

DATE: March 8, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-33478

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant deliberately falsified her security clearance application by claiming she worked at a company when in fact she did various odd jobs for her father and brother. Applicant failed to sufficiently mitigate the personal conduct and criminal conduct 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 8 September 2003, DOHA issued a Statement of Reasons (SOR) ⁽¹⁾ 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 20 February 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 21 January 2004. On 10 February 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 19 February 2004.

Without objection from Applicant, I granted Department Counsel's motion to amend the allegation in SOR ¶ 1.b. to reflect Applicant asked "at least one employee" of the concrete company to provide false information rather than "two employees."

FINDINGS OF FACT

Applicant is a 39-year-old employee of a defense contractor working as an assistant in the security office. From 1982-88, she served in the U.S. Army Reserve, obtaining the pay grade of E-4. She was married in 1985 and now has two children.

Applicant was born and raised in State 1. In 1998, Applicant, her husband, and children moved to State 2, where she

found employment with a defense contractor. In 1999, she completed a security clearance application (SCA). Before completing the SCA, Applicant discussed with her husband how she was going to answer question 6-her employment activities-for the period 1989-98. She did not want to reveal her father and brother paid her a weekly allowance for performing "various odd jobs," including babysitting her brother's children. Ex. B at 2. Applicant had asked JD, a friend in State 1, if she could use her as a personal and work reference to confirm, if asked, that she was Applicant's supervisor at a concrete company from 1989-98. Ex. B at 4. Applicant never worked at that company. Applicant listed the friend as a reference. On 14 February 2000, Applicant was granted a secret clearance.

In August 2000, Applicant completed another SCA as part of the process required to upgrade her clearance to top secret. She answered question 6 as she had in her 1999 SCA, claiming she had worked for JD at the concrete company from 1989-98. Sometime thereafter, JD telephoned Applicant to notify her that a Defense Security Service (DSS) agent was going to interview her (JD) about Applicant's security clearance. When Applicant was confronted by the DSS agent, she admitted she had not worked for JD or the concrete company. Tr. 28.

Applicant performed all of her assigned duties for the defense contractor in an excellent or superior manner. Ex. A.

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 (1) deliberately falsified her SCA by stating she was employed by the concrete company when, in fact, she was performing odd jobs for her father and brother (¶ 1.a.), and (2) asked at least one individual to provide false information to any investigator inquiring about Applicant's employment history (¶ 1.b.). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness

to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence and Applicant's admissions that Applicant knowingly and deliberately falsified relevant and material facts on her SCA. DC E2.A5.1.2.2. Applicant knew a DSS agent would contact her former employers. Tr. 43. She contends she was physically and mentally abused by her father and brother. They were angry with her for moving to State 2, and she was concerned about what they would say about her if interviewed by a DSS agent. But that is hardly a valid reason for lying on her SCA. Applicant no longer lived near her father or brother and there is no evidence Applicant was under any physical threat of coercion. Such concealment of information increased her vulnerability to coercion or exploitation. DC E2.A5.1.2.4. She also admits asking a friend to lie about Applicant's employment history, which is reliable unfavorable information about Applicant. DC E2.A5.1.2.1; E2.A5.1.2.4. Applicant took positive steps to significantly reduce or eliminate her vulnerability to coercion, exploitation, or duress by admitting her deliberate falsification to the DSS agent and at the hearing. MC E2.A5.1.3.5. However, her admission only occurred after she knew the DSS agent had discovered her lie and confronted her about it. None of the other mitigating conditions apply to this case. After carefully considering all of the evidence, I find against Applicant.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant committed a felony, a violation of 18 U.S.C. § 1001, by deliberately falsifying her SCA. ¶ 2.a. A history or pattern of criminal activity creates doubt about an applicant's 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* at 484 U.S. at 527. Applicant deliberately lied about her employment history on her SCA which she certified as "true, complete, and correct" to the best of her knowledge and belief, and with an understanding that knowing and wilful false statements were a violation of 18 U.S.C. § 1001. An applicant may be disqualified if allegations of criminal conduct are raised against her. DC E2.A10.1.2.1. The criminal offense was not an isolated incident (MC E2.A10.1.3.2)-she deliberately falsified the 1999 SCA as well. After weighing all the evidence in this case against the disqualifying and mitigating conditions, I find 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.: Against Applicant

Subparagraph 1.b.: 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.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.