

DATE: January 26, 2005

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-32670

## **DECISION OF ADMINISTRATIVE JUDGE**

**JOAN CATON ANTHONY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant falsified material facts on the security clearance application he completed and certified in April 2002. His lack of candor and deliberate misrepresentations raise serious security concerns. 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 July 31, 2003, 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) and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on September 29, 2003, and by letter dated October 8, 2003, he requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on January 13, 2004. The FORM contained documents identified as Items 1 through 8. By letter dated January 14, 2004, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant did not submit additional information or objections within that time period. On March 5, 2004, the case was assigned to me for a decision.

### **FINDINGS OF FACT**

The SOR contains ten allegations of disqualifying conduct. Nine allegations relate to conduct addressed under Guideline E, Personal Conduct, and one allegation relates to conduct addressed under Guideline J, Criminal Conduct. In his answer to the SOR, Applicant admitted all nine allegations under Guideline E and denied the Guideline J allegation. His admissions are incorporated as findings of fact.

Applicant is a 49-year-old welder employed by a defense contractor. He was married in 1975, but he and his wife are now separated. He is the father of one child, born in 1979.

Applicant completed and certified a security clearance application (SF-86) on April 16, 2002. He answered "no" to Questions 33, 35, 37, 38, and 39 on the SF-86.

Question 33 on the SF-86 reads: "**Your Financial Record - Bankruptcy** In the last 7 years, have you filed a petition under any chapter of the bankruptcy code (to include Chapter 13)?" In July 1997, Applicant petitioned for Chapter 13 bankruptcy in a United States Bankruptcy Court. A payment agreement could not be reached. In February 1998, the bankruptcy court entered an order dismissing Applicant's Chapter 13 petition after failure to confirm a payment plan.

Question 35 on the SF-86 reads: "**Your Financial Record - Repossessions** In the last 7 years, have you had any property repossessed for any reason?" In January 2001, Applicant turned possession of his home over to the Department of Housing and Urban Development (HUD) when he was unable to maintain monthly payments.

Question 37 on the SF-86 reads: "**Your Financial Record - Unpaid Judgments** In the last 7 years, have you had any judgments against you that have not been paid?" In February 1997 a judgment was entered against Applicant in the amount of \$136.00. As of August 28, 2002, the judgment had not been satisfied.

Question 38 on the SF-86 reads: "**Your Financial Delinquencies - 180 Days** In the last 7 years, have you been over 180 days delinquent on any debt(s)?" In February 1997, a judgment was entered against Applicant for \$136.00. As of August 28, 2002, Applicant had not satisfied the judgment. Applicant owed an automobile credit company approximately \$749.42 on a delinquent account which had been charged off as a bad debt in or about March 1998. Applicant made the final payment to satisfy the debt in October 2001. In January 1999, Applicant satisfied a judgment entered against him in the approximate amount of \$1,586.00 for a loan he had failed to pay. Applicant is responsible for a debt of \$740.40 on an account charged off as a bad debt in November 2000 and referred for collection. As of August 28, 2002, this debt had not been satisfied.

Question 39 on the SF-86 reads: "**Your Financial delinquencies - 90 Days** Are you currently over 90 days delinquent on any debt(s)?" In February 1997, a judgment for \$136.00 was entered against Applicant. As of August 28, 2002, the judgment had not been satisfied. As of August 2002, Applicant had not satisfied the aforementioned debt in the amount of \$740.40.

After completing his SF-86, Applicant signed and dated the following statement:

#### "CERTIFICATION BY PERSON COMPLETING 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).

Applicant denied deliberately falsifying his answers to Questions 33, 35, 37, 38, and 39 on his SF-86. He said his brother helped him complete the SF-86 and entered data that was not accurate or complete. Applicant did not thoroughly and carefully review the entries his brother made on the SF-86, and he signed and certified the answers provided by his brother.

#### 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**

In the SOR, DOHA alleged Applicant deliberately falsified his answers on his SF 86 to questions 33, 35, 37, 38 and 39 (¶¶ 1.a. (1), 1.b., 1.c.(1), 1.d.(1), 1.d.(2), 1.d.(3), 1.d.(4), 1.e.(1) and 1.e.(2)). Applicant admits the falsifications and argues they were carried out by his brother, to whom he entrusted the responsibility of preparing his SF-86. Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

An applicant's responsibility to provide truthful and complete responses to questions on his or her SF-86 cannot be delegated to another person. With respect to the Guideline E conduct alleged in SOR subparagraphs 1.a.(1) through 1.e. (2), Applicant falsified his SF-86 by omitting and concealing relevant and material information about his debts and financial obligations in his responses to Questions 33, 35, 37, 38, and 39, bringing his conduct under disqualifying condition E2.A5.1.2.2. He did not fully and truthfully provide the requested information, and thus mitigating condition E2.A5.1.3.6. does not apply.

A person's refusal to provide relevant and material information to the Government provides a rational basis for denial or revocation of access to classified information for that person. ISCR Case No. 98-0445 at 3 (App. Bd. April 2, 1999), (quoting *Gayer v. Schlesinger*, 490 F. 2d 740, 754 (D.C. Cir. 1973); *Clifford v. Shoultz*, 413 F. 2d 868 (9<sup>th</sup> Cir. 1969), *cert. denied*, 396 U.S. 962 (1969)).

With respect to the Guideline E conduct alleged in the SOR, the Government has established its case. Applicant's assertions that he did not intend to falsify his responses to Questions 33, 35, 37, 38 and 39 on his SF-86 are not credible in light of his awareness of his financial problems over a period of several years and his creditors' many attempts to put him on notice of delinquent debts and financial liabilities. Additionally, Applicant's statement that he failed to answer the questions accurately and completely because he had delegated the completion of his SF-86 to his brother lacks credibility. Applicant's failure to provide his own complete, truthful, and correct answers to the questions about his financial situation reflects questionable judgment and raises a security concern under ¶ E2.A5.1.2.2 of Guideline E. His conduct also raises concerns under ¶ E2.A5.1.2.5. because it suggests a pattern of dishonesty and rule violation. His reticence to reveal the truth about his conduct suggests that, under some circumstances, he may put his interests above those of the government.

Mitigating condition E2.A5.1.3.1. does not apply to the facts of this case. The information withheld by Applicant is pertinent to a determination of his judgment, trustworthiness, and reliability. Two other mitigating conditions under

Guideline E might be applicable to the instant case. The security concern raised by Applicant's disqualifying conduct could be mitigated if the falsification was an isolated incident, was not recent, and if the Applicant subsequently provided the correct information voluntarily. ¶ E2.A5.1.3.2. While Applicant supplied some correct information about his financial delinquencies when questioned by a special agent of the Defense Security Service on August 28, 2002 (Item 7) and in response to interrogatories from DOHA on February 18, 2003 (Item 8), his falsifications were not isolated incidents and they are recent. Mitigating condition E2.A5.1.3.3. is also inapplicable, since Applicant did not make prompt good faith efforts to correct the falsification before being confronted with the facts. Accordingly, the allegations in subparagraphs 1.a. through 1.e. (2) of the SOR are concluded against the Applicant.

## **Guideline J - Criminal Conduct**

In the SOR, DOHA alleged Applicant knowingly and willfully falsified his answers to Questions 33, 35, 37, 38, and 39 on his security clearance application in violation 18 U.S.C. § 1001 and that these acts constituted felonious criminal conduct. An applicant with a history or pattern of criminal behavior raises serious doubts about his judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan*, 484 U.S. at 527. Applicant deliberately lied on the security clearance application he certified and signed for the purpose of obtaining a security clearance. Under all the circumstances, Applicant failed to convince me that he did not knowingly and willfully falsify his security clearance application. An applicant may be disqualified if allegations of criminal conduct are raised against him. ¶ E2.A10.1.2.1. The criminal offense was an isolated incident, and therefore mitigating condition E2.A10.1.3.2 applies. Nonetheless, after weighing the disqualifying and mitigating conditions, the finding is against Applicant.

## **FORMAL FINDINGS**

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

### **Paragraph 1. Guideline E.: AGAINST APPLICANT**

Subparagraph 1.a.(1): Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.(1): Against Applicant

Subparagraph 1.d.(1): Against Applicant

Subparagraph 1.d.(2): Against Applicant

Subparagraph 1.d.(3): Against Applicant

Subparagraph 1.d.(4): Against Applicant

Subparagraph 1.e.(1): Against Applicant

Subparagraph 1.e.(2): Against Applicant

### **Paragraph 2. Guideline J: AGAINST APPLICANT**

Subparagraph 2.a.: 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.