

DATE: March 25, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-25380

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER E. WILLMETH**

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Forty-three year old Applicant failed to mitigate his personal conduct of providing false answers on two security clearance applications that he submitted thirteen years apart. Clearance is denied.

**STATEMENT OF THE CASE**

On August 27, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement Reasons (SOR) to Applicant. The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant her access to any classified information and recommends that his case be submitted to an Administrative Judge. On September 12, 2002, the Applicant provided a response to the SOR and requested a hearing. This case was assigned to the undersigned Administrative Judge on November 26, 2002. A notice of hearing was issued on December 2, 2002, and the hearing was held in Arlington, Virginia on December 19, 2002. During the hearing, six Government exhibits, two Applicant exhibits, and the testimony of the Applicant were received. The transcript (Tr.) Was received on December 27, 2002.

**FINDINGS OF FACT**

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 43 year-old male computer technician employed by a defense contractor and is seeking to obtain a security clearance. He served in the United States Navy from January 1979 until January 1983 (Ex. 6). Subsequent to his naval service, Applicant received computer training and has been employed in the computer field since 1987 (Ex. B).

On the security clearance application that he executed on May 16, 2000 (Ex. 1), Applicant provided a false answer (Tr.

at 30-31). Applicant responded "no" to question 24, failing to disclose he had been charged with possession of marijuana in Prince William County, Virginia in November 1999 (Ex. 3); <sup>(1)</sup> On the security clearance application that he executed on April 1, 1987 (Ex. 2), Applicant submitted two false answers (Tr. at 34-35 and 41-42). In response to question 14a, Applicant responded "no," failing to reveal he was charged with and received non-judicial punishment for possession of marijuana while serving in the United States Navy in August 1979 (Ex. 6). <sup>(2)</sup> Applicant also responded "no" to question 15a on Ex. 2, failing to disclose he used marijuana while attending high school in 1978 (Ex. 5; Tr. at 22-23). <sup>(3)</sup>

## POLICIES

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline E - Personal Conduct: the concern is 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.

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

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.

None of the conditions in section E2.A5.1.3. that could mitigate security concerns are applicable to Applicant.

## CONCLUSIONS

That Applicant submitted false answers in response to three questions on two security clearance applications is undisputed. Applicant admitted this in both his response to the SOR and his testimony. Such actions establish disqualifying condition E2.A5.1.2.2., the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire.

Applicant did not cite nor do any of the mitigation factors in E2.A5.1.3. of the Directive apply in this case. Applicant's falsifications are both undisputed and pertinent to a determination of trustworthiness. The falsification was not an isolated incident but one Applicant repeated over a 13 year period. In both cases, Applicant did not admit to having given false answers until after being confronted with the information he failed to disclose (Tr. at 32-33; Ex. 4; and Ex. 5).

With regard to his motivation for the falsifications, Applicant stated that he did not reveal his possession of marijuana charge in 1999 when he filled out Exhibit 1 in 2000 because "I was confused and afraid of losing my security clearance and job" (Ex. 4). With regard to his falsifications on Exhibit 2 in 1987, Applicant said, "I did not list these arrests on my PSQ because I was scared and knew it wouldn't help me" (Ex.5). Such motives do not constitute a mitigation factor:

"The fact the Administrative Judge did not consider Applicant's motives a mitigating factor is not error. On the contrary, self-interest is not a valid justification for falsifying." ISCR Case No. 96-0685 at p.2 (App. Bd. Nov. 14, 1997); DISCR Case No. 89-1586 at p.4 (App. Bd. Oct. 26, 1990).

With regard to the "whole person concept," Applicant's insistence that he has been "tip-top" in his job other than for his falsifications finds some support in the record (Ex. A). Applicant also expressed regret, apologized for his actions, and assured that "it won't happen again" (Tr. at 53). However, Applicant's credibility is wanting. In his sworn statement to the Defense Investigative Service agent after the discovery of his 1999 arrest, Applicant suggested his cousin was the source of the marijuana found in his car ashtray (Ex. 4). Although he reiterated this in his testimony, he also testified that a friend of his was the source of the marijuana (Tr. at 42). With regard to his possession of marijuana charge while serving in the United States Navy in 1979, Applicant continued to maintain that he knew nothing about the marijuana that was discovered in his shirt pocket (Ex. 5; Tr at 24). When Navy authorities found marijuana in his bag in 1981, Applicant provided a sworn statement that he knew nothing about it (Ex. 5).

Denial of a security clearance is appropriate when an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 99-0123 at p.3 (App. Bd. Jan. 11, 2000); ISCR Case No. 98-0188 at p.3 (App. Bd. Apr. 29, 1999). Based on the record in this case, Applicant has failed to demonstrate the required degree of trustworthiness. Therefore, 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 as follows:

Paragraph 1. Guideline E: AGAINST APPPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

### **DECISION**

In light of all the evidence in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**Roger E. Willmeth**

**Administrative Judge**

1. Question 24: "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?"
2. Question 14a: Have you ever been arrested, charged, cited or held by Federal, state, or local law enforcement or juvenile authorities regardless of whether the citation was dropped or dismissed, or you were found not guilty?"
3. Question 15a: "Have you ever used any narcotic, depressant, stimulant, hallucinogen (to include LSD or PCP) or Cannabis (to include marijuana or hashish) except as prescribed by a licensed physician?"