

DATE: January 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-15066

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Francisco Mendez, Esq., Department Counsel

Katherine A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant falsified her security clearance application by failing to report a tax lien against her property, an unpaid judgment, several debts that were over 180 days delinquent, and an arrest and conviction for bank fraud. Applicant submits no credible evidence to mitigate her falsification. 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 April 18, 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ 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 May 20, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on August 13, 2003. On September 17, 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. At the hearing, Department Counsel moved to amend subparagraph 1.d. of the SOR to show that Applicant had answered 'no' to Question 26 and not Question 21 on her security clearance application (SF-86). Applicant concurred in the proposed amendment and admitted a misdemeanor arrest and conviction and not a felony arrest and conviction. (Transcript 19-23.) Accordingly, I granted Department Counsel's motion. DOHA received the transcript (Tr.) of the proceeding on September 25, 2003.

FINDINGS OF FACT

The SOR in this case contains 8 allegations of disqualifying conduct under Guideline E, Personal Conduct. All 8 allegations related to the falsification of material facts on Applicant's SF-86, which she filed on May 23, 2001.

In her answer to the SOR, Applicant admitted answering Question 36 on the SF-86 incorrectly. Question 36 reads as follows: "Your Financial Record - Tax Lien. In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts?" Applicant answered "no" to Question 36. In her answer, she admitted the existence of a state tax lien, as alleged in SOR subparagraph 1.a., but denied she knew about it when she filed her SF-86. ⁽³⁾

In her answer, Applicant also admitted answering Question 37 incorrectly. Question 37 on the SF-86 reads as follows: "Your Financial Record - Unpaid Judgments. In the last 7 years, have you had any judgments against you that have not been paid?" Applicant answered "no" to Question 37. Applicant admitted she knew of the judgment but stated she was not aware that it was listed on her credit report.

Applicant's answer also acknowledged that her response to Question 38 on the SF-86 was not truthful. Question 38 on the SF-86 reads as follows: "Your Financial Delinquencies - 180 Days. In the last 7 years, have you been over 180 days delinquent on any debts?" Applicant answered "no" to Question 38. She admitted that she failed to list 3 debts that she knew were over 180 days delinquent in response to Question 38. She also admitted a fourth debt in the amount of \$8,835, relating to the repossession of an automobile, which she knew to be over 180 days overdue when she answered Question 38.

In her answer, Applicant denied answering Question 21 on her SF-86 incorrectly. Question 21 reads as follows:

Your Police Record - Felony Offenses

Have you been charged with or convicted of any felony offenses?

(Include those under the Uniform Code of Military Justice.) 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 answered "no" to Question 21. In her answer, she explained that she had been arrested, convicted, and fined for bank fraud, a misdemeanor crime. At her hearing, Applicant admitted being convicted of the misdemeanor crime in 1995 and also admitted that she had not responded truthfully to Question 26 on the SF-86, which required an applicant to list any arrests for offenses committed in the last 7 years which were not identified in responses to Questions 21, 22, 23, 24, or 25 on the SF-86. Without objection, I granted Department Counsel's request to amend the SOR to show Applicant's falsification of her response to Question 26 and not to Question 21. Applicant's admissions are incorporated herein as findings of fact.

Applicant is 33 years old and has been employed for three years as a program management specialist by a government contractor. She is the single mother of one child. Her financial difficulties date back to the early 1990s. (Ex. 2, at 1-3.) She attributes her financial problems to her failure to realize the importance of maintaining good credit (Ex. 2, at 5.) In an attempt to cure her financial problems, she filed for Chapter 7 bankruptcy on November 19, 2001. (Ex. 2, at 1.) She stated that the bankruptcy court granted her petition in bankruptcy and fully discharged her debts in January 2002. ⁽⁴⁾

Applicant admitted providing untruthful answers on her SF-86, but she denied untruthful intent. She said she regretted her past behavior, and she stated she did not know at the time she filed her security clearance application how important it was to answer the questions on the form fully and truthfully. (Tr. 84-86.) She stated that she had matured and had become a trustworthy person. (Tr. 87.)

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 and mitigating conditions 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

Guideline E-Personal Conduct

Under Guideline E, Personal Conduct, the SOR, as amended, alleges that Applicant falsified material facts in her security clearance application by answering "no" to Questions 36, 37, 38, and 26 on her SF-86, thereby deliberately failing to disclose a tax lien (1.a.), an unsatisfied judgment (1.b.), financial delinquencies of over 180 days (1.c.), 1.c(1), 1.c(2), 1.c(3), and 1.c(4), and an arrest, conviction, and fine for bank fraud (1.d.). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

When an applicant deliberately omits, conceals, or falsifies material facts on a personal security questionnaire, this raises a security concern and may be disqualifying. ¶ E2.A5.1.2.2. The security concern resulting from lack of candor or truthfulness in answering the questions on an SF-86 can be mitigated if the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts. ¶ E2.A5.1.3.3.

Applicant provided negative answers to Questions 36, 37, 38, and 26 when she completed and signed her SF-86 in May 2001. In her answer to the SOR and in her testimony at her hearing, Applicant admitted falsifying her responses to the questions. I find her falsifications to be deliberate.

With respect to Applicant's Guideline E conduct, the Government has established its case. Applicant's failure to answer Questions 36, 37, 38, and 26 on her SF-86 completely, truthfully, and correctly raises a security concern under ¶ E2.A5.1.2.2 of Guideline E. The record shows that the falsifications were not isolated incidents and occurred in recent time. When confronted with the facts, Applicant voluntarily supplied correct information to an agent of the Defense Security Service. However, she did not make a prompt good faith effort to correct the falsifications before being confronted with the facts. Thus, mitigating condition E2.A5.1.3.3 is inapplicable to the facts of her case. Accordingly, all Guideline E allegations in 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.c(1): Against Applicant

Subparagraph 1.c(2): Against Applicant

Subparagraph 1.c(3): Against Applicant

Subparagraph 1.c(4): Against Applicant

Subparagraph 1.d.: 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. Applicant testified that the State tax lien had been released before she filed her SF-86 (Tr. 28.), and this was corroborated by her Exhibit B, showing the date of the release as February 27, 2001. However, Question 36 did not inquire whether a lien had been satisfied, but whether it had been placed on an applicant's property within the previous 7 years.
4. Applicant presented no documentation regarding her bankruptcy filing and eventual discharge. (Tr. 55-56.)