, the Applicant attended one college and from June 1970 until May 1971, he attended a different college. From September 1977 until December 1979, the Applicant attended a third college achieving an associate of arts (AA) degree. The Applicant's Security Clearance Application, Standard (Std) Form 86, (Gov Ex 1) reflects his AA degree.

The Applicant was employed by a hospital janitorial company from February 1989 to April 1997. In February 1994, after the Applicant had been working for the company for five years, the company's federal contract came up for renewal. The new contract required some company employees to have BS or higher degrees. At contract renewal time, the Applicant was asked to submit a resume (Gov Ex 3) and was told it would be good for the employees to show college degrees. In his resume, the Applicant stated he had a four-year university degree when in fact he only had a two-year college degree. He did this to meet the requirements of the proposal. (tr. 28) His employer did not force him or pressure him to put this on his resume. The Applicant submitted his resume knowing it would be submitted to the government as part of the bid package. (tr. 29) The same resume was included by the company in two bid proposals.

The Applicant had a good working relation with one of the company's vice president. This ended in 1994, when the company's co-owner and vice president died. Starting in 1994, the Applicant began to daily receive extreme verbal abuse (tr. 23, 36) and threats of physical abuse by company employees. All of the company's management was family or close friends of the surviving owner (tr. 34, 61) who treated the Applicant as an outsider. He did not speak Spanish, the language used by the owner, management staff, and many of the employees. In May 1994, the Applicant received a letter (Gov Ex 4) concerning his work performance. Specifically addressed were: the timeliness of daily reports, the Applicant bringing his sick son to work, late arrival, ignoring company practices or policies involving routine matters, and the Applicant's lack of assistance in resolving a grievance. Following the letter, the Applicant continued to work for the company for three years.

In early 1997, for two and a half months the Applicant was working 12 to 14 hours each day providing management support. By April 1997, the Applicant had had enough of the treatment at the company and decided to leave for health and well being. (tr. 35) He was unhappy at work, felt abused, mistreated, and feared for his own safety and that of his family. (tr. 40) He resigned from the company after negotiating a consulting agreement (Gov Ex 5) whereby the Applicant would be paid his current salary for an additional five months as a consultant for the company. In early 2001, the company's current operations manager contacted the Applicant and asked the Applicant to again work for the company. (tr. 34)

After the Applicant left the company, the company was investigated for contract and tax fraud. The Applicant was interviewed as a witness against the company, but he was not the subject of the investigation.

In November 1997, the Applicant took a job in the same hospital working for a different government contractor. The Applicant was asked to complete an Application for Employment. (Gov Ex 10) The Applicant updated his previous resume by simply adding his most recent work experience and did not change his level of education which reflected four years of college education. The form did not ask if the Applicant had graduated or if he had received a degree. Although the Applicant remembers this form being completed three or four months after having secured the job (tr. 79), the form is dated on the first page as November 1997. There is no indication as to whether this date was the current date when the form was completed or was backdated to an earlier date when the form was actually completed. The Applicant told individuals at this company he had a college degree from a state university which was false. (tr. 30) He also told other individuals, at the same company, he had a college degree--which was true⁽²⁾--and did not further elaborate. (tr. 31) The company used this information in two Federal contract proposals, however those proposals did not impose any type of employee educational requirement. (tr. 31) The Applicant has not told his current employer he does not have a four-year degree for he is afraid to tell them. (tr. 32)

In March 2000, the Applicant answered "no" to Std Form 86 Question 20 which asked about the Applicant's employment record during the prior 10 years. He was asked if he had been fired from a job, quite a job after being told he would be fired, left a job following allegations of misconduct,

unsatisfactory performance, or for other reasons under unfavorable circumstances.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Personal Conduct (Guideline E) 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:

Conditions that could raise a security concern and may be disqualifying also include:

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.

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

None Apply.

BURDEN OF PROOF

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

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. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions and activities, in providing false information to his employer which he knew would be reviewed in bid proposals submitted to the Federal government, poses a serious potential risk to the nation's security precautions.

The Applicant provided his employer false information concerning his level of education by indicating he had four years of education when in fact he only had an AA degree from a two-year college. The information was provided to his employer not to get a job, for he already had the job, but in response to his employer's request for the information to be included in the employer's bid proposal. The Applicant knew at the time he provided the information it would be relied upon by the Federal government in the potential awarding of a Federal contract. The falsified facts were both relevant and material. The resume is a personal history statement and the awarding of a contract is a "benefit" to the Applicant for not getting the contract might have had an impact on the Applicant's employment.

Because his actions were a deliberate falsification of material facts on a personal history form used in a proposal to award federal contracts, Disqualifying Condition 2-(3) applies. None of the mitigating conditions (MC) apply to the falsification to his first employer.

MC 1-(4) does not apply because the falsification is pertinent to a determination of judgment, trustworthiness, or reliability. MC 2-(5) does not apply, for although the false information given his employer about his education submitted in February 1994 is not a recent event it was not isolated. The same falsification was submitted to two different companies and was part of numerous bid proposals to the Federal government. MC 3-(6) does not apply for there is no evidence the Applicant made prompt, good-faith efforts to correct the falsification before being confronted by the facts. In fact, the Applicant has yet to inform his current employer about his false statement concerning his education because he is afraid. MC 4-(7) does not apply because the falsification was not the result of improper or inadequate advice. MC 5, 6, and 7 are not relevant to this case. Since none of the mitigating conditions apply, I find against the Applicant as to SOR subparagraph 1.a

Although the same resume was submitted to his second employer and included in two additional bid proposals, those proposals impose no educational requirements for employees. As such, the falsification was relevant, but was not material. I find for the Applicant as to SOR subparagraph 1.b.

The Applicant answered "no" to Question 20 on his Std Form 86, concerning his employment record. After the death of a co-owner, a hostile work environment developed for the Applicant. The company employed mostly related individuals and he was not part of the family. Although the Applicant had received a letter concerning his work performance three years before leaving, the events covered by the letter were not the reasons for his leaving. By April 1997, he was unhappy with his work, felt abused, mistreated, and feared for his own safety and that of his family. After resigning, the Applicant was paid his full salary for an additional five months. It is unreasonable to assume the Applicant would have been offered five additional months of salary if he was leaving for misconduct, unsatisfactory performance, or for "other reasons under unfavorable circumstances." In fact, four years after leaving the company, the company asked the Applicant if he was interested in again working for the company. This is also unlikely if the Applicant left under unfavorable circumstances. An applicant's job dissatisfaction is not the type of leaving "a job for other reasons under unfavorable circumstances" contemplated in Question 20. The Applicant's response to Question 20 on the Std Form 8 was not deliberately false. I find for the Applicant as to SOR subparagraph 1.c.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

The awarding of a security clearance is not a once in a life time occurrence, but is based on current disqualifying and mitigating conditions. Under the Applicant's current circumstances a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a security clearance, in the future, he may well demonstrate persuasive evidence of his security worthiness. A clearance at this time is not warranted.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

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

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For 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.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. The Applicant does have a college degree, a two year AA degree from a community college.
3. DC 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.A5.1.2.2.)
4. MC 1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability. (E2.A5.1.3.1.)
5. MC2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. (E2.A5.1.3.2.)
6. MC3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts. (E2.A5.1.3.3.)
7. MC 4. 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.)