

DATE: July 31, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-16983

## **ECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Nichole L. Noel, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a contract security clearance investigator. He was terminated by a former employer for claiming he had interviewed personal references when he had not done so. Applicant failed to mitigate personal 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. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 22 November 2004, detailing the basis for its decision--security concerns raised under Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 6 December 2004 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 6 July 2006. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 14 July 2006 and responded in an undated letter. The case was assigned to me on 25 July 2006.

### **FINDINGS OF FACT**

Applicant served as a special agent for the Defense Investigative Service (DIS) from February 1982 until August 1994. Item 4 at 1. After leaving DIS, he was employed as a security clearance investigator by a contractor for the Defense Security Service (DSS). He left that employment in April 2001, apparently after questions were raised about his productivity.

Applicant obtained another job as a security clearance investigator for another DSS contractor. Ex. 4. In October 2001, Applicant submitted a report of investigation (ROI) on a military applicant for a security clearance in which he claimed to have interviewed RLR, one of the applicant's references. Applicant's employer contacted RLR as part of its quality

control program. RLR claimed he had received telephone calls from Applicant but never talked to him. RLR became concerned about his contact with Applicant's employer and notified DSS. DSS directed Applicant's employer to perform an inquiry. *Id.* at 2. When initially questioned about it, Applicant claimed he had failed to ask RLR all the relevant questions but would go back and ask RLR more specific questions. *Id.* at 9. The inquiry found two of Applicant's other 13 cases contained inaccurate reporting. In both cases, Applicant reported interviewing a reference, who denied being interviewed. In one of those two cases, the reference said his brother, whom the subject of the investigation did not know, was interviewed. The company concluded Applicant had not performed the interviews as reported, terminated his employment, and revoked his credentials.

Applicant was interviewed by a DSS agent and provided a signed, sworn statement on 21 May 2003 concerning his previous employment. Item 5. In his statement, Applicant claimed he had "no recollection of anyone ever verbally discussing the aforementioned allegation with [him]." Item 5 at 2. He attributed possible discrepancies in his reports as being the result of "either mixed up notes (meaning notes from various cases getting mixed together), or from possible reference sources in [his] case material being misconstrued as having already been interviewed when in fact they had not." *Id.* at 3.

On 11 June 2003, Applicant completed another signed, sworn statement in which he admitted he had been previously questioned about three cases in which reference interviews had not been done as he had reported in his case files. He asserts he was working several cases, was in a rush to get his work completed, and was not very careful in transcribing information from his notes into the reports of investigation. Item 6 at 1.

### 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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Each security clearance decision "must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy." Directive ¶ 6.3. 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.

Enclosure 2 of the Directive sets forth personnel 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.

### CONCLUSIONS

In the SOR, DOHA alleged Applicant was terminated from employment in December 2001 for discrepant reporting (¶ 1.a) and in April 2001 "due to work performance issues" (¶ 1.b). In his Answer, Applicant admitted the allegation in ¶ 1.a, but was unsure how to reply to the allegation in ¶ 1.b because he did not "remember if anyone apprised [him] of being fired from [that job] for work performance." Department Counsel asserts "the allegation in ¶ 1.b is not pertinent to a determination of security worthiness," and therefore, the Government was not seeking an adverse decision on it. FORM at 3 n. 4.

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1. It is a potential security concern and may be disqualifying when reliable, unfavorable information against an applicant is provided by associates, employers, coworkers, neighbors, or other acquaintances. DC E2.A5.1.2.1. The available information shows that Applicant's work in completing security clearance investigations was

unreliable.

An Applicant may mitigate such security concerns by establishing that the information was unsubstantiated or was not pertinent to a determination of judgment, trustworthiness, or reliability. MC E2.A5.1.3.1. Applicant had not done so. The reliable, unfavorable information is relevant to show Applicant's reliability in conducting an important job--security clearance investigations. He states he will do better in the future. But Applicant's limited responses to the SOR and FORM and his inability to remember that he had been informed by his employer of some of the cases in which he failed to interview references does not convince me that he has mitigated the Government's security concerns about his reliability.

### **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: For Applicant

### **DECISION**

In light of all of the circumstances 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