

DATE: March 19, 2007

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-19701

## DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

### APPEARANCES

#### FOR GOVERNMENT

Daniel Crowley, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant was not candid in completing his security clearance application and failed to include criminal charges and to list his first marriage and information about his first wife. In communications with employers, he misrepresented his higher education record. He was admonished by an employer for sending an unsolicited and sexually suggestive communication to another employee, and he denied this conduct in interviews with authorized investigators. His conduct as a consultant for a defense contractor violated his employer's service agreement with the defense contractor. Applicant's conduct raised security concerns under Guideline E, Personal Conduct, of the Directive. He provided no credible explanations for his falsifications, omissions, and failure to comply with his employers' rules and regulations. 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 February 17, 2006, under the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision—security concerns raised under Guideline E (Personal Conduct) of the Directive. Applicant requested a hearing before an administrative judge and filed an answer to the SOR on April 6, 2006. On July 12, 2006, the case was assigned to me. I convened a hearing on November 15, 2006 to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Because the hearing could not be completed on November 15, it was continued. The hearing was resumed and completed on November 17, 2006. The Government called no witnesses, introduced 23 exhibits, and offered two documents containing facts for administrative notice. The Government's exhibits were identified as Ex. 1 through 23. The documents containing facts offered by the Government for administrative notice were designated Ex. I and Ex II. Applicant testified on his own behalf and called one additional witness. Applicant introduced 24 exhibits, which were identified as Ex. A, B, and F through BB, and he introduced three documents, identified as Ex. C, D, and E, containing facts for administrative notice. The Government's exhibits and Applicant's exhibits were admitted into evidence without objection. The Government's documents containing facts for administrative notice and Applicant's documents

containing facts for administrative notice were admitted without objection.

On December 5, 2006, DOHA received the transcript for the November 15, 2006 hearing (Tr. I). On December 8, 2006, DOHA received the transcript of the November 17, 2007 proceeding (Tr. II). By letter dated January 29, 2007, Applicant advised that the mailing address specified for him on the transcripts was not correct and he supplied a correct address.

### FINDINGS OF FACT

The SOR contains twelve allegations of disqualifying conduct under Guideline E, Personal Conduct, of the Directive. In his answer to the SOR, Applicant admitted the allegation at ¶ 1.a., that in ay 1984 he was charged with and found guilty of attempted larceny, a misdemeanor, and the allegation at ¶ 1.h., that, in November 2000, as an employee of a government contractor, he delivered an anonymous, unsolicited, and sexually suggestive letter to a co-worker's mailbox. He denied the remaining ten allegations in the SOR and noted mitigating circumstances. Applicant's admissions are included herein as findings of fact.

Applicant is 42 years old. Since 2002, he has been employed as a senior subcontract manager by a defense contractor. Prior to taking his current position, Applicant was employed for approximately 18 years in procurement, subcontract management, inventory control, and shipping and receiving. He has worked as a direct employee and as a consultant. (Ex. 1, 2, 3, 5.)

#### **Applicant's Academic Record**

After graduating from high school, Applicant enrolled in a community college. He signed up to take four courses in the winter of 1985, but he withdrew and did not complete the courses.<sup>(3)</sup> Applicant renewed his academic studies at the community college in the Spring of 1992.

In December 1998, Applicant submitted a resume to an employer in a format that falsely stated he had been awarded an associate degree in business management in December 1993 from the community college and was "currently pursuing studies in Business Administration" at a State university. Under the education section of his resume, Applicant identified his high school and listed the month and date of his graduation. He then listed the name of the community college, "December 1993," and "Associates Degree in Business Management." (Ex. 5 at 2.) Applicant's academic record from the community college shows that as of December 1998 he had earned 22 credit hours toward his associate's degree. His academic record from the community college further shows he earned three academic credits in the Spring of 1994 and did not earn any additional academic credits until the Spring of 1999. (Ex. F.)

In April 2000, Applicant sent a resume and a cover letter to a prospective employer. In his cover letter Applicant stated: "I continue to pursue a Bachelors Degree in Individualized Studies with an emphasis on Contracting at [State University] in which I currently maintain a near 4.0 GPA." (Ex. 6.) Applicant's academic record from the community college, where he was pursuing his associate's degree in April 2000, does not show he had taken or was taking any courses specifically identified as contracting courses.

In December 2002, the community college awarded him a degree of Associate of Applied Science, Magna Cum Laude, with a cumulative grade point average (GPA) of 3.54. He had earned a total of 72 credit hours. (Ex. F at 6-10; Ex. 17.)

Applicant's goal was to be admitted to a program at a state university that would enable him to design academic studies for himself that complemented his professional experience. He learned he could transfer his community college credits to a program at the State university which provided opportunities for individualized study. In the Spring of 2003, Applicant was admitted to a bachelor of individualized study (BIS) program at a four-year State university.<sup>(4)</sup> In order to be admitted to the BIS program at the university, an applicant had to show successful completion of at least 30 semester hours of college credit and a 2.0 cumulative GPA. By August 2005, Applicant had earned 21 hours of credit toward his bachelor's degree in individualized studies at the State University and had a GPA of 3.29. (Ex. 17.)

In a signed, sworn statement to a DSS special agent on October 5, 2005, Applicant stated: "The only place I have

achieved a 4.0 grade point average was when I attended a [university satellite campus] . . . program that I completed in 2002. I did claim a "near" 4.0 average while attending [State university] in a letter to my former employer." (Ex. 18 at 1.) At his hearing, Applicant continued to argue that he did not misrepresent his academic record. (Ex. H; Ex. I ; Tr. I at 77-82.) I did not find him credible.

### **Applicant's Arrests and Criminal Charges**

In 1984, when he was 19 years old, Applicant and a companion were arrested and charged with attempted larceny. The charge was reduced to trespassing. On the advice of counsel, Applicant pled guilty and paid a fine of approximately \$100. Applicant has not communicated with the companion in over 20 years. (Answer to SOR at 1; Ex. 12; Tr. I at 73-74; Tr. II at 33.)

In 1989, when he was about 24 years old, Applicant and his girlfriend (later his wife) stole a television set he estimated to cost about \$250 from the department store where the girlfriend worked. They were arrested and charged with larceny. Applicant pled guilty to attempted petty larceny. He was fined and sentenced to 30 days work release. At the time of his arrest, Applicant learned his girlfriend had been fired from a previous job for stealing from her employer. (Answer to SOR at 1; Ex. 19 at 1; Tr. I at 74-77; Tr. II at 33-36.) In his answer to SOR allegation 1.b., Applicant denied he voluntarily and knowingly stole the television set. He has been divorced from his wife since 1998 and no longer has contact with her. The two events occurred 22 and 17 years ago. (Answer to SOR at 1.)

### **Applicant's Marriages**

In September 1991, Applicant married the girlfriend with whom he had stolen the television set. It was his first marriage. Applicant's grandmother, who suffered from dementia, lived with the couple from approximately 1994 to 1996, and Applicant was responsible for managing the grandmother's financial affairs. Applicant believed his wife was abusing his grandmother. (Ex. K; Tr. I at 95-98.)

In 1996, Applicant's wife filed for divorce and alleged physical abuse. (Ex.4 at 8-9.) In a signed, sworn statement to a special agent of the Defense Security Service (DSS) in October 2005, Applicant stated: 'I have never hit, kicked, or hit [his first wife] with any type of object. However, around the very first part of the time we lived together, we had a fight. She threw a magazine at me, and I threw it back. This is the only such incident I have had with any female.' (Ex. 18 at 2.)

Later, in two signed, sworn statements to DSS special agents, Applicant admitted he and his wife had physical altercations during the marriage on three occasions and that he "hit her four or five times with my closed fist in the stomach and back" in about 1996. The couple separated in 1996 and was divorced in 1998. (Ex. 19; Ex. 20; Tr. I at 95-99.)

Applicant married for a second time in 1999. He remains married to his second wife, who appeared as a witness at his hearing. (Ex. 1; Tr. II, 16-31.)

### **Applicant's Work for Defense Contractors**

From approximately November 1998 to May 2000, Applicant was employed by a company that supplied consultants to a defense contractor . His work as a consultant was at will, and in April 2000, Applicant was circulating his resume and looking for a permanent job. Toward the end of April, he decided to terminate his employment as a consultant to the defense contractor. He worked onday and Tuesday of the week of April 24 to 29. He did not work April 26, 27, 28, or 29. (Tr. II at 39-40; Ex. 7.) On Sunday, April 30, he went to his office at the defense contractor and downloaded and printed personal records and information belonging to the defense contractor. From the defense contractor's fax machine, he faxed his weekly time report to the consulting firm which employed him and paid his salary. The weekly time report, which he signed, showed he worked eight hours on each of the six days from April 24 to April 29. (5) Applicant cleaned out his desk and left the offices of the defense contractor. In a signed sworn statement dated November 30, 2005, Applicant claimed he did not intentionally submit a false time report. He also said he did not work any hours for his employer between April 24 and April 29. (Ex. 19 at 2.) In testimony, he claimed he worked two days, April 24 and 25. (Tr. I, 106-108.) I did not find him credible.

On Monday, May 1, 2000, Applicant called the procurement manager at the defense contractor and told him he had accepted a permanent position at another company and would no longer be working for him.<sup>(6)</sup> The procurement manager advised Applicant to call the consulting company that employed him and inform that company he was quitting. He also advised Applicant to return his badge, desk keys, and any confidential or proprietary data in his possession to the defense contractor. (Tr. II at 14-15; Ex. 8.)

By letter dated May 4, 2000, the contracts administrator at the defense contractor informed Applicant's consultancy employer that the defense contractor's records showed Applicant had printed 90 documents on Sunday morning, and that 52 of those documents could not be found and were presumed to be in Applicant's possession. The defense contractor claimed that many of those documents were corporate documents and were considered to be confidential. The defense contractor said it considered Applicant's actions to be serious and had reason to believe Applicant had gone to work for a competitor. It requested that the consultancy return Applicant's admissions badge, his desk keys, other contracting documents in Applicant's possession, all documents printed by Applicant, and all copies he made of the printed documents. (Ex. 8.) In a follow-up letter to the president of the consulting firm, dated May 11, 2000, the contracts administrator for the defense contractor referred to the responsibility of the consulting firm to ensure that all individuals it hired and sent to the defense contractor complied with the confidential information provisions of the service agreement between the defense contractor and the consultancy employer. The contracts administrator concluded that Applicant's conduct in using the defense contractor's information system networks to print personal documents and company documents for other than company business purposes on Sunday, April 30 violated the service agreement. He again requested that Applicant return all documents he printed on the defense contractor's information systems networks and, in addition, that Applicant execute and provide to the defense contractor a signed affidavit "which states that [Applicant] did not take any other [company] documentation and he does not have any [company] documentation in his possession and/or he has not transferred from his possession any [company] documentation obtained during his assignment on the [consulting] contract at [company]." (Ex. 9 at 1-2.)

On May 24, 2000, Applicant executed and signed the following affidavit:

I, [Applicant], have returned all documents that were mistakenly taken with my personal belongings from [defense contractor company's] facilities. I no longer have any [company] documentation in my possession and I have not, at any time, transferred from my possession any [company] documentation obtained during my assignment at [company.]

(Ex. 10 at 1.)

In the signed, sworn statement he gave to a DSS special agent on November 30, 2005, Applicant stated that a year later, in about April 2001, when moving from one residence to another, he found a purchasing manual belonging to the defense contractor in his home. He said he reviewed the manual and concluded it did not contain confidential or proprietary information. At the time of his interview with the DSS agent, Applicant had the manual in his possession. He said he would give it to the DSS agent. (Ex. 19 at 2.)

In a signed, sworn statement dated December 1, 2005, Applicant admitted he had failed to give the purchasing manual to the DSS special agent, as he had indicated on November 30, 2005, he would do. He said he could not find it and thought his wife had mailed it back to the defense contractor at the beginning of November 2005. He said he last saw the manual in his home at the beginning of November 2005. He said he had not opened the manual or reviewed it. Applicant also admitted he possessed "about 20 pages" of material on cost accounting standards belonging to the defense contractor. (Ex. 20 at 1.) He mailed 27 pages of the defense contractor's cost accounting standards documents to a DSS agent in December 2005. (Ex. 21.)

In a signed sworn statement to a DSS agent on October 4, 2005, Applicant claimed he left his consultancy position at the defense contractor on Sunday, April 30, 2000, because he had "received an employment offer that required me to start immediately." (Ex. 18 at 1.) In a signed, sworn statement to a DSS special agent, dated November 30, 2005, Applicant acknowledged his supervisor at the consulting company was upset he had left the defense contractor without giving notice. He said he reported to work at his new employer on May 1, 2000, the day after printing the documents on the defense contractor's information system network. At his hearing, Applicant testified he did not have a new job to

report to when he tendered his resignation on May 1, 2000, and he had not reported to a new position on that day. Instead, he had traveled across the country to join his wife for a vacation. The SF-86 he executed and signed February 18, 2004, indicated Applicant did not work for another employer until June 1, 2000. (Ex. 19; Tr. II, 56-58; Ex. 3.) Applicant consistently made false and misleading statements.

Applicant's next job with a defense contractor commenced in June 2000 and ended in August 2002 (Employer X). (Ex. 3.) Applicant stated there was a culture of harassment in Employer X's workplace. Applicant concluded one co-worker, a female, was responsible for harassing other employees. In November 2000, he wrote an anonymous unsolicited and sexually suggestive letter to the co-worker and put it in her office mailbox. The letter invited a response from the woman and instructed her to put her response in an envelope, mark it with a red check mark, and leave it in her mailbox. The woman sought the advice of her facility security officer (FSO), who advised her to comply with the instructions in the letter. The employee did so. The FSO then set up a surveillance camera very early in the morning in front of the employee's mailbox. The surveillance camera recorded Applicant coming to the employee's mailbox and picking up the marked letter. The FSO reported the incident to the company's management. A senior management official met with Applicant, told him he knew Applicant had been the perpetrator of the note, and told him not to do it again. (Ex. B at 4-5; Tr. I, 115-118; Tr. II, 50-52.)

Applicant was interviewed by a DSS special agent on July 16, 2003 and shown a copy of the sexually suggestive note left in the mailbox of his female coworker in November 2000. He initially denied any involvement in the passing of this or other notes to the co-worker, although he later recalled being questioned by a company manager regarding the matter. He said he did not volunteer this information in his initial interview when a DSS agent asked him if he had ever been called before a supervisor or manager regarding unprofessional conduct because he misunderstood what was being asked. In a signed, sworn statement to a DSS special agent on July 16, 2003, Applicant denied any involvement in the incident and stated he was willing to undergo a polygraph exam regarding the matter. (Ex. B, 13-14; Ex. 16 at 1-2.) I find Applicant intentionally misled and lied to investigators.

On November 30, 2005, in an interview with a DSS special agent, Applicant admitted writing and sending the anonymous sexually suggestive letter to his coworker in November 2000. He characterized the conduct as a prank. ( Ex. 19 at 3.)

By letter dated July 7, 2002, Applicant resigned from his position with Employer X. He complained his immediate manager had intentionally subjected him to emotional distress and that higher management had condoned the immediate manager's harassing conduct. (Ex. 14 at 1.)

### **Applicant's Security Clearance Applications**

The instructions for completing the SF-86 form include the following advisory:

3. All questions on this form must be answered. If no response is necessary or applicable, indicate this on the form (for example, enter "None" or "N/A"). If you find that you cannot report an exact date, approximate or estimate the date to the best of your ability and indicate this by marking "APPROX" or "EST." (Government Document for Administrative Notice I at 1.)

Item 13 on the instructions directs an applicant to "mark one box to show your current marital status and provide information about your spouse(s) in items a. and/or b." Item 13(a) requires an applicant to list specific information about a current spouse.<sup>(7)</sup> Item 13 (b) requires an applicant to provide the full names of all former spouses, including their birth dates, places of birth, countries of citizenship, dates of marriage, and places where married. Additionally, an applicant is required to report whether the marriage ended by death or divorce and the date that occurred. An applicant is also required to list the jurisdiction where the record of divorce is maintained and to provide the address and telephone number of the former spouse.<sup>(8)</sup> (Government Document for Administrative Notice at 5.)

Item 23 (a) on the instructions for completing a SF-86 asks an applicant to respond either "yes" or "no" to this question: "Have you ever been charged with or convicted of any felony offense?" (Government Document for Administrative Notice I at 7.)<sup>(9)</sup>

While he was employed by Employer X, Applicant completed a security clearance application and signed it electronically on August 31, 2001. In response to the question requiring him to identify spouses and former spouses, Applicant listed and provided information about his current spouse. He failed to list his former spouse and supply requested information about her. In response to the question asking him if he had ever been charged or convicted of a felony, Applicant answered "no." (Ex. 1.)

Applicant resigned his position with Employer X in July 2002, claiming he had been treated unfairly and harassed. He took a job with another defense contractor and completed another SF-86 on July 16, 2003. In response to the question requiring him to identify and provide information on spouses or former spouses, he again listed and provided information only about his current spouse. In response to the question asking him if he had ever been charged or convicted of a felony, Applicant again answered "no." (Ex. 2.)

On the SF-86 he completed on July 16, 2003, Applicant provided information that had not appeared on his August 2001 SF-86 because it had not occurred until July 2002. In response to Question 20, which asks if an individual has ever been fired from a job, quit a job after being told he would be fired, left a job by mutual agreement following allegations of misconduct, left a job by mutual agreement following allegations of unsatisfactory performance, or left a job for another reason under unfavorable circumstances, Applicant answered "yes" and stated he had left a job for other reasons under unfavorable circumstances. Under the "remarks" portion of his response, he stated: "I was being harassed/bullied by a manager at [Employer X]. I filed several complaints, I was not satisfied with how [Employer X] responded to the situation, the harassment continued and I decided to separate from the company." (Ex. 2.)

The following certification appears at the end of the SF-86 form:

My statements on this form, and any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See section 1001 of title 18, United States Code.)

On February 18, 2004, Applicant signed and certified the SF-86 he executed on July 16, 2003. (Ex. 3.)

Applicant claimed his failure to list his first wife on his SF-86 was an oversight. He testified he filled out only one SF-86 and signed it electronically in August 2001. He said his current employer forwarded his SF-86 to the government without providing him with an opportunity to review his answers. The facility security officer at his present employer provided a letter on Applicant's behalf that stated, in pertinent part: "The security form that this facility processed on [Applicant's] behalf was a SF-86 from his previous employer." Applicant also testified that his failure to list his first wife on his SF-86 was brought to his attention in a security interview on July 16, 2003. (Tr. II, 52-53; Ex. A.)

Applicant testified he did not list his felony charge in 1989 because he thought he had been charged with shoplifting, which was a misdemeanor. He said he only recently learned the crime was considered a larceny because the value of the television he stole was estimated to be \$250, and the State where the crime was committed defines larceny as a theft of an item with a value of \$200 or more. <sup>(10)</sup> Applicant also testified he pled guilty to a lesser offense and then attempted to retract his plea. He said the prosecutor in the case advised him that if he retracted his plea to the lesser offense, the State would then try him on the felony count, which carried a sentence of one year in jail. (Tr. I, 74-76.)

## 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

### Guideline E - Personal Conduct

DOHA's allegations in the SOR raised security concerns under Guideline E about Applicant's truthfulness, judgment, reliability, and willingness to comply with rules and regulations. Guideline E conduct, which involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, could indicate an applicant may not properly safeguard classified information. *See* Directive ¶ E2.A5.1.1

Several Guideline E Disqualifying Conditions (DC) apply to the conduct alleged in the SOR. Applicant's coworkers, business associates, and employers supplied reliable unfavorable information about his personal conduct, which was alleged in ¶¶ 1.c., 1.d., 1.e., 1.f., 1.g., and 1.h., thus raising security concerns under DC E2.A5.1.2.1. <sup>(11)</sup> The allegations in ¶¶ 1.c. and 1.d. that Applicant falsified relevant and material facts about his educational background to employers also raised security concerns under DC E2.A5.1.2.2. <sup>(12)</sup> The allegations in ¶¶ 1.j. and 1.k. that Applicant deliberately falsified material facts on security clearance applications he executed on August 31, 2001, July 16, 2003, and February 18, 2004 by failing to list his former wife, to whom he was married for seven years, and by answering "no" to Question 21 and subsequently failing to list a felony charge in 1989 also raise security concerns under DC E2.A5.1.2.2. The allegations in ¶¶ 1.i.(1) and 1.i.(2) that Applicant deliberately falsified material facts in an interview with a DSS special agent and in a signed sworn statement made to the DSS agent raise security concerns under DC E2.A5.1.2.3. <sup>(13)</sup>

The allegations in ¶¶ 1.a., 1.b., 1.h., 1.j., and 1.k. raise security concerns under DC E2.A5.1.2.4. <sup>(14)</sup> because Applicant's conduct and his deliberate omissions and falsifications regarding that conduct increased his vulnerability to coercion, exploitation, or duress. The allegations at ¶¶ 1.f. and 1.g. that Applicant violated a service agreement between his consulting company employer and a defense contractor also raise security concerns under DC E2.A5.1.2.5. <sup>(15)</sup> The allegations at ¶¶ 1.a. and 1.b. raise security concerns under DC E2.A5.1.2.6. <sup>(16)</sup>

There are seven Mitigating Conditions (MC) that might be applicable to disqualifying conditions raised under Guideline E. First, a Guideline E security concern that arises from reliable unfavorable information provided by associates, employers, coworkers, neighbors, or other acquaintances might be mitigated if the information they provide was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability. MC E2.A5.1.3.1. Second, a falsification on a SF-86 or in an interview with an authorized investigator, or on a sworn statement signed in the presence of an authorized investigator might be mitigated if it was an isolated incident, was not recent, and the individual has subsequently provided the correct information voluntarily. MC E2.A5.1.3.2. Third, a falsification might

be mitigated if the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts. MC E2.A5.1.3.3.

Fourth, an omission of material facts might be mitigated if the omission was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided. MC E2.A5.1.3.4. Fifth, a falsification or omission might be mitigated if the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress. MC E2.A5.1.3.5. Sixth, a refusal to cooperate with an investigation might be mitigated if the refusal was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, the individual fully and truthfully provided the requested information. MC E2.A5.1.3.6. Finally, an individual can mitigate certain personal conduct if he or she provides evidence that association with persons involved in criminal activities has ceased. MC E2.A5.1.3.7.

In response to the allegation at ¶ 1.a. of the SOR, Applicant admitted he and an companion were arrested in 1984 and charged with petty larceny. In his answer to the SOR, he denied he had voluntarily and knowingly stolen a television set with his girlfriend in 1989, as alleged at SOR 1.b., and he denied he had subsequently been charged with larceny. Applicant's conduct and his denial of the larceny charge raise security concerns under DC E2.A5.1.2.4., E2.A5.1.2.5., and E2.A5.1.2.6. Applicant's past conduct and his denial of responsibility for the conduct could increase his vulnerability to coercion, exploitation or duress. The conduct reveals a pattern of dishonesty or rule violation, and it demonstrates association with persons involved in criminal activity. Applicant presented no credible evidence to rebut the Government's allegations of criminal charges. While Applicant is no longer associated with the persons with whom he carried out criminal activity, he failed to show he had taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation or duress. Accordingly, while MC E2.A5.1.3.7. applies to the allegations at ¶¶ 1.a. and 1.b. of the SOR, MC E2.A5.1.3.5. does not.

Two of Applicant's former employers provided business records that had been prepared by Applicant. In those documents, Applicant misrepresented his educational background on two separate occasions, once on a resume and once in an letter to a employer who later hired him. Applicant's academic record for the year 2000 shows he was not enrolled at the State university, did not have a cumulative 4.0 GPA, and had not and was not taking specialized courses in contracting. Applicant provided no credible evidence to rebut the Government's allegations that he deliberately misrepresented his academic background. The information provided by the former employers was substantiated and pertinent to a determination of judgment, trustworthiness, or reliability. I find he deliberately falsified his academic record. Thus, MC E2.A5.1.3.1. is inapplicable.

The conduct alleged at ¶¶ 1.c. and 1.d. also raises security concerns under DC E2.A5.1.2.2. To bolster his employment qualifications, Applicant falsified his academic record and educational background in documents offered to employers. His falsifications were not isolated incidents, and he continued at his hearing to deny them. He did not make prompt good-faith efforts to correct the falsifications, and he did not provide correct information voluntarily. Accordingly, MC E2.A5.1.3.2. and E2.A5.1.3.3. are inapplicable. No other Guideline E mitigating conditions apply to the disqualifying conduct alleged at ¶¶ 1.c. and 1.d of the SOR.

There is substantive evidence that Applicant submitted a fraudulent time card when he resigned from his position as a consultant in April 2000 (SOR ¶ 1.e.); violated a service agreement between his employer and a defense contractor when, prior to tendering his resignation, he went to the defense contractor's offices after normal working hours and printed out documents belonging to the contractor and took them home for personal use and retention (SOR ¶ 1.f.); executed a false affidavit on May 24, 2000, asserting he had returned all documents in his possession belonging to the defense contractor when in fact he retained certain documents until they were surrendered by him to DSS investigators in December 2005 (SOR ¶ 1.g.); and, in November 2000, delivered an anonymous, unsolicited, and sexually suggestive letter to a co-worker's mailbox (SOR ¶ 1.h.). There is reliable, unfavorable information that raised security concerns under DC E2.A5.1.2.1. Applicant presented no credible information to rebut the Government's allegations. The information submitted by Applicant's former employers was substantiated and pertinent to a determination of his judgment, trustworthiness, and reliability. Accordingly, MC E2.A5.1.3.1. is inapplicable. No other Guideline E mitigating conditions apply.



The conduct alleged at ¶¶ 1.f. and 1.g. also raises security concerns under DC E2.A5.1.2.5., for it suggests a pattern of dishonesty or rule violations. The conduct alleged at ¶ 1.h. raises an additional security concern under DC E2.A5.1.2.4. because it suggests behavior that increases an individual's vulnerability to coercion, exploitation, or duress. Applicant presented no credible evidence to rebut or mitigate these security concerns.

On July 16, 2003, Applicant was interviewed by a special agent of the DSS. During that interview, Applicant deliberately falsified material facts, when, after being shown the anonymous, unsolicited, and sexually suggestive letter, he denied any knowledge or involvement in the matter. (SOR ¶ 1.i(1)). During that interview, Applicant executed and signed a sworn statement denying any involvement in the writing or delivery of the sexually suggestive letter to his co-worker. (¶ 1.i(2)). Applicant knew his oral and written statements regarding the matter were false. During an interview with a special agent of the DSS on November 30, 2005, he admitted writing the letter and delivering it to his co-worker. Applicant also admitted writing the letter and delivering it to his co-worker in his answer to the SOR.

Applicant's conduct raises security concerns under DC E2.A5.1.2.3., for he deliberately provided false or misleading information concerning relevant and material matters to an investigator in connection with a personnel security or trustworthiness determination. DC E2.A5.1.2.5. also applies because Applicant's conduct revealed a pattern of dishonesty or rule violations. Neither MC E2.A5.1.3.2, MC E2.A5.1.3.3., or E2.A5.1.3.5. applies.

On August 31, 2001, Applicant executed a SF-86 and signed it electronically. On July 16, 2003, he revised the SF-86 he had completed in 2001 and added an explanation of the conditions that led him to quit a previous job in July 2002. On February 18, 2004, he signed the SF-86 he had revised on July 16, 2003. The instructions for completing a SF-86 make clear an applicant must answer all questions and supply all information requested. On each of the three iterations of his SF-86, he failed to list his first marriage and to supply pertinent information about his first wife. (SOR ¶1.j.) Applicant's failure to list his first marriage and to identify his first wife on his SF-86 was a deliberate omission, concealment, or falsification of relevant and material facts and raises security concerns under DC E2.A5.1.2.2.

Applicant claimed his failure to list his first marriage and to identify his first spouse was an oversight. From the record, it is fair to assume he had three opportunities to review the SF-86 and comply with instructions. The record also recites that Applicant and his first wife were partners in crime and had violent physical altercations during their seven-year marriage. It was not a relationship that one would easily forget. I conclude that Applicant's testimony that he forgot to report his first marriage and identify his first spouse was not credible. I also conclude that his omission was deliberate.

Applicant's falsification was not an isolated incident and it was recent. He did not provide the correct information voluntarily, and he did not make prompt good-faith efforts to correct the falsification before being confronted with the facts. Accordingly, neither MC E2.A5.1.3.2. nor E2.A5.1.3.3. applies.

On the SF-86s he executed on August 31, 2001, July 16, 2003, and February 18, 2004, Applicant was required to report all charged felony offenses. Applicant answered "no" to Question 21 on all three versions of his SF-86, even though he had been charged with a felony in his State of residence for stealing a television set valued at over \$200 in 1989. (SOR ¶ 1.k.). Applicant's failure to list his felony charge in response to Question 21 on the SF-86 was a deliberate omission, concealment, or falsification of relevant and material facts and raises security concerns under DC E2.A5.1.2.2.

Applicant claimed he did not know he had been charged with a felony when he was arrested for stealing the television set. He stated he had pled guilty to a lesser offense and then attempted to withdraw his plea. He also testified the prosecutor stated that if he withdrew his plea of guilty to the lesser offense, he would be charged and tried for the felony originally charged. Applicant's denial that he was charged with a felony lacks credibility. I conclude he deliberately falsified his answer to Question 21 on his SF-86. No Guideline E mitigating conditions apply.

## **Whole Person Analysis**

Paragraph E2.2 of the Directive requires that the adjudicative process in a security clearance case not only assess conduct under the adjudicative guidelines, but it must also reflect a careful weighing of a number of variables known as the whole person concept. The factors to be considered in a whole person analysis include the nature, extent, and seriousness of the conduct (E2.2.1.1); the circumstances surrounding the conduct, to include knowledgeable participation (E2.2.1.2); the frequency and recency of the conduct (E2.2.1.3); the individual's age and maturity at the

time of the conduct (E2.2.1.4.); the voluntariness of participation (E2.2.1.5.); the presence or absence of rehabilitation and other pertinent behavioral changes (E2.2.1.6); the motivation for the conduct (E2.2.1.7); the potential for pressure, coercion, exploitation, or duress (E2.2.1.8.); and, the likelihood for continuation or recurrence (E2.2.1.9)

Applicant is 42 years old. He is a mature man and has had the benefit of higher education. The record reflects he has a clear knowledge of the English language and knew what he was certifying with his signature on the SF-86s he executed and on the statements he signed and certified in the presence of authorized investigators.

Applicant prepared a resume and a letter seeking employment that misrepresented his educational background. In the workplace, he filed a time card that falsely claimed payment for time he did not work, and he violated his employer's service agreement with a defense contractor by downloading and copying the defense contractor's documents and taking them to his home for his own use after he resigned from the defense contractor's employment. He executed an affidavit stating he had returned all of the defense contractor's documents, but he retained some of the defense contractor's documents for several years. He sent an unsolicited sexually suggestive note to a co-worker, then denied he sent it, and finally admitted his action. Applicant's personal conduct in the workplace involved questionable judgment, untrustworthiness, unreliability and an unwillingness to comply with rules and regulations. His testimony about his conduct was misleading and deceptive and lacked credibility.

I have reviewed and considered all of the evidence, and I have assessed Applicant's credibility and demeanor. After weighing the applicable Guideline E disqualifying and mitigating conditions, and after considering all relevant factors in the whole person analysis, I conclude all SOR Guideline E allegations against Applicant.

In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense assessment of a person's trustworthiness and fitness for access to classified information. Indeed, the "whole person" concept recognizes we should view a person by the totality of his or her acts and omissions, including all disqualifying and mitigating conduct. Having done so, I conclude Applicant should not be entrusted with a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in Department of Defense Directive, 5220.6, as amended.

### **FORMAL FINDINGS**

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

Paragraph 1.: Guideline E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i (1): Against Applicant

Subparagraph 1.i.(2): Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: 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.

Joan Caton Anthony

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.
3. Applicant's transcript from the community college shows he withdrew from three courses in the 1985 winter term and received a grade of F in a fourth course. Applicant disputed the F grade and reported the community college registrar was "engaged in correcting" the recordation of the Grade of F. (Ex. AA; Ex. F.)
4. Admission to the BIS program was contingent upon admission to the State University as an undergraduate student. (Tr. II, 28-30; Ex. G at 3.)
5. At the bottom of the Weekly Time Report is a handwritten note, which reads as follows: "Submitted by Kevin but did NOT work the hours. He claims it was a mistake. He had 0 hours." Applicant stated an unidentified person at his employer's office made the notations pursuant to information he provided.
- 6.
7. Additionally, if the couple is separated, the applicant must list the date of separation. If the couple is legally separated, the jurisdiction of the record of separation must be provided. An applicant must also list the current spouse's address if it is not the same as the applicant's. (Government document for administrative notice at 5.)
8. Identification of marital status and an applicant's marriage and prior marriages appear at Item 8 on the printed SF-86. *See* Ex. 1; Ex. 2; Ex. 3
9. An applicant's response to Item 23 appears at Item 21 on the printed SF-86. *See* Ex. 1; Ex. 2; Ex. 3.
10. In the state where Applicant resided and stole the television set, grand larceny is defined as taking another's goods or chattels valued at \$200 or more. Grand larceny is punishable by imprisonment or incarceration in a state correctional facility for not less than one year and not more than 20 years, or, in the discretion of the jury or court trying the case without a jury, by confinement in jail for no more than 12 months or a fine of not more than \$2,500, either or both. (Government document I for administrative notice at 1.)
11. DC E2.A5.1.2.1. reads: "Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances."
12. DC E2.A5.1.2.2. reads: "The deliberate omission, concealment, or falsification of relevant and material facts from any personal 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."

13. DC E2.A5.1.2.3. reads: "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."

14. DC E2.A5.1.2.4. reads: "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."

15. DC E2.A5.1.2.5. reads, in pertinent part, "A pattern of dishonesty or rule violations. . . ."

16. DC E2.A5.1.2.6. reads: "Association with persons involved in criminal activity."