

DATE: February 15, 2005

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-31315

**DECISION OF ADMINISTRATIVE JUDGE**

**CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, age 30, lied on applications for security clearances submitted to two employers, by falsifying his educational background, and by omitting two convictions for theft. He also used a company credit card for personal purposes. Applicant submitted a sworn statement but failed to mitigate security concerns under Guideline E (Personal Conduct). Clearance is denied.

**STATEMENT OF THE CASE**

On March 26, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant alleging facts which raise security concerns under Guideline E (Personal Conduct). The SOR detailed reasons why DOHA could not find that it is clearly in the national interest to grant or continue a security clearance. [\(1\)](#)

In a sworn written statement, dated April 9, 2004, Applicant timely answered the SOR (Answer) and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's preliminary decision, a copy of which was received by Applicant on August 10, 2004. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by September 9, 2004. Applicant did not object to the FORM and did not submit anything further in his own behalf. The case was previously assigned to another administrative judge on November 1, 2004, but was reassigned to me on February 1, 2005, due to caseload considerations.

**FINDINGS OF FACT**

Applicant, age 30 has been a programmer/analyst for a federal contractor since September 2002. He has admitted 5 of the 6 factual allegations pertaining to personal conduct under Guideline E, as stated in the SOR. These admissions are incorporated herein as findings of fact. After a thorough review of the record as a whole, I make the following additional findings of fact:

Applicant falsified his resume submitted to a personnel services company where Applicant worked from June to September 1997, by stating that he had graduated from a major state university with honors, when, in fact he never completed degree requirements at any university.<sup>(2)</sup> He admitted he lied about his college degree to secure employment. On question 10, Questionnaire for National Security Positions (Standard Form 86), dated February 7, 1998, Where You Went To School, he listed attendance at a major state university from September 1992 until December 1995. He admitted he only attended until December 1994, and blamed the error on a secretary.<sup>(3)</sup> While a scrivener's error is possible, Applicant produced no corroborating statement from the secretary to explain the discrepancy and so the document speaks for itself. His attempt at avoiding responsibility is consistent with his other actions. On question 23 he failed to list two arrests in February 1995, one charge for theft, for which he was found guilty and sentenced to 27 days in jail; the other a charge for theft to which he entered a plea of guilty.<sup>(4)</sup> Applicant had an opportunity to correct this omission in a sworn statement dated July 21, 1999, given to a special agent of the Defense Security Service,<sup>(5)</sup> and in another security clearance application dated October 1, 2002,<sup>(6)</sup> but he failed to disclose the facts and again falsely answered an SF 86.

In December 2000, Applicant used his employer's credit card and charged personal expenditures to this card, knowing that the card was only for business purposes. In November 2002, he made arrangements to repay the debt and it was eventually paid by October 10, 2003.<sup>(7)</sup>

### **POLICIES**

The Directive sets forth adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information.<sup>(8)</sup> The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in ¶ 6.3 of the Directive, i.e., the nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

Under Guideline E, security concerns arise when an individual does not complete required security forms in a truthful manner or deliberately conceals or falsifies information on a personal history statement that presents a false picture to an employer about an Applicant's background, and that is calculated to secure employment.

Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under guideline E (personal conduct), Directive, ¶ E2.A5.1.1. *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.*

### **BURDEN OF PROOF**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>(9)</sup> for an Applicant to either receive or continue to have access to classified information. The government bears an initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a prima facie case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.<sup>(10)</sup>

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government. [\(11\)](#)

### CONCLUSIONS

The Government has established its case under Guideline E because Applicant falsified resumes and answers on national security questionnaires. Security concerns arise when an individual does not complete required security forms in a truthful manner that presents a false picture to an employer about Applicant's background, and that is calculated to secure employment. The following Guideline E disqualifying conditions apply. Directive, ¶ E2.A5.1.1.2. *Refusal to provide truthful answers to lawful questions in connection with a personnel security determination*; ¶ E2.A5.1.2.2. *The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire or personal history statement used to conduct investigations, determine employment qualifications, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*; and ¶ E2.A5.1.2.5. *A pattern of dishonesty*.

The dispositive issue is whether, in light of the foregoing, Applicant's conduct and history of repeatedly providing false or misleading answers on national security questionnaires and personal histories given to employers indicates that he is a person who would properly safeguard classified information. Applicant has admitted to five disqualifying actions. The sixth, SOR ¶1.b., I find against Applicant because it is consistent with his giving false answers on security applications. I find no mitigating conditions that apply. Directive, ¶ E2.A5.1.3.2., *The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*. Applicant provided no evidence that the false answers were isolated incidents. He had at least 3 opportunities to voluntarily provide correct information in 2 security clearance applications and in his sworn statement, [\(12\)](#) but did not. In his answer Applicant attributes his false answers to "poor judgment." A person who demonstrates poor judgment should not be entrusted with classified material. In analyzing Directive ¶ E2.A5.1.3.3., *The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.*, Applicant apparently told the truth only after the government made another investigation of his security clearance application in 2002. Only after the loss of his security clearance became a possibility did Applicant provide truthful answers. His pattern of knowing and willful conduct in providing false answers to security questionnaires, false education claims, and dishonesty with his employer's credit card demonstrates that he cannot be trusted to properly safeguard classified information.

I have carefully weighed the evidence. And I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive ¶ 6.3, as called for by a fair and commonsense assessment of the record before me as required by Directive ¶ E2.2.3. These facts raise reasonable doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one whom the government entrusts its interests. Absent substantial information to resolve those doubts, which Applicant failed to provide, I conclude it is not clearly consistent with the national interest to grant or continue Applicant's security clearance.

### FORMAL FINDINGS

Formal Findings for each SOR allegation required by Directive ¶ E3.1.25 are 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

### **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. Clearance is denied.

Christopher Graham

Administrative Judge

1. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.

2. Item 3 (*Answer dated April 9, 2004*) at 1.

3. *Id.*, at 1.

4. Item 4 (Security Clearance Application dated February 2, 1998) at 2.

5.

0Item 7 (*Applicant's sworn statement dated July 21, 1999*) at 1-9.

6.

0Item 5 (*Security clearance application dated October 1, 2002*) at 9-10.

7.

0Item 3, noted *supra*, at 2 and 4.

8Directive, Enclosure 2.

8.

9.

0 See *Department of the Navy v. Egan*, 484 U.S. 518 (1998).

10.

0See *Egan*, 484 U.S. at 528,531.

11. See *Egan*; Directive ¶ E2.2.2.

12. Items 4, *supra*, at 7-8; 5, *supra*, at 10-11; and 7, *supra*, at 1-9.