

DATE: January 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23540

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was fired from a position as a security officer. After deliberately omitting this fact from his security clearance application, he again denied having ever been fired when he was interviewed by a DSS investigator over seven months later. Applicant has failed to mitigate these falsifications. He also failed to report another employment termination but it does not constitute further evidence of falsification. The record establishes that he voluntarily resigned from that position, rather than being transferred to an evening shift. Clearance is denied.

STATEMENT OF THE CASE

On August 26, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order (1) and Department of Defense Directive, (2) issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On September 16, 2003, Applicant responded to the SOR and requested a hearing. The case was assigned to me on December 1, 2003. A notice of hearing was issued on December 23, 2003 and the hearing was held on January 13, 2004. During the hearing, three Government (Govt) exhibits, three Applicant (Ap) exhibits, and the testimony of Applicant were received. The transcript (Tr) was received on January 21, 2004.

PROCEDURAL ISSUE

Department Counsel moved to withdraw the sole allegation against Applicant under Guideline F (SOR ¶ 1.a). (3) SOR ¶ 1.a addresses a \$2877.00 judgment obtained against Applicant in 1996. In his response to the SOR, Applicant submitted a copy of an order of satisfaction for the judgment. Applicant's submission establishes that he has satisfied the only delinquent debt alleged by the Government. Therefore, I grant Department Counsel's motion to withdraw SOR ¶ 1.a.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is a 39-year-old security officer who is employed by a defense contractor. He is seeking a security clearance.

Applicant held a full-time position as a campus police officer with a private university from October 1991 until August 2000. Rather than being transferred to an evening shift, Applicant chose to resign his position.

At the same time Applicant was employed by the university, he held a part-time position as a security officer with a law firm. In 2000, the law firm terminated his employment when he failed to respond to a door alarm. This was the second occasion on which he had failed to respond to such an alarm.

On December 23, 2000, Applicant executed a security clearance application (SF 86). In response to question 20, ⁽⁴⁾ Applicant answered, "no," and did not disclose that he had been fired by the law firm. ⁽⁵⁾

On July 25, 2001, Applicant told a Defense Security Service (DSS) investigator that he had no employment other than that listed on his SF 86. Applicant further stated that he had never been terminated from any employment. Applicant knew these statements to be false. ⁽⁶⁾

On October 19, 2001, Applicant admitted to the same DSS investigator that his above statements to the investigator on July 25, 2001 were not true. ⁽⁷⁾

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish controverted facts in the SOR. 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 also 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 guideline is applicable to this case.

Guideline E, Personal Conduct, concerns 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 addresses 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.

Disqualifying conditions under Guideline E also include E2.A5.1.2.3 (Disqualifying Condition 3) and E2.A5.1.2.4 (Disqualifying Condition 4). Disqualifying Condition 3 concerns deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination. Disqualifying Condition 4 addresses personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation, or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail.

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

CONCLUSIONS

Although Applicant told a DSS investigator that he was "forced to resign" his security position with a university, his employment record states that he left "voluntarily." The record reveals that he chose to resign rather than transfer to the evening shift. Applicant testified he did so because a doctor had advised him against working an evening shift because he suffered from narcolepsy. The record fails to establish a disqualifying condition under Guideline E. Accordingly, I find in favor of Applicant with regard to SOR ¶ 2.a.

Applicant admits that he lied on his SF 86 when he failed to disclose that he had been fired from a job. This substantiates the applicability of Disqualifying Condition 2.

Applicant asserts that his termination was not justified because he was not aware or notified of the alarms to which he failed to respond and which lead to his termination. However, the reliability of Applicant's assertion is in question due to his admitted false statements on his SF 86 and to the DSS investigator. Applicant admitted it was a second instance of failing to respond to an alarm that resulted in his termination. Based on the record, there is not a sufficient basis for concluding that Applicant's termination was unwarranted. Certainly an employment termination based on unreliability is relevant and material to a determination of an applicant's security worthiness. Moreover, even if his termination was not justified, it would not excuse his deliberate omission of the fact he had been terminated.

In his response to the SOR, Applicant contends that he failed to include his employment by a law firm because he was not aware of the requirement to report part-time positions. This is not consistent with his earlier admission to the DSS investigator. Moreover, question 11 on his hand-written SF 86 clearly states the requirement to include "part-time work." Furthermore, even if he inadvertently failed to include security position with the law firm in response to question 11, it fails to justify his failure to report his termination in response to question 22. That question does not reference or limit the required response to the employment history that is provided in response to question 11.

In his testimony, Applicant claims that he failed to report his termination by a law firm because he was embarrassed. Not only does this fail to mitigate his falsification but it is evidence that actually supports Disqualifying Condition 4. ISCR Case No. 99-0557 (July 10, 2000) at 3.

Applicant argues that his falsification on the SF 86 was an isolated incident. This argument ignores his further admission that he lied to a DSS investigator over seven months after submitting his SF 86, when he denied that he had ever been terminated from any employment. In addition to establishing Disqualifying Condition 3, Applicant's admission refutes the argument that his falsification on the SF 86 was an isolated incident. Moreover, Mitigating Condition 2 requires more than that a falsification be an isolated incident. It also must not be recent and the applicant must voluntarily provide correct information. In this case, Applicant's falsifications are recent since he made them with regard to the application for a security clearance that is in issue in this case. In addition, he never admitted his falsification until he was confronted with the results of the agent's investigation during a second interview. Applicant has apologized for lying and may sincerely regret his actions but this fails to mitigate his false statements. I find against Applicant with regard to SOR ¶ 2.b, and 2.c, and 2d.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: WITHDRAWN

Subparagraph 1.a: Withdrawn

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Subparagraph 2.d: Against Applicant

DECISION

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant

Signed

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 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. Tr 9.
4. "Has any of the following happened to you in the last 10 years? -Fired from a job -Quit a job after being told you'd be fired -Left a job by mutual agreement following allegations of misconduct -Left a job by mutual agreement following allegations of unsatisfactory performance -Left a job for other reason under unfavorable circumstances"
5. Govt Ex 2 at 7.
6. Govt Ex 3 at 3.
7. *Id.*