

DATE: June 27, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-27461

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant did not intentionally falsify her security clearance application concerning her arrest in 1994 and related job termination. Clearance is granted.

**STATEMENT OF THE CASE**

On June 14, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as amended) issued a Statement of Reasons (SOR) 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 and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on September 23, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 23, 2004. A notice of hearing was issued on December 16, 2004, scheduling the hearing for January 19, 2005. At the hearing the Government presented six exhibits. The Applicant presented four exhibits and testified on his own behalf. The official transcript (Tr.) was received on February 3, 2005.

**FINDINGS OF FACT**

The Applicant is 35 years old and is not a high school graduate. She is employed as a Machine Operator by a defense contractor and is applying for a security clearance in connection with her employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because she intentionally falsified material aspects of her personal background during the clearance screening process.

The Applicant completed a Security Clearance Application (Standard Form 86), dated February 11, 1999. In response to question 23 (a), which asked, "Have you ever been charged with or convicted of any felony offense," the Applicant responded, "NO." (*See* Government Exhibit 1). This was a correct response since the Applicant has never been charged with or convicted of a Felony offense.

The same questionnaire at question 23 (b), asked the Applicant if she has ever been charged with or convicted of a firearms or explosives offense. The Applicant responded, "NO." (*See* Government Exhibit 1). This was a correct response since the Applicant has never been charged with or convicted of a firearms or explosives offense.

Question 23(c) asked the Applicant if there were any charges pending against her for any criminal offense. The Applicant answered, "NO." (*See* Government Exhibit 1). This was a correct response since, at that time, the Applicant has no charges pending against her for any criminal offense.

Question 23(d) asked the Applicant if she had ever been charged with or convicted of any offense related to alcohol or drugs. The Applicant answered, "NO." (*See* Government Exhibit 1). This was a correct response since, at that time, the Applicant had never been charged with or convicted of any offense related to alcohol or drugs.

Question 23(e) asked the Applicant if in the last seven years has she been subject to a court marital or other disciplinary proceedings under the Uniform Code of Military Justice. The Applicant answered, "NO." (*See* Government Exhibit 1). This was a correct response since the Applicant had never been in the military.

Question 23(f) asked the Applicant if in the last seven years, has she been arrested for, charged with, or convicted of any offense(s) not listed in response to a, b, c, d or e above. The Applicant answered, "NO." (*See* Government Exhibit 1). This was a false answer. The Applicant failed to list her arrest on December 21, 1994 for Theft of Personal Property. Again she explained that she thought the incident occurred outside of the seven year period. (Tr. p. 21). There was also some confusion on her part as to whether a citizens arrest is considered an arrest by the police, and whether she was required to list a citizens arrest in response to this question. (Tr. p. 22).

Question 11 of the same security clearance application asked the Applicant to list her employment activities beginning with the present and working back seven years. The Applicant failed to list her employment with Kids-R-Us from about October 1994 to December 1994. She explained that she thought the incident occurred outside of the seven year period. (Tr. p. 23).

Question 22, of the same security clearance application asked the Applicant (1) if she has ever been fired from a job, (2) quit a job after being told she'd be fired, (3) left a job by mutual agreement following allegations of misconduct, (4) left a job by mutual agreement following allegations of unsatisfactory performance, (5) left a job for other reason under unfavorable circumstances. The Applicant answered, "NO." This was a false answer. The Applicant failed to list the fact that she was terminated from her employment at Kids-R-Us on or about December 21, 1994 for Theft of Personal Property. She thought the incident occurred outside of the seven year period. There is also information that the Applicant was terminated from Kinko's. The Applicant contends that she was never actually terminated from Kinko's. She was accused of stealing copies, but she asserts that she never did. She quit the job before the matter was investigated. (Tr. pp. 24-25).

I find that the Applicant did not intentionally conceal this information from the Government on her security clearance application. She credibly testified that when she filled out the security clearance application she believed that her arrest in 1994, occurred outside of the seven years that she believed she was required to disclose.

### Mitigation.

Letters from the Applicant's supervisor, coworkers and friends all attest to the Applicant's high level of integrity, dependability and honesty. The Applicant is noted for her wonderful personality, exemplary values, respectfulness and fortitude. Her performance on the job is outstanding. She is hard working, conscientious and ambitious. She takes great

pride in her work and always conducts herself in a professional manner. (See Applicant's Exhibits A, B,C and D).

## POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline E (Personal Conduct)

#### Condition that could raise a security concern:

None.

#### Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing 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 determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted

upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in instances of dishonesty which demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant failed to list material facts on her security clearance application (Guideline E). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

I observed the Applicant's demeanor and evaluated her credibility. With respect to the Applicant's failure to list her 1994 arrest and related job termination on her security clearance application, she stated that she mistakenly assumed that they occurred over seven years ago, and/or because she was not arrested by the police, but was subject to a citizens arrest was not sure if the arrest qualified as something she was required to list. Furthermore, she had never completed a security clearance application before and did not take the time to research the arrest and determine exactly when it occurred. I do not find that she intentionally tried to conceal this information from the Government. I find that she was simply careless and unsophisticated when she filled out the application. To corroborate her testimony, during her interview with the Defense Security Service, the Applicant told the agent about what happened to her while she worked at Kids-R-U's but she could not remember when the incident happened or all of the details. She explained that she was only issued a citation. She was never arrested by the police or taken to the police station. (*See* Government Exhibit 3). Hopefully she has learned that she must be as accurate and as honest as possible in the future when she completes this document.

It is important for the Applicant to know that the Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of his personal background. In this instance, the Applicant did not intentionally conceal this derogatory information concerning her arrest and employment history from the Government. It was obviously a careless mistake. In this case, the Applicant has demonstrated that she is trustworthy, and does meet the eligibility requirements for access to classified information. Accordingly, I find for the Applicant under Guideline E (Personal Conduct).

On balance, it is concluded that the Applicant has overcome the Government's case opposing her request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge