

DATE: March 8, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24638

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In 1997--more than seven years ago--Applicant stole \$100 from her employer. She lied about the theft in two sworn statements. She has repaid the money, admitted to her former employer her wrongful actions, and apologized. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from her personal and criminal conduct. Clearance is granted.

STATEMENT OF THE CASE

On May 26, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On June 14, 2004, Applicant answered the SOR and requested a hearing. On September 28, 2004, I was assigned the case. On October 8, 2004, a hearing in this matter was convened. On October 19, 2004, the transcript (tr.) of the hearing was received.

FINDINGS OF FACT

The SOR alleges security significant personal conduct and criminal conduct. The Applicant admits to the following: stealing \$100 from her employer in 1997; she left the job without admitting to her supervisor what she had done; she did not include this incident on her 2002 security clearance application, Standard Form (SF) 86; during an August 2003 interview, she denied taking the money; following the interview, she called the investigator and admitted she had taken the money. Those admissions are incorporated herein as findings of fact. After thorough review of the whole record, I make the following additional findings of fact:

The Applicant is 27 year old security analyst who has worked for a defense contractor since November 2002 and is seeking to obtain a security clearance. The Applicant is regarded by those who know her as demonstrating technical excellence and uncompromising professionalism. (App Ex D) She is dedicated, strives to put the mission needs before her own, volunteers for whenever or wherever she is needed, her behavior and professionalism are impeccable. She has

moved into an elite position in half the normal two-year training period. (App Ex E) She is dedicated, honest, dependable, dedicated to the mission, confident, and loyal. (App Ex F) She has an eager, can-do attitude, her performance has been stellar, and has consistently exhibited the highest levels of integrity and professionalism. (App Ex G) She has performed admirably, is a fast learner, and has an outstanding work record. (App Ex H) Supervisors state Applicant is dedicated, energetic, has a strong work ethic, and the best worker they have.

From October 1995 to February 1997, Applicant worked as an officer manager for a moving company. The company was investigated for overbilling and lost its government contract. Applicant was laid off because there was insufficient work. This employment was not listed on her security clearance application, Standard Form (SF) 86. Applicant says she did not knowingly provide false information to the government concerning this employment.

In 1997, Applicant was treated for depression. She was having problems with her parents, had dropped out of college, was in a bad personal relationship, and was having general self esteem problems. She had dramatically changed from a happy, outgoing, and dependable person to become very moody and distant. (App Ex C) She had four or five sessions with a licensed counselor and stopped seeing the counselor because she no longer felt she needed further help. When she completed her November 2002 SF 86, she answered "yes" to question 19 related to medical record. She also answered "yes" to the second part of the question which asked if the consultations related to marital, family, or grief counseling because it was related to grief.

In 1997, she stole \$100 from her employer. Shortly after the missing money was discovered, Applicant left the company to return to college. Applicant has since completed her bachelor's degree and is working on her master's degree. The problems with her family have been resolved

In April 2003, Applicant was interviewed by a Defense Security Service (DSS) special agent. Applicant stated she did not take \$100 from a prior employer. (Gov Ex 2) In August 2003, Applicant repeated in another interview with DSS that she did not take the money. (Gov Ex 3) Within three hours of her making her statement, Applicant thought about what she had done, her conscience bothered her, so she called the agent and admitted her misconduct and asked to make another statement. She had not admitted to her theft earlier because she was embarrassed, ashamed, and trying to forget what she had done. (Gov Ex 4)

In August 2003, Applicant went to her former employer, explained she had taken the \$100, apologized and repaid the money. Her former employer stated he "would not hesitate to hire her again with complete confidence that her performance would be outstanding." (App Ex B) Applicant has admitted to friends and family what she did. She now realizes there is no need to lie and is determined not to repeat her mistake. She has come to terms with what she has done. She has received tremendous support from her employer, friends, and family.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security.

Applicant's provided false information on her November 2002 SF 86 and during her April 2003 and August 2003 interviews, which poses a serious potential risk to the nation's security precautions. Disqualifying Condition (DC) 2. (E2.A5.1.2.2. *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*) and DC3. (E2.A5.1.2.3. *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*) apply.

From October 1995 through February 1997, Applicant worked for a moving company and left when the amount of work was insufficient to keep her employed. The company had lost a government contract. Although this employment was not listed on her SF 86 there is no showing Applicant deliberately failed to disclose information. The Applicant has denied intentional falsification. There does not appear any adverse matter concerning this employment the Applicant would wish to hide from the government. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. Her omission concerning this employment was not a knowing and willful falsification. I find for Applicant as to SOR 1.b.

In 1997, Applicant was experiencing numerous personal problems. She was having problems with her parents, had dropped out of college, was in a bad personal relationship, and was having general self esteem problems. It was a bad

point in her life and she sought assistance. On her SF 86, in response to question 19, she indicated she had seen a mental health professional about a mental health related condition. Since her treatment was related to family, her personal relationship, and grief counseling, she answered "yes" to the second half of the question. Since her answers were truthful, I find for her as to SOR 1.c.

In 1997, Applicant stole \$100 from her employer. The theft occurred more than seven years before the hearing and is not recent. I find for her as to SOR 1.a. The day after being questioned about the missing money she quit her job and returned to college. Question 20 on her SF 86 directs she disclose being fired from a job, quitting a job after being told she would be fired, leaving a job by mutual agreement following unsatisfactory performance, or leaving a job for other reasons under unfavorable circumstances. She left the job to return to school. This may have occurred after she had taken the money, however, she was not fired, told she would be fired, did not leave due to unsatisfactory performance, or leave under unfavorable circumstances for her employer would rehire her. None of the criteria in question 20 apply, I find for Applicant as to SOR 1.d.

Once she had lied, she persisted with the lie too long. In her first interview with DSS, she said she did not steal the money and repeated that in her second interview. After leaving the second interview she thought about what she had done her conscience bothered her. Within three hours she called the DSS agent and told him she had taken the money. She then wrote a new statement admitting the theft. It certainly would have been better had she admitted to the theft immediately. But she ultimately did the right thing by admitting the theft. Her call to the DSS agent was a good-faith effort to correct the falsification. However, it was neither prompt nor did it occur before being confronted with the facts. Therefore, MC 3 (E2.A5.1.3.3. *The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*) does not apply.

She initiated the call to the DSS following the second interview. No only did she admit it to the DSS, but also to her family and friends. Then she took an even more telling step by returning to her former employer explained she had taken the \$100, apologized and repaid the money. Her former employer said he would not hesitate to hire her. Applicant realizes the seriousness of her lie and is determined not to repeat her mistake. She has come to terms with what she has done. She has received tremendous support from her employer, friends, and family. Her actions significantly reduce or eliminate her vulnerability to coercion, exploitation, or duress. Mitigating Condition (MC)5. (E2.A5.1.3.5. *The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress*) applies.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of Applicant's conduct; the circumstances surrounding the conduct (the initial lie and then persisting with the lie); the frequency and recency of the conduct (two interviews); presence or absence of rehabilitation (acknowledgment of the theft and lie, admission and repayment); potential for pressure, coercion, exploitation, or duress; and conclude there is no probability the conduct will continue or recur in the future. I find for Applicant as to SOR 1.e. and 1.f.

The Government has satisfied its initial burden of proof under criminal conduct, Guideline J. Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about her judgment, reliability, and trustworthiness. She stole \$100 from her employer and lied about it during in two signed, sworn statements. DC 1. (E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged.*) applies.

The initial theft occurred more than seven years ago and is not recent. It is unlikely Applicant will ever lie again to the government on an SF 86, during an interview, or in a sworn statement. The factors leading to the violation are not likely to recur. MC 4. (E2.A10.1.3.4. *The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur.*) I find for Applicant as to criminal conduct.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Personal Conduct: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.e.: For the Applicant

Subparagraph 1.f.: For the Applicant

Paragraph 2 Criminal Conduct: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

DECISION

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

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.