

DATE: December 29, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-23073

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's contradictory explanations for falsifying material information about his educational background on an electronic security clearance application (ESCA) precludes a finding that he currently possesses the good judgment, reliability and trustworthiness required of individuals with access to classified information. Clearance is denied.

### **STATEMENT OF THE CASE**

On April 18, 2003, 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, issued a Statement of Reasons (SOR) to 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on May 6, 2003. The case was assigned to the undersigned on August 27, 2003. A Notice of Hearing was issued on September 19, 2003, and the hearing was held on October 7, 2003. The transcript was received on October 20, 2003.

### **FINDINGS OF FACT**

Applicant is a 58 year old employee of a defense contractor. He has worked in the defense industry since the 1970s.

When applicant applied for employment with his current employer in or about 1985, he filled out an employment application (Exhibit 2). On said application, he indicated that he had received a Bachelor of Science in Electrical Engineering (BSEE) from University A in June 1976. In fact, although applicant had taken courses at University A from 1972 to 1976, he had never received a Bachelor of Science degree of any type from University A, or from any other university. Applicant admits that he intentionally provided the false information, but doesn't know why he lied (TR at 53-54).

In February 2000, applicant completed an ESCA (Exhibit 1). In response to Question 5, applicant indicated that he had received a BSEE degree from University A on June 1, 1976. This information was false because, as noted above, applicant had never received any type of Bachelor of Science degree. Applicant has, in essence, provided three different descriptions of his state of mind at the time he responded to Question 5. First, in a signed, sworn statement that he gave to a Special Agent of the Defense Security Service (DSS) in April 2002, he stated without equivocation that he provided the false information intentionally. Second, in his response to the SOR, he stated he is not sure why he "marked the box incorrectly." He then speculated that maybe he "did not proof read the information in enough detail." This explanation is not credible since applicant did more than just mark a box incorrectly. In fact, he affirmatively represented the type of degree and the exact date that it was supposedly awarded. Third, at the hearing, he denied that he intentionally provided the false information, and denied that he was trying to mislead the Government. He testified that he was confused when filling out the ESCA because he "didn't really know how to put down the fact that (he) did not graduate" (TR at 24-25). This testimony were not credible. In the "Remarks" section of Question 5, applicant stated that his "school dates" were approximate and that the street address and zip code of University A are unknown. It is obvious that he easily could have added that he had never received a degree. Based on the foregoing, I find that applicant intentionally provided the false information on the ESCA.

Applicant testified that he told the DSS Special Agent about the false information on the ESCA before the agent confronted him with his falsification. This testimony was not credible.

Applicant completed an application for a reserve deputy position with the local Sheriff in late 2001 (Exhibits 3 and 4). On said application, applicant indicated that he had received a BSEE degree from University A in 1976. Applicant submitted the application with the false information to the Sheriff's Department, but withdrew it before it was acted upon.

Applicant's employer is aware of his "misrepresentation of his college degree" (Exhibits C and D).

## **POLICIES**

Enclosure 2 of the Directive sets forth Guidelines (divided into conditions that could raise security concerns and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Guidelines are applicable:

### **Personal Conduct**

#### Disqualifying Conditions

E2.A5.1.2.2: The deliberate omission of relevant and material facts from any personnel security questionnaire.

E2.A5.1.2.4: Concealment of information that increases an individual's vulnerability to coercion, exploitation, or duress.

#### **Mitigating Conditions**

E2.A5.1.3.5: The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation or duress.

### **Criminal Conduct**

#### Disqualifying Conditions

E2.A10.1.2.2: A single serious crime or multiple lesser offenses.

#### Mitigating Conditions

E2.A10.1.3.2: The crime was an isolated incident.

### **CONCLUSIONS**

Although applicant's falsification of his employment application and the Sheriff's Department application are serious matters, it is his intentional falsification of the ESCA which is most troubling.<sup>(1)</sup> The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts on a security clearance application, it is extremely difficult to conclude that he or she nevertheless possesses the good judgment, reliability and trustworthiness required of clearance holders.

In this case, I have considered the fact that applicant is an extremely intelligent individual who has spent decades working in the defense industry. Had applicant been honest and forthright at the hearing when testifying about his falsification of the ESCA, his positive contribution to the defense effort since the 1970s would have gone a long way toward mitigating his dishonesty. However, by offering different, contradictory explanations for providing the false information about his education on the ESCA, applicant has made it impossible to conclude that he currently possesses the good judgment, reliability and trustworthiness required of individuals with access to classified information. For this reason, Guidelines E and J are found against applicant.

### **FORMAL FINDINGS**

PARAGRAPH 1: AGAINST THE APPLICANT

PARAGRAPH 2: 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.

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Joseph Testan

Administrative Judge

1. Applicant's intentional falsification of the ESCA constitutes criminal conduct under 18 U.S.C. 1001.