

DATE: March 25, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-03501

**DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

**APPEARANCES**

**FOR GOVERNMENT**

Eric Borgstrom, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant deliberately falsified her application for employment and her personal security application. Her unmitigated personal conduct involves lack of candor, questionable judgment, unreliability, and unwillingness to comply with rules and regulations, strongly suggesting an inability or unwillingness to safeguard confidential information. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On October 23, 2002, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on November 12, 2002 and requested that her case be determined on the record in lieu of a hearing. Later, she changed her mind and requested a hearing before an administrative judge. The case was assigned to me on September 10, 2003. On October 14, 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on October 23, 2003.

**FINDINGS OF FACT**

The SOR contains seven allegations of disqualifying conduct under Guideline E, Personal Conduct. Applicant admitted five allegations and denied two. Applicant's admissions are incorporated herein as findings of fact.

Applicant is 32 years old, holds a secret-level security clearance, and is employed as an administrative assistant by a defense contractor. She was married in 1998, and, at the time of her hearing, she was separated from her husband. She is the mother of a six-year-old child.

In her position as an administrative assistant, Applicant acts as the main receptionist for her employer. She also assists the office manager and was designated assistant security officer for her employer. She has attended one three or four-day security management course with her supervisor, who is the security officer. Her employer requested Applicant apply for top secret clearance so that she could carry out increased responsibilities as an assistant security officer.

In 1994, Applicant was attending a university and had not paid her dormitory fees. A party was held in her dormitory room at which students drank alcohol and used drugs. Applicant was sent a letter by university officials telling her to vacate the campus and not to return. Two weeks later, she returned to campus to visit friends. She was arrested by university police and cited for criminal trespass, first degree. The case was later dismissed.

Applicant completed and signed a security clearance application (SF-86) on April 5, 2000.

Question 26 on the SF-86 reads as follows:

### **Your Police Record - Other Offenses**

In the last 7 years, have you been arrested for, charged with, or convicted of any offenses not listed in modules 21, 22, 23, 24 or 25? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.

Applicant responded "no" to Question 26 and did not list her arrest for criminal trespass, first degree, on her SF-86.

In December 1997, Applicant was arrested on a military base and charged with driving under the influence, driving while intoxicated, and reckless driving. In March 1998, she pled guilty to driving under the influence. Her driver's license was restricted. She was sentenced to one year of probation, fined, and ordered to complete an alcohol treatment program. Question 30 on the SF-86 reads as follows:

### **Your Use of Alcohol**

In the last 7 years has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)? Do not repeat information reported in module 21 of form SF86. (Your Medical Record).

Applicant responded "no" to Question 30. She did not disclose her attendance at a two-day alcohol-related treatment program ordered by the court after she pled guilty to driving under the influence in March 1998.

Applicant falsified the employment application she submitted to her current employer by listing an employer for whom she had never worked. Her sister-in-law had worked for the employer but Applicant had not. She said she listed the fictitious employer on her resume and on her employment application to improve her chances of acquiring her current position. She said she told her supervisor she had falsified her employment application. Her supervisor appeared at her hearing as a witness for her and denied knowing Applicant had falsified her employment application.

Applicant admitted she had defaulted on a student loan and her wages had been garnished to repay the debt. At her hearing she presented credible evidence to demonstrate she had paid the debt in full and that her wages were no longer being garnished.

Applicant was employed by a business from August 1994 to November 1995 and was fired by that business because she failed to meet production requirements. Question 20 on the SF-86 reads as follows:

### **Your Employment Record**

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.

Applicant answered "no" to Question 20 on her SF-86.

## 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. Or. 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.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

## CONCLUSIONS

In the SOR, DOHA alleged Applicant demonstrated disqualifying conduct under Guideline E when she falsified her SF-86 by failing to disclose that she had been arrested in 1994 and charged with criminal trespass in the first degree (¶ 1.a. and ¶ 1.f.)<sup>(3)</sup>; that she had been arrested in 1997 and pled guilty to driving under the influence, conduct for which she had been sentenced to one year of probation, ordered to complete an alcohol treatment program, limited to a restricted driver's license, and assessed a fine (¶ 1.b.); that when she completed her SF-86, Applicant deliberately failed to disclose the court-ordered alcohol treatment she received as part of her sentence (¶ 1.g.); that she falsified her employment record on her resume and her application for employment with her present employer (¶ 1.c.); that because she had defaulted on a student loan, her wages were being garnished, and she owed over \$2,000 on the debt (¶ 1.d.); and that she had falsified her SF-86 by failing to disclose she had worked for a certain employer and had been fired because she failed to meet production requirements (¶ 1.e.).

The security concern under Guideline E, Personal Conduct, is with conduct or behavior which demonstrates questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty or unwillingness to comply with rules and regulations. Individuals who exhibit such conduct may not possess the personal qualities required to properly safeguard classified information. E.2.A5.1.1.

Applicant's conduct as alleged in the SOR raises concerns about her security worthiness. When an applicant deliberately omits, conceals, or falsifies material facts on a personal security questionnaire, a resume, or an application for employment, this raises a security concern and may be disqualifying. ¶ E2.A5.1.2.2. A security concern is also raised when an applicant conceals information which increases her vulnerability to coercion, exploitation, or duress and which could render her susceptible to blackmail. ¶ E2.A5.1.2.4. When an applicant's conduct also shows a pattern of dishonesty or rule violations relating to work and credit responsibilities, an additional security concern is raised. ¶ E2.A5.1.2.5.

There are three conditions that could mitigate the security concerns in this case. The security concern resulting from lack of candor or truthfulness in answering questions on an SF-86 can be mitigated if the Applicant made prompt, good-faith efforts to correct the falsification before being confronted with the facts. ¶ E2.A5.1.3.3. Second, a falsification can be mitigated if it was an isolated incident, was not recent, and the Applicant has subsequently provided correct information voluntarily. ¶ E2.A5.1.3.2. Third, a falsification can be mitigated if the Applicant has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress. ¶ E2.A5.1.3.5.

At her hearing Applicant produced credible evidence to show her student loan debt had been paid in full and her wages were no longer being garnished. The Government conceded that the debt had been fully satisfied. Mitigating condition ¶ E2.A5.1.3.5 applies to this disqualifying condition, and, accordingly, the allegation at ¶ 1.d. is concluded for the Applicant.

In her answer to the SOR, Applicant admitted the allegations at ¶¶ 1.a., 1.b., 1.c., and 1.g. She provided negative answers to Questions 26, 20, and 30 when she completed and signed her SF-86 in April 2000. In her testimony at her hearing, Applicant admitted falsifying her responses to the questions. I find her falsifications to be deliberate.

In ISCR Case No. 98-0761 at 3 (Dec. 27, 1999), DOHA's Appeal Board stated that an administrative judge, in deciding an Applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*." After weighing the favorable and unfavorable evidence presented in this case, I find the evidence against Applicant's security worthiness stronger than the evidence favoring her security worthiness. With respect to Applicant's Guideline E conduct alleged at ¶¶ 1.a., 1.b., 1.c., 1.e., 1.f., and 1.g. of the SOR, the Government has established its case by proving facts and circumstances indicating that Applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Applicant's failure to answer Questions 26, 20, and 30 on her SF-86 completely, truthfully, and correctly, and her falsification of her employment record on the employment application she filed with her present employer, raise security concerns under ¶ E2.A5.1.2.2 of Guideline E. The falsifications were not isolated incidents and were recent. When confronted with the facts, Applicant voluntarily supplied correct information to an agent of the Defense Security Service. However, she did not make prompt good-faith efforts to correct the falsifications before being confronted with the facts, nor did she take positive steps to significantly reduce or eliminate the vulnerability to coercion, exploitation, or duress that these falsifications created. Thus, mitigating conditions at ¶¶ E2.A5.1.3.2, E2.A5.1.3.3, and E2.A5.1.3.5 of the Directive are inapplicable to the facts established by the Government.

Under the whole person concept, I conclude that Applicant has not successfully overcome the Government's case opposing her request for a security clearance. Accordingly, the Guideline E allegations at ¶¶ 1.a., 1.b., 1.c., 1.e., 1.f., and 1.g. of the SOR are concluded against the Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline E.: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

### **DECISION**

In light of all of 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. Clearance is denied.

**Joan Caton Anthony**

---

**Administrative Judge**

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. The SOR further states that Applicant's criminal trespass case was later dismissed.