

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant falsified her academic qualifications when applying for a position with a defense contractor in 1991, claiming an associate degree she had not earned. Hired and subsequently granted access to Secret information, Applicant presented fraudulent documentation to her employer when asked to verify her highest level of education. In conjunction with a request for clearance upgrade, Applicant misrepresented her educational achievements on a security clearance application and during subject interviews with a Defense Security Service (DSS) special agent in 1994. Applicant lied about her academic credentials on her application for her current employment in 1998, and she falsely claimed she had left her previous job due to the illness of a family member. In application for a security clearance in October 1999, she indicated she did not have a college degree, but she deliberately concealed that she had been terminated from her employment in 1994 for falsification of her credentials. Clearance is denied.

CASENO: 02-00290.h1

DATE: 07/24/2002

DATE: July 24, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00290

DECISION OF ADMINISTRATIVE JUDGE

ELIZABETH M. MATCHINSKI

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant falsified her academic qualifications when applying for a position with a defense contractor in 1991, claiming an associate degree she had not earned. Hired and subsequently granted access to Secret information, Applicant presented fraudulent documentation to her employer when asked to verify her highest level of education. In conjunction with a request for clearance upgrade, Applicant misrepresented her educational achievements on a security clearance application and during subject interviews with a Defense Security Service (DSS) special agent in 1994. Applicant lied about her academic credentials on her application for her current employment in 1998, and she falsely claimed she had left her previous job due to the illness of a family member. In application for a security clearance in October 1999, she indicated she did not have a college degree, but she deliberately concealed that she had been terminated from her employment in 1994 for falsification of her credentials. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended by Executive Orders 10909, 11328 and 12829) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 (as amended by Change 4), issued a Statement of Reasons (SOR), dated February 4, 2002, to the Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. DOHA recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied or revoked. The SOR was based on personal conduct (guideline E) and criminal conduct (guideline J) because of Applicant's record of providing false information about her academic credentials and employment history to her employers and the Government.

On March 1, 2002, Applicant responded to the allegations set forth in the SOR and requested that her case be determined on the written record in lieu of a hearing. The Government submitted its File of Relevant Material (FORM) on March 27, 2002, a copy of which was forwarded to Applicant by letter dated March 28, 2002, with instructions to

submit additional information and/or any objections within thirty days of receipt. Applicant filed an undated response, to which Department Counsel on May 8, 2002, indicated she had no objection. On May 30, 2002, the case was assigned to me for a decision.

FINDINGS OF FACT

After a thorough review of the evidence, and on due consideration of the same, I render the following findings of fact:

Applicant is a 32-year-old configuration manager/data manager, who has worked for her current employer since mid-February 1998. Applicant seeks a Top Secret security clearance for her present duties.

As a high school student, Applicant became involved in a stay-at-school program offered by the Federal Government. While working for the Government at an aeronautics laboratory, Applicant commenced in late August 1988 business administration studies at a local college. As proof of her attendance, Applicant provided to the Government stay-at-school program a letter from the college, signed by the dean of business. Applicant attempted thirteen units of study, completing none, before she left the college in January 1989.

In March 1990, Applicant commenced employment for a federal contractor at a laboratory on the local military base. In early November 1991, Applicant applied for a full-time position of technical information specialist with another defense contractor (company X) performing work onsite at the laboratory. Applicant submitted to company X a resume in which she indicated falsely she had an associate degree (AA) in business management from the local college. On her application for employment, Applicant reported she earned her AA degree in June 1990, with a final grade point average of 3.25. On signing her job application and submitting it to company X for consideration, Applicant certified the information furnished in the application and any supporting documentation was true and complete to the best of her knowledge and belief and that she understood any misrepresentation or material omission of material fact on the form or another other record submitted pertinent to employment would constitute grounds for immediate dismissal.

Unaware that Applicant had claimed an academic degree she had not earned, company X hired Applicant. In late March 1992, Applicant was granted a Secret clearance by the Department of Defense for her duties with company X. In early February 1993, Applicant was requested to verify her highest academic degree. Applicant completed a degree information verification form for her employer on which she listed an AA degree in business administration earned in early June 1990 at the local college.

In April 1994, Applicant provided to company X, in support of her qualifications for another position at the corporation, a letter on the stationery of the local college which she had prepared without the college's knowledge. This document, purportedly signed by the dean of business at the local college, attested to Applicant's alleged successful completion of 60 units in business administration and current enrollment in a business workshop program.

In conjunction with a request for clearance upgrade to Top Secret for new duties with the same defense contractor, Applicant on May 17, 1994, executed a Personnel Security Questionnaire (DD Form 398) on which she reported she attended the local college from August 1988 to June 1990, graduating with an AA degree in business.

On October 25, 1994, Applicant was interviewed by a Defense Security Service (DSS)-then Defense Investigative Service-special agent. Applicant falsely maintained she had earned her AA degree from the local college. Reinterviewed six days later, Applicant told the agent she had been in contact with the college, and could provide verification of the AA degree. One week later, Applicant again was contacted by a Government investigator about her academic credentials. Applicant fabricated an excuse for her inability to verify her college degree, falsely maintaining her college credits had been entered onto her father's transcripts.

On November 23, 1994, Applicant was interviewed again by the DSS. Applicant admitted she had falsely listed on her DD 398 the award to her of an AA degree, in order to be consistent with the academic qualifications she had reported to her employer to acquire her job. Regarding the April 1994 letter on college stationery submitted to company X to qualify for her new position, Applicant related to the investigator she used a letter which had been provided to her for the stay-in-school program, altering the date, addressee and the text of the document.

Company X in early December 1994 received verification from the college that Applicant had attended the institution for one semester, with zero credit hours completed. At the request of company X human resources personnel, the dean of business at the college reviewed the April 1994 letter submitted by Applicant to qualify for a new position with company X. The dean of business indicated the letter bearing his typewritten name and purported signature had neither been authored nor signed by him.

On December 7, 1994, Applicant was involuntarily terminated from her employment for excessive, unapproved absenteeism and for misrepresenting her educational credentials to the company.⁽¹⁾ With Applicant absent from the company for six consecutive work days since late November 1994, the termination letter was forwarded to Applicant at her residence via Federal Express. On December 12, 1994, company X requested Applicant's background investigation for a Top Secret security clearance be canceled due to her involuntary termination.

In mid-February 1998, Applicant applied for the position of technical writer with her present employer (company Y). On her application for employment, Applicant misrepresented her academic background, indicating that he had been

awarded an AA degree from the local college in June 1989. She also misrepresented her employment history at company X, indicating she had worked there until December 1996 when she left "due to a very ill family member." Applicant also provided company Y a resume detailing her employment with company X to December 1996 and her receipt of an AA degree from the local college. ⁽²⁾ Applicant was hired by company Y.

In application for a security clearance for her duties at company Y, Applicant on October 14, 1999, executed a security clearance application (SF 86), EPSQ version. In response to inquiry into her education, Applicant listed attendance at the local college from June 1987 to June 1989, with no degree or diploma awarded. Applicant responded negatively to question 20 ["Has any of the following happened to you in the last 10 years? -Fired from job-Quit a job after being told you'd be fired-Left a job by mutual agreement following allegations of misconduct-Left a job by mutual agreement following allegations of unsatisfactory performance-Left a job for other reason under unfavorable circumstances"].

On July 17, 2000, Applicant was interviewed by a Defense Security Service special agent about her falsification, employments and education. Applicant indicated she did not list her most recent employment with company X as it was only for a nine-month period during which she had been subjected to sexual harassment. ⁽³⁾ Regarding her listed education, Applicant admitted she falsified both her resume and employment application for employment with company X, listing an AA degree which she did not have in order to obtain the job. Applicant denied knowing of the reasons for her termination from company X as she received a notice from the company in a Federal Express package and simply ripped it up. She contested any abandonment of her job as she had told the human resource manager she quit. Applicant attributed her conduct in the last few months of her employ at company X to personal distress over a marital separation, a great-grandfather's illness, and sexual harassment at work. With respect to her present employment, Applicant indicated she had been converted from a temporary to a permanent employee and received three promotions. Since her present position did not require a college degree, Applicant considered informing company Y she does not have the AA, but feared reprisal or termination of her job if she did so. Applicant denied any intentional falsification of her SF 86.

One week later, Applicant was reinterviewed by the same agent. Applicant acknowledged "many omissions and incorrect items on the [SF 86] form" but denied she had any intent to mislead. Applicant is found to have intentionally falsified her response to question 20 on her October 1999 SF 86 regarding any adverse employment history in the last ten years. It stretches credulity that Applicant destroyed her Federal Express package from company X without reading the contents. Even if Applicant verbally quit before the termination, she was aware she had left the job under unfavorable circumstances. ⁽⁴⁾

Applicant has taken no action to inform company Y that she lacks the AA degree. She requests a "second chance" to prove herself worthy of a position of trust and submits it would be detrimental to the directorate were she to lose her job because of the "mistake" she made when she was "young and acted stupidly."

POLICIES

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines which must be carefully considered according to the pertinent criterion in making the overall common sense determination required. Each adjudicative decision must also include an assessment of the nature, extent, and seriousness of the conduct and surrounding circumstances; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the motivation of the individual applicant and extent to which the conduct was negligent, willful, voluntary or undertaken with knowledge of the consequences involved; the absence or presence of rehabilitation and other pertinent behavioral changes; the potential for coercion, exploitation and duress; and the probability that the circumstances or conduct will continue or recur in the future. *See* Directive 5220.6, Section 6.3 and Enclosure 2, Section E2.2. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility or emotionally unstable behavior. *See* Directive 5220.6, Enclosure 2, Section E2.2.4.

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

Personal Conduct

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.

E2.A5.1.2. Conditions that could raise a security concern and may be disqualifying also 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.

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.

E2.A5.1.2.5. A pattern of dishonesty

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

None.

Criminal Conduct

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

E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged

E2.A10.1.3. Conditions that could mitigate security concerns include:

None.

Under the provisions of Executive Order 10865 as amended and the Directive, a decision to grant or 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. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses.

Decisions under the Directive include consideration of the potential as well as the actual risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

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 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 her 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." 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 Enclosure 2 to the Directive, Section E2.2.2.

CONCLUSIONS

Having considered the evidence of record in light of the appropriate legal precepts and factors, and having assessed the credibility of the Applicant, I conclude the following with respect to guidelines E and J:

Applicant presents a security significant history of false statements, all motivated by self-interest. Applicant falsified her academic credentials on an application for employment and a resume used to gain employment with defense contractor company X in 1991. Asked by the company to certify the highest level of academic degree achieved, Applicant executed in February 1993 a degree verification form on which she claimed an AA degree she had not earned. To qualify for another position within the firm in April 1994, Applicant presented a fraudulent letter which she had prepared using old college stationery. While Applicant claims she did not forge the signature of the business dean on that letter, the business dean, who had no apparent motive to lie, indicated he had not signed the document and the signature affixed was not his. Whether or not Applicant forged the dean's signature by her own hand, her conduct was fraudulent.

Willing to lie even to the Department of Defense to protect her employment and security clearance, Applicant falsely claimed she had an AA degree when she completed a DD 398 on May 17, 1994, and was interviewed by a DSS investigator on October 25, 1994. On October 31, 1994, Applicant claimed she would be able to provide verification from the college of the degree. On November 7, 1994, she provided a spurious excuse to the DSS for her inability to provide such verification, claiming that her college credits had been entered on her father's transcript. Although Applicant admitted during an interview of November 23, 1994, that she had falsely listed an AA degree on her personnel security questionnaire, she made no effort to notify her employer that she lacked the degree.

In application for her current employment, Applicant in February 1998 falsified her academic credentials on her job application and on her resume. She also misrepresented to company Y the circumstances surrounding her separation from company X, as she claimed on her employment application that she had worked for company X until December 1996, and had left the job because of a family illness. In responding "No" to question 20 on an October 1999 SF 86, Applicant acted to conceal from the Government as well that she had been fired from company X in December 1994 for absenteeism and misrepresenting her educational achievements. ⁽⁵⁾

Under guideline E, disqualifying conditions E2.A5.1.2.2. (the deliberate omission, concealment or falsification of relevant and material facts from any personnel security questionnaire), E2.A5.1.2.3. (deliberately providing false or misleading information concerning relevant and material matters to an investigator) and E2.A5.1.2.5. (a pattern of dishonesty) must be considered in evaluating Applicant's security suitability. Furthermore, by deliberately falsifying responses on her May 1994 and October 1999 security clearance applications, and misrepresenting during DSS interviews the material facts surrounding her academic credentials, Applicant violated Title 18, Section 1001 of the United States Code. ⁽⁶⁾ Under guideline J, criminal conduct, the fact that Applicant has never been formally charged with a violation of that statute does not preclude its consideration for security purposes, as any criminal conduct is potentially security disqualifying. DC E2.A10.1.2.1. (allegations or admission of criminal conduct, regardless of whether the person was formally charged) must also be considered in this case.

The concerns for Applicant's judgment, reliability and trustworthiness engendered by intentional false statements may be overcome if the falsification was isolated, not recent and corrected voluntarily (E2.A5.1.3.2.); the individual made prompt, good faith efforts to correct the falsification before being confronted (E2.A5.1.3.3.); or 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.). None of the mitigating conditions apply to Applicant's benefit. Personal problems and/or immaturity cannot reasonably explain such a serious record of repeat falsification. Assuming Applicant was experiencing a period of marital discord in the 1994 time frame when she was terminated from her employ with company X, she was reconciled with her spouse by the time she applied for a job with her present employer in 1998. Presented with the opportunity to set the record straight, Applicant in October 1999 deliberately misrepresented on her SF 86 the dates of her employment with company X and falsely denied any adverse circumstances surrounding the termination of that employ.

While security clearance decisions are not meant to punish applicants for past wrongdoings, rehabilitation of such serious personal and criminal conduct requires a showing of remorse and a demonstrated track record of reform. Applicant has yet to exhibit any meaningful understanding that she has an obligation at all times to be completely

candid with the Government. When interviewed on July 17, 2000, Applicant commenced by stating she had not listed her most recent employment with company X, as it was only for a nine-month period during which she had been subjected to sexual harassment. However, the resume and employment application submitted to company Y and her October 1999 SF 86 all reflect an ending date of December 1996 (vice the correct date of December 1994) for her employment with company X. Moreover, although she subsequently acknowledged to the agent that she had provided "some incorrect dates of employment" on her SF 86, she denied any intentional falsification. Her veracity during her July 2000 interviews is called in question. While the Government is aware of Applicant's record of falsification of her academic credentials, she has taken no effort to notify company Y that she does not have an AA degree, presumably because she does not want to jeopardize her employment. This exhibited tendency to act primarily in self-interest is incompatible with a security clearance and reflects a lack of rehabilitation. Applicant's contributions to her current employer are not enough to overcome the personal conduct and criminal conduct concerns engendered by her extensive record of intentional misrepresentation. Subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.j., 1.k., 1.l., 1.m., 1.n., 1.o., and 2.a. are resolved against her. Subparagraph 1.i. is found for Applicant, as the Government did not present any evidence to prove Applicant lied as alleged. (7)

FORMAL FINDINGS

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

Paragraph 1. Guideline E: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the Applicant

Subparagraph 1.n.: Against the Applicant

Subparagraph 1.o.: Against the Applicant

Paragraph 2. Guideline J: AGAINST THE APPLICANT

Subparagraph 2.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 Applicant.

Elizabeth M. Matchinski

Administrative Judge

1. Applicant claims she had quit her job voluntarily before the termination because of sexual harassment by her manager when she was working in the environmental group. Due to threats from this manager, Applicant indicates she quit her job. (See item 7). Applicant's accounts of sexual harassment by this person and of the latter's alleged romantic involvements with other female employees are uncorroborated, while there is clear documentation of her firing for proven unethical behavior (willful misrepresentation of educational experience).

2. In July 2000, Applicant told a DSS special agent she was contacted originally by the company for a six month temporary position, and that human resource personnel at company Y still had a copy of her old resume, which she had used for a job at company X. Applicant claims she was too embarrassed to tell company Y she did not really have an AA degree so she completed the employment application listing the degree to match her resume. (See item 7). The resume which was submitted with her employment application contains information about her work experience after she left company X (See item 9), which indicates she completed a new resume for this job in which she again misrepresented her academic credentials.

3. It is not clear what Applicant was referring to, as both her SF 86 and her resume indicate employment at company X through December 1996, when she had been fired in December 1994.

4. It is noted that company X's efforts to verify her employment in early December 1994 were undertaken when Applicant was absent from the workplace. Yet, there is insufficient evidence to conclude the company's actions were taken in retaliation by a vindictive employee.

5. Applicant tendered contradictory responses to subparagraph 1.o. of the SOR. While she entered "Admit" directly to the left of the allegation on a copy of the SOR submitted as part of her answer, she provided additional information indicating a denial to 1.o. because she was unaware she had been terminated from her employ with company X. Applicant was found to have known she had been terminated from her employment under less than favorable circumstances.

6. Section 1001 of Title 18 of the United States Code provides in pertinent part:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully-

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) mails or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title or imprisoned not more than 5 years, or both.

7. The Government has the burden of proving this allegation, which Applicant denies. The Government presented no evidence from this interview. Even if Applicant had indicated a female clerk from the college had faxed her a letter, there is no evidence from which one could infer the letter was the one Applicant provided to company X in April 1994.