

DATE: December 28, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 03-11869

**DECISION OF ADMINISTRATIVE JUDGE**

**MARC E. CURRY**

**APPEARANCES**

**FOR GOVERNMENT**

D. Michael Lyles, Esq., Department Counsel

**FOR APPLICANT**

William F. Savarino, Esq.

**SYNOPSIS**

In 1996, Applicant falsified a resume and an employment application by inflating his credentials and work experience. In 1999, he provided false information in response to several questions on a security clearance application. His pattern of duplicity generated security concerns that he failed to mitigate. Clearance is denied.

**STATEMENT OF THE CASE**

On September 28, 2005, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating it was unable to find that it was clearly consistent with the national interest to grant or continue a security clearance. <sup>(1)</sup> The SOR alleged security concerns under Guideline E for personal conduct, and Guideline F for financial considerations. Applicant answered the SOR on November 20, 2005, and requested a hearing.

The case was assigned to me on September 6, 2006. A notice of hearing was issued on September 18, 2006 scheduling the hearing for October 12, 2006. The hearing was held as scheduled. DOHA received the transcript on October 25, 2006.

**FINDINGS OF FACT**

I have incorporated Applicant's admissions into the findings of fact. In addition, I make the following findings of fact.

Applicant is a 39-year-old married man with five children, ranging in age from 1 to 12. He has been working in the information technology field since the late 1980s. Currently, he is a network engineer. He has held a security clearance since 1995.

Applicant works full-time for two employers, earning a combined salary of \$192,000 per year. <sup>(2)</sup> He has been making substantially in excess of \$100,000 for the past six years.

In 1995, the company, with whom Applicant was working at the time, was acquired by another company. The new company retained the old employees, but required them to submit employment applications.<sup>(3)</sup> Their intention was to fire any of the employees that did not have a bachelor of science degree, or lacked extensive experience in information technology.<sup>(4)</sup>

At the time, Applicant did not have a bachelor of science degree, and had yet to accrue any significant experience in information technology. Fearing he would lose his job, he inflated his credentials on an employment application by mischaracterizing a professional certification, earned in 1990, as a bachelor of science degree, and falsely indicating that he possessed an associate's degree in business administration.<sup>(5)</sup> In addition, he falsely indicated that he had served as the vice president of operations for a former employer, when he had actually worked as a salesman, and overstated his annual salary earned at another past job.<sup>(6)</sup>

Applicant's employer decided to retain him, and he worked there for five months before leaving. While applying to work for another employer in approximately October 1997, he again submitted false information.<sup>(7)</sup> He did so because, ". . . [his] experience was still limited, so [he] needed to embellish."<sup>(8)</sup> He successfully obtained this job, as well.<sup>(9)</sup> He embellished his work experience on one additional employment application.<sup>(10)</sup>

In 1991, Applicant and three friends founded a company that specialized in computer assembly and sales. At its peak, from 1992 to 1996, three employees other than the owners were on the payroll, and it generated approximately \$800 per month in revenue.<sup>(11)</sup>

Through the business, Applicant occasionally provided services for foreign clients. Specifically, he installed network cabling and computers in the Embassy of the Philippines in approximately 1992, and delivered computers to the Embassy of Palau and the Embassy of Micronesia in 1995.<sup>(12)</sup> In an effort to solicit business, Applicant once attended a public function at the Australian Embassy in 1994.

Although the company generated revenue, it never earned a profit, and Applicant never earned any income from it.<sup>(13)</sup> Because he and the other owners each had full-time jobs, and could not devote the time necessary to make it a viable operation, they agreed to disband it in 1996.<sup>(14)</sup> At that time, Applicant entered into an agreement with the co-owners whereupon they would relinquish their interests in the corporation in exchange for a him assuming full responsibility for the company's debt.<sup>(15)</sup>

For the next two years, Applicant continued to assemble and sell computers in his individual capacity.<sup>(16)</sup> He sold approximately 20 computers during this period, and did not keep any transaction records. During this time, he earned approximately \$2,400 per year that he used to satisfy the defunct company's debt.<sup>(17)</sup> He did not report this income to the U.S. Internal Revenue Service (IRS) or to the state revenue authority. He did not think he had to report it because of its minimal nature.<sup>(18)</sup> After an investigative agent in 2004 told him that he may have a duty to report it, he consulted an attorney to help him amend the old tax returns.<sup>(19)</sup> The attorney advised him that it was unnecessary to amend them.<sup>(20)</sup>

In February 1998, Applicant's live-in nanny sued him for back wages.<sup>(21)</sup> The case eventually settled in December 1998.<sup>(22)</sup> After the settlement, the lawsuit became a source of embarrassment for Applicant due to the sordid nature of some of her allegations, which received media coverage.<sup>(23)</sup>

On March 29, 1999, Applicant completed an SF 86. He failed to list the school where he earned a professional certificate in 1990, the company for whom he was working at the time he completed the SF 86, and the business he operated in a part-time capacity from 1991 to 1999, as required in response to Question 5 (*Where You Went to School*) and Question 6 (*Your Employment Activities*), respectively. Also, he failed to list, as required, the contacts with foreign embassies through his business and a lawsuit in 1998.

Applicant characterized his failure to list the professional certificate and the company for whom he was working when  
<sup>(24)</sup>

he completed the SF 86, as unintentional oversights. He testified that he did not list his business because it was only part-time, and he earned no income.<sup>(25)</sup> Also, Applicant testified that he omitted his business contacts with various foreign embassies and the 1998 civil suit because he misunderstood the questions.<sup>(26)</sup>

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

An administrative judge need not view the adjudicative guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process involves an evaluation of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guidelines are most pertinent to an evaluation of the facts of this case:

**Guideline E - Personal Conduct:** Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

**Guideline F - Financial Considerations:** An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to these adjudicative guidelines are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest"<sup>(27)</sup> In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The government is responsible for presenting witnesses and other evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's loyalty is not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

### CONCLUSIONS

Applicant's SF 86 omissions raise the issue of whether Personal Conduct Disqualifying Condition (PC DC) 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 qualification, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. Question 6 requires applicants to list their employment history, but does not specify whether part-time, self-employment should be included. Consequently, Applicant's explanation for omitting his self-employment was reasonable. Also, Applicant's explanation for failing to list the company with whom he was employed when he completed the SF 86 was reasonable. I conclude he did not falsify Question 6, as alleged in subparagraph 1.a.

Upon considering the innocuous, sporadic nature of Applicant's foreign contacts, I conclude he did not intend to conceal them. Similarly, he did not intend to conceal them from an investigative agent during a 2001 interview.

Conversely, Applicant clearly had an intent to conceal from the investigator the lawsuit in which he was involved in 1998, because it was a source of embarrassment for him. Consequently, his explanation for omitting it from Question 40 was not credible. PC DC E2.A5.1.2.2 applies to this omission.

Applicant's omission from Question 5 of a professional certificate obtained from a school he attended for one year approximately 16 years ago appears to be an unintentional oversight. However, upon viewing it in the context of his earlier falsifications on past job applications, I conclude it was intentional. In 1996, he falsified a job application by mischaracterizing his 1990 professional certificate as a bachelor of science in computer information systems. This falsification of the 1996 job application created a paradox when he prepared to complete Question 5 of the SF 86 in 1999. Specifically, if he listed it as a bachelor's degree, he would have repeated the earlier falsification, whereas if he listed it correctly, it would have contradicted his 1996 job application and possibly triggered increased security clearance scrutiny. Applicant chose to avoid this conundrum by intentionally omitting it and characterizing it as an oversight. PC DC E2.A5.1.2.2 applies to this omission as well.

I have considered all of the mitigating conditions, and conclude none apply. Applicant's falsification of his employment credentials remains a security concern.

Applicant's failure to disclose income to the IRS and the state revenue authority from his self-employment, and his alleged failure to report income to the state unemployment insurance commission while receiving benefits in 1995 raises the issue of whether PC DC E2.A5.1.2.5 (*A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*), and Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.2 (*Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust*) apply. The amount of income Applicant did not report to the taxing authorities was nominal. Upon being informed of the possible need to amend his back taxes, he contacted an attorney who reviewed the issue, and advised him it was unnecessary. Although the business of which Applicant was a co-owner generated revenue, it neither generated a profit nor any income for Applicant in his personal capacity. Consequently, he did not fail to report income to his state's unemployment insurance commission when he was briefly receiving benefits in 1995. Neither PC DC E2.A5.1.2.5 nor FC DC E2.A6.1.2.2 is applicable to these allegations.

### **Whole Person Concept**

Although Applicant's falsification of his resume occurred nearly 10 years ago, the circumstances surrounding it were particularly troubling. Faced with the possibility of losing his job, he provided false information to his employer regarding his credentials and experience. He retained the job, and used it to obtain employment with two successive employers. He did not stop providing false information to prospective employers until he concluded he no longer

needed to falsify his credentials in order to obtain the type of jobs he desired.

These falsifications undermined his credibility with respect to the omission of a professional certificate and a lawsuit from his SF 86 executed in 1999. His explanation for omitting the lawsuit was particularly outlandish in light of its surrounding circumstances. Upon analyzing Applicant's case in conjunction with the whole person concept, particularly, the nature, extent, and seriousness of the conduct, <sup>(28)</sup> the surrounding circumstances and motivation for the conduct, <sup>(29)</sup> and the likelihood of recurrence, <sup>(30)</sup> I conclude he has not mitigated the security concerns. Clearance is denied.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

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: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Subparagraph 1.k: For Applicant

Paragraph 2 - Guideline F: FOR APPLICANT

Subparagraph 2.a: For Applicant

### **DECISION**

In light of all 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.

Marc E. Curry

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended. (Directive).

2. Tr. 139.

3. Tr. 34.

4. *Id.*
5. Tr. 37; Exhibit 4, Statement of Qualifications, dated September 6, 1996.
6. Tr. 36.
7. Exhibit 2, Signed, Sworn Statement, dated April 19, 2004, at 18; Exhibit 5, Applicant's Resume (undated).
8. *Id.*
9. Exhibit 1, SF 86, electronically submitted March 29, 1999, at 2 (Question 6, Response 1).
10. *See* note 7.
11. Exhibit 3, Certified Results of Interview, prepared by investigator April 2, 2001, at 2, 3.
12. *See* note 7 at 45.
13. Tr. 71.
14. *Id.*
15. *See* note 7 at 26.
16. *Id.*
17. *See* note 7 at 27.
18. Tr. 69.
19. *Id.*
20. *Id.*
21. Exhibit 12, Complaint filed February 6, 1998.
22. Exhibit 16, Agreed Order of Dismissal, dated December 2, 1998.
23. Tr. 97.
24. Tr. 60.
25. Tr. 52.
26. Tr. 62.
27. *See* Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.
28. Directive ¶ E2.2.1.1.
29. Directive ¶¶ E2.2.1.2, and E2.2.1.7.
30. Directive ¶ E2.2.1.9.