

DATE: September 1, 2004

In Re:

SSN: -----

Applicant for Trustworthiness Determination

ADP Case No. 02-16193

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant failed to mitigate a non-judicial punishment for wrongful possession of a government computer that occurred 13 years ago and a deliberate falsification on an employment application 11 years ago by repeating that falsification on his pending application for a trustworthiness determination. His deliberate falsification of having earned a bachelor of science degree when he never attended college is conduct that demonstrates that he is not suitable for a trustworthiness determination. Eligibility is denied.

STATEMENT OF THE CASE

On July 1, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order,⁽¹⁾ Department of Defense (DOD) Regulation,⁽²⁾ and DOD Directive,⁽³⁾ issued a Statement of Reasons (SOR) to Applicant. The SOR details security concerns under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him a sensitive information systems position and recommends that his case be submitted to an Administrative Judge.

On August 5, 2003, responded to the SOR and requested a decision on the written record in lieu of a hearing. The Applicant received the File of Relevant aterial (FORM), containing four documents, on December 9, 2003. On December 22, 2003, he submitted a response to the FORM. This case was assigned to me on January 16, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact:

Applicant is a 51-year-old system administrator employed by a U.S. defense contractor. He is seeking a sensitive information systems position.

While serving in the United States Air Force on or about March 1991, Applicant was found to be in possession of a government computer. He received non-judicial punishment that included a forfeiture of his pay in the amount of \$900.00 (SOR ¶ 2.a).

On or about August 1993, Applicant applied for his current position. In his employment application, he falsely represented that he had attended the University of Georgia. In fact, Applicant has never attended the University of Georgia (SOR ¶ 1.a).

On November 1, 1999, Applicant completed a Questionnaire for Non-Sensitive Positions (SF 85). In response to question 9 ("where you went to school"), he falsely stated that he had attended the University of Georgia from June 1991-June 1998 and that he had received a bachelor of science degree from that university (SOR ¶ 1.b).

On July 6, 2000, Applicant provided a sworn statement to a Defense Security Service (DSS) investigator. He admitted he lied on both his employment application and on his SF 85 when he stated he had attended and received a degree from the University of Georgia (SOR ¶ 1.a and b).

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines includes the consideration 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 decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline E: Personal Conduct

The concern under Guideline E is 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. Conditions that could raise a security concern and may be disqualifying under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 covers 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.

Conditions that could mitigate security concerns include E2.A5.1.3.2 (Mitigating Condition 2). Mitigating Condition 2 applies when the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily.

Guideline J: Criminal Conduct

The concern under Guideline J is a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. Conditions that could raise a security concern and may be disqualifying under Guideline J include E2.A10.1.2.1, allegations or admission of criminal conduct, regardless of whether the person was formally charged (Disqualifying Condition 1).

Conditions that could mitigate security concerns include E2.A10.1.3.1, the criminal behavior was not recent (Mitigating Condition 1). They also include E2.A10.1.3.2, the crime was an isolated incident (Mitigating Condition 2).

CONCLUSIONS

Guideline E: Personal Conduct

Applicant not only deliberately falsified his employment application but he repeated that lie more than six years later when he submitted his application for a sensitive information systems position. This establishes Disqualifying Condition 1.

Applicant did not admit to his falsifications until being confronted with the facts by the DSS investigator. In his statement to the DSS investigator, Applicant defends his falsification on the employment application because he had the equivalent experience to qualify for the job. He claims he listed a college degree "to make it impossible for me not to be interviewed." Applicant defends repeating that falsification on his SF 85 because his boss ensured he did not skip the education part of the form. Apparently, the thought never occurred to Applicant this was an opportunity to come clean and not commit another falsification. He had more than six years to prove he was qualified for the job despite he had no college degree. Moreover, this would have mitigated his original falsification. It would have isolated the original falsification, which he committed six years earlier, and Applicant would have been providing correct information voluntarily. Instead Applicant chose to commit another falsification. The effect is neither of his falsifications have been mitigated. Applicant's conduct demonstrates he is not suitable for a trustworthiness determination. Based on the record, I find against Applicant with regard to Guideline E.

Guideline J: Criminal Conduct

Applicant's non-judicial punishment in 1991 evidences criminal conduct that raises Disqualifying Condition 1. Were that his only offense, it would be mitigated under Mitigating Condition 1 because it is not recent. If it were his only offense, it would also be mitigated under Mitigating Condition 2 because it would be an isolated incident. However, Applicant undermined his position by his deliberate falsification on his SF 85. This evidences further criminal conduct that is recent and violates 18 U.S.C. 1001. His combined criminal acts establish Disqualifying Condition 1 and are not mitigated. Consequently, I find against Applicant with regard to Guideline J.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

DECISION

In light of the evidence of record in this case, it is not clearly consistent with the national interest to make or continue a

determination of trustworthiness, suitability and eligibility for Applicant to hold a sensitive information systems position.

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5200.2-R, *DoD Personnel Security Program*, dated January 1987.
3. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program (Directive)*, dated January 2, 1992, as amended and modified.