

DATE: August 24, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-33777

**ISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Edward Loughran, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant did not intentionally provide false information in response to two questions on a Security Clearance Application (SCA). Clearance is granted.

**STATEMENT OF THE CASE**

On March 5, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on March 29, 2004. The case was assigned to the undersigned on June 17, 2004. A Notice of Hearing was issued on July 8, 2004, and the hearing was held on August 5, 2004. The transcript was received on August 23, 2004.

**RULINGS ON PROCEDURE**

At the hearing, Department Counsel moved to amend the SOR by adding an allegation under Guideline E. Applicant did not object, and the Motion was granted. The SOR was amended by adding Paragraph 1b. and 1b.(1), which are as follows:

1b. You falsified material facts on a security clearance application (SF-86), executed by you on July 17, 2002, on which you were required to reply to the following question: "**Question 26. Your Police Record - Other Offenses.** For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. In the last 7

years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25?" to which you responded "no"; whereas, in truth, you deliberately failed to list that you had been arrested, as set forth below:

(1) You were arrested on or about June 8, 1998, in Santa Ana, California, and charged with Possession of Stolen Property, a felony. The charge was dismissed.

### **FINDINGS OF FACT**

Applicant is a 24 year old secretary. She has been employed by a defense contractor for approximately two years.

In 1998, applicant was arrested. The police officer involved in the arrest requested that applicant be prosecuted for possession of a stolen vehicle, a felony. The case was referred to the District Attorney's office, but the case was rejected for prosecution, and applicant was never formally charged with a crime.

Applicant completed an SCA on July 17, 2002. In response to Question 21, which asked, "Have you ever been charged with or convicted of any felony offense?" applicant stated "no." Applicant believes that she responded correctly to this question because she was never formally charged. Although it can be reasonably argued that applicant was charged by the police, her position that she was never charged because (1) the prosecutor declined the police department's request to prosecute and (2) she never had to appear in court, is also reasonable. More importantly, because I find that applicant truly believed her "no" response was the correct response, I conclude that she had no intent to provide false information in response to this question. Accordingly, SOR Allegation 1a is found for applicant.

Applicant's "no" response to Question 26, which is referenced above in the RULINGS ON PROCEDURE section of this decision, was clearly false. Unlike Question 21, this question asked about arrests, and applicant knew at the time she completed the SCA she had been arrested.

Applicant testified that she did not intend to provide a false answer. She further testified that she misread the question and thought it, like the previous five questions (Questions 21 through 25), was only asking about charges, not arrests. Considering the evidence as a whole, including applicant's demeanor and conduct while testifying, I find applicant's testimony that she misread the question, and did not intentionally provide the false information, to be credible and worthy of belief. Accordingly, I further find that applicant did not intend to provide false information in response to this question. Based on the foregoing, SOR Allegation 1b is found for applicant.

One of applicant's coworkers appeared at the hearing and testified that applicant is reliable and trustworthy and one of the best secretaries the company has had.

Letters from seven other coworkers of applicant, including at least two of her supervisors, were admitted into evidence (Exhibits C through I). Applicant is described by these coworkers as a hard working, reliable, and trustworthy individual.

### **CONCLUSIONS**

I conclude that applicant did not intentionally provided false information on the SCA she completed on July 17, 2002. Accordingly, Guideline E is found for applicant.

### **FORMAL FINDINGS**

PARAGRAPH 1: FOR THE APPLICANT

Both subparagraphs found for 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 applicant.

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Joseph Testan  
Administrative Judge