

KEYWORD: Personal Conduct

DIGEST: Applicant did not falsify his answer to question 20 on his SF 86 by not disclosing his previous employer removed him from a project because of emotional outbursts at members of his team. After mental health treatment, Applicant returned to work on another project for the same employer and voluntarily left his employment shortly afterwards to accept a position with his current employer. Applicant's answer to question 19 on the same SF 86 demonstrates that he was not attempting to conceal the information. He disclosed his mental health treatment as a result of the removal and provided a medical release. Applicant's treatment has eliminated the behavior that lead to his removal and he is a highly regarded and respected employee. Clearance is granted.

CASE NO: 02-24065.h1

DATE: 06/30/2004

DATE: June 30, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-24065

**DECISION OF ADMINISTRATIVE JUDGE  
ROGER E. WILLMETH**

**APPEARANCES**

**FOR GOVERNMENT**

Stephanie C. Hess, Department Counsel

**FOR APPLICANT**

Joseph V. Kaplan, Esq.

**SYNOPSIS**

Applicant did not falsify his answer to question 20 on his SF 86 by not disclosing his previous employer removed him from a project because of emotional outbursts at members of his team. After mental health treatment, Applicant returned to work on another project for the same employer and voluntarily left his employment shortly afterwards to accept a position with his current employer. Applicant's answer to question 19 on the same SF 86 demonstrates that he was not attempting to conceal the information. He disclosed his mental health treatment as a result of the removal and provided a medical release. Applicant's treatment has eliminated the behavior that lead to his removal and he is a highly regarded and respected employee. Clearance is granted.

**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 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 October 2, 2003, Applicant submitted a response to the SOR and requested a hearing. The case was assigned to me on January 22, 2004. A notice of hearing was issued on April 2, 2004 and the hearing was scheduled for May 7, 2004. For good cause shown, the hearing was postponed and held on June 16, 2004. During the hearing, two Government exhibits (Govt Ex), four Applicant exhibits (Ap Ex), and the testimony of one Government witness and three Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on June 29, 2004.

**FINDINGS OF FACT**

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

Applicant is a 62-year-old project manager employed by a defense contractor. He is seeking a security clearance.

Applicant was a systems analyst with his previous employer. In June 1998, he was the technical lead for software development on a company project at a federal department. Frequently, Applicant became upset and yelled at other members of his team. On June 10, he met with his supervisor and three of the team members to discuss the situation and try to resolve it. Later that same day, Applicant met with his supervisor. His supervisor informed Applicant that he was removing him from the project and having him assigned to another project. The next day, Applicant was removed from the project. Two days later, he was placed on administrative and/or sick leave and advised to seek medical assistance.

Applicant consulted with his primary care provider, who prescribed Paxil and referred Applicant to a psychiatrist. His psychiatrist determined that Applicant's condition was the result of moderate depression, lack of adequate sleep, and the pressures of his job. He prescribed Zyprexa in addition to Paxil. Applicant continues to take both medications on a daily basis and consults his psychiatrist on a regular basis. Since undergoing treatment, he has not engaged in the type of behavior that lead to his removal from the project.

On August 12, 1998, Applicant returned to work for his former employer on another project at the same federal department where he had worked on his previous project. The government manager had requested that Applicant be assigned to the project.

That same month, Applicant notified his employer that he would be leaving the company to accept his position with his current employer. His previous employer accepted his resignation but permitted him to continue to work on the project through September 30. Applicant joined his current employer on October 1, 1998.

On May 23, 2000, Applicant executed a security clearance application (SF 86). In response to initial part of question 19, (3) he answered, "yes," and provided the name and address of his psychiatrist and another therapist. In response to the second part of question 19, (4) Applicant answered, "no." In response to question 20, (5) Applicant answered, "no" (SOR ¶ 1.a). In addition, Applicant signed the authorization for release of medical information included with the SF 86.

During the course of investigating Applicant, a special agent for the Defense Security Service (DSS) obtained information concerning the events in June 1998. On April 18, 2001, he interviewed Applicant and confronted him with those events. Applicant provided a sworn statement in which he related the circumstances that lead to leaving his previous employer. After being informed by the special agent that he should have provided that information in response to question 20 on his SF 86, Applicant also acknowledged that he should have done so.

Applicant is currently assigned by his employer as the project manager for the same project on which he worked for his last employer. Applicant's

character and work performance for the company for which he works are highly regarded by both the company president and the vice president to whom Applicant directly reports.

### 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 guideline is 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.

### CONCLUSIONS

The Government alleges Applicant falsified material facts in response to question 20 of his SF 86 by not disclosing his removal from a project by his former employer. Question 20 requires an applicant to disclose any of the following events within 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." The key term is "job."

Applicant testified he did not provide the information in response to question 20 because he interpreted the use of "job" as synonymous with employer. Because none of conditions related to his overall employment, he answered, "no." Although contending that Applicant should have disclosed the information in response to question 20, the Government does not appear to be arguing a different interpretation of "job." In fact, when asked if he interpreted the word "job" in question 20 to mean specific projects assigned by an employer, the DSS special agent answered: "No. I referred to it as the employer, the job meaning employer."<sup>(6)</sup>

Actually, "job" is susceptible to being interpreted with either meaning. It can refer to a "task" or "a regular remunerative position."<sup>(7)</sup> However, it appears more likely to associate the term with one's overall employment rather than a particular project or assignment. Under the circumstances, Applicant's interpretation of the term in responding to question 20 is reasonable.

Department Counsel argues Applicant should have disclosed this information before being confronted with it by the special agent. But that is not what the SOR alleges nor does the record establish that Applicant lied to the investigator. The fact the special agent's investigation revealed this information, which is pertinent to a determination of Applicant's fitness for a security clearance, does not ipso facto establish that Applicant acted improperly by not disclosing it in response to question 20. Moreover, Applicant did disclose information on his SF 86 pertaining to the events in 1998.

Applicant's response to question 19 on the same SF 86 demonstrates that he was not trying to conceal the information. He admitted he had consulted mental health professionals and provided the name and address of the psychiatrist who has treated him since the events in June 1998 as well as that of another therapist involved in the same treatment. He further indicated the consultation went beyond marital, family, or grief counseling.<sup>(8)</sup> Applicant also executed the release that would enable the Government to obtain information from these mental health professionals concerning his condition and treatment. The DSS special agent, who investigate Applicant, confirmed that Applicant's response to question 19 would result in DSS pursuing medical interviews. Based on Applicant's response to question 19 and his medical release, he would have reasonably expected the Government to obtain information pertaining to the events in 1998.

The record fails to establish that Applicant falsified material facts on SF 86. In addition, it does not raise any other security concern because the evidence establishes that Applicant's treatment and medication have eliminated the

behavior that caused his previous employer to remove him from a project. I find in favor of Applicant.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline E: FOR APPLICANT

Subparagraph 1.a: For Applicant

### **DECISION**

In light of the evidence of record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

*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. "In the last 7 years, have you consulted a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition?"
4. "Did the mental health related consultation(s) involve only marital, family, or grief counseling not related to violence by you?"
5. "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"

6. Tr 34-35.

7. *Merriam-Webster's Collegiate Dictionary* (10<sup>th</sup> ed., Merriam-Webster, 2002) at p. 629.

8. Applicant also noted that he was on extended sick leave during this period by separately listing it under "employment activities" in response to question 6.