

DATE: September 17, 2003

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-19896

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Marc Curry, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant deliberately falsified his security clearance application by claiming he had never been arrested or charged with any offense related to drugs. 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 25 March 2003, DOHA issued a Statement of Reasons (SOR) under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive<sup>(2)</sup> detailing the basis for its decision—failure to meet the personal conduct (Guideline E) personnel security guideline of the Directive. Applicant answered the SOR in writing on 23 April 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 14 July 2003. On 20 August 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. DOHA received the transcript (Tr.) of the proceeding on 27 August 2003.

### **FINDINGS OF FACT**

Applicant is 40 years old. Tr. 9; Ex. 1 at 1. He served in the U.S. Navy from 1987-95. Tr. 10; Ex. 1 at 6. In 1994, while he was still on active duty with the Navy, Applicant was arrested and charged with possession of drug paraphernalia by the Naval Criminal Investigative Service. Ex. 2 at 2. Applicant was offered nonjudicial punishment for this offense under Article 15, Uniform Code of Military Justice (UCMJ) (10 U.S.C. § 815). Applicant demanded trial by court-martial. At the court-martial, the charge was dismissed. Ex. 2 at 2.

On 26 March 2002, Applicant completed a security clearance application. Question 24 asked Applicant if he had ever been charged with or convicted of any offenses related to alcohol or drugs. He answered, "no." Ex. 1 at 7.

### **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 falsified his SCA by failing to acknowledge that he had been charged with a drug-related offense. Under Guideline E, 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. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence that Applicant failed to correctly answer question 24 on his SCA. The question is whether those omissions were deliberate falsifications.

In a signed, sworn statement to a Defense Security Service agent, Applicant attributed his omission of his arrest from his SCA to the fact that it was ultimately dismissed. Ex. 2 at 2. During the hearing, Applicant asserted that he thought he only had to provide information from the last seven years. He suggested that his belief was not unreasonable because question 25 asked Applicant if, in the previous seven years, he had been subject to court-martial or other disciplinary proceedings under the UCMJ. Ex. 1 at 7. After listening to his presentation and observing his demeanor, Applicant did not convince me that his failure to accurately answer question 24 was not a deliberate omission of a relevant and material fact. DC 2. None of the mitigating conditions listed under Guideline E apply.

### FORMAL FINDINGS

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

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a.: 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.

**James A. Young**

**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.