

DATE: June 22, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

CR Case No. 03-14226

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jason Perry, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's deliberate falsification of material facts in a sworn statement to DSS is a violation of Title 18, United States Code, Section 1001, a felony. This conduct has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

**STATEMENT OF THE CASE**

On a date uncertain, 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, (as amended) issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on January 28, 2004, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on April 8, 2004. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on April 16, 2004, and he submitted no reply.

The case was assigned to the undersigned for resolution on June 21, 2004.

**FINDINGS OF FACT**

The Applicant is 50 years old. He is employed as a factory worker by a defense contractor. He is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the

Statement of Reasons (SOR). The following findings of fact are entered

as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because his conduct involves questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

In a sworn statement to the Defense Investigative Service (DSS) dated November 8, 2002, the Applicant stated that during early 1998, he purchased two two-way radios at a flea market and took them to a radio appliance store requesting that the frequencies of the radios be changed. It was determined by the store owner that the radios had been stolen from the Applicant's employer. During the course of an internal investigation into the matter, the Applicant stated that he did not steal the radios from his employer and that he resigned from his job because he did not want to work a swing shift. (See Government Item 5). These were false statements.

In a subsequent statement dated April 30, 2003, and in his answer to the SOR, the Applicant admitted stealing the two two-way radios from his employer and resigning from his job in lieu of being fired. (See Government Items 6 and 3).

The Applicant stated that he knew that he was being untruthful to DSS about the theft. He withheld the truth because he was embarrassed and ashamed of his actions. (See Government Item 6). The Applicant also acknowledged that this was a mistake in judgment that he will never repeat.

The Applicant deliberate attempt to conceal the truth of the details concerning a theft he committed in 1998, from the government in his sworn statement dated November 8, 2002, is a violation of Title 18, United States Code Section 1001, a felony.

### POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are

found to be applicable in this case:

#### Guideline E (Personal Conduct)

##### Conditions that could raise a security concern:

4. Personal Conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail.

5. A pattern of dishonesty or rule violations, including violations of any written or recorded agreement made between the individual and the agency.

##### Conditions that could mitigate security concerns:

None.

#### Guideline J (Criminal Conduct)

##### Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

2. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general

factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk.

Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past

and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical

basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence

which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms

of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per

day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or blackmail. This personal conduct demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in personal conduct or concealment of information that increases his vulnerability to coercion, exploitation or duress. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has failed to introduce persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

The evidence shows that the Applicant deliberately provided false information to the government in a sworn statement dated November 8, 2002 before a Special Agent with DSS, concerning a theft that he committed in 1998. (Guidelines E and J). This conduct is a violation of Title 18, United States Codes, Section 1001, a felony. Although the Applicant acknowledges that he made a mistake in judgment, there is insufficient evidence in the record to support the fact that the Applicant has sufficiently rehabilitated himself since providing this false information. Furthermore, the Applicant's personal conduct shows a pattern of dishonesty and rule violations, which is entirely unacceptable conduct. None of the mitigating factors apply. As a result, the Applicant poses a potential security risk and cannot be trusted with the national secrets. Accordingly, Guideline E (Personal Conduct) and Guideline J are found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by

Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the 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 the Applicant.

DARLENE LOKEY ANDERSON

Administrative Judge