

DATE: December 17, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-18181

ECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant deliberately falsified three applications for employment by claiming he had received a bachelor of science degree in computer science. He also falsified a statement he gave to a security investigator by claiming he had only falsified one application. 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 10 May 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 26 May 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 11 November 2004. On 7 December 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 15 December 2004.

FINDINGS OF FACT

Applicant is a 34-year-old network administrator for a defense contractor. Ex. 1 at 1, 2. He held a Department of Defense secret clearance in 1988 and a Department of State secret clearance in 2002. He is a member of the board of elections for his homeowners association and is involved in a prison ministry. His acquaintances and coworkers hold him in high regard.

In 1995, Applicant completed an application for employment with a defense contractor. In it, he claimed he had received a bachelor of science (B.S.) degree in computer science from a university in 1994. He also submitted a résumé that claimed he had graduated from the university with a B.S. in computer science and a minor in business administration.

In 1997, Applicant applied for employment with another defense contractor. In the application, he claimed he had received a B.S. in computer science from a university. In 2002, when Applicant applied for a position with his current employer, he claimed he had received a B.S. in computer science from a university in 1994.

On 8 October 2002, Applicant completed a security clearance application in which he claimed he had received a B.S. degree in computer science. Ex. 1 at 1.

Applicant was interviewed about his security clearance by a Defense Security Service (DSS) agent on 6 March 2003. In a signed, sworn statement completed that date, Applicant admitted he had not graduated from the university, but claimed he had listed it on his 1997 employment application because he expected to do so later that year. Ex. 2 at 3. He denied misleading others about his education. *Id.* at 4. In another interview conducted later on 6 March 2003, Applicant admitted he had inappropriately claimed to have a B.S. degree in computer science on his 1995 employment application so he would have a better chance of getting the job. He also noted that his current supervisor did not know Applicant did not have a degree and, that if he learned such, he would be fired. Ex. 3 at 2-3. Applicant has neither graduated nor told his employer that he does not have the degree.

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 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.

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 falsified material facts about holding a B.S. degree on applications for employment in 1995 (¶ 1.a), 1997 (¶ 1.c), and 2002 (¶ 1.d); falsified material facts about holding a B.S. degree on a résumé in 1995 (¶ 1.b); and falsified material facts in a statement to a DSS agent concerning the number of times he misled others about his education (¶ 1.e). 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.

The Government established by substantial evidence that Applicant deliberately claimed in his employment applications that he had graduated from college with a B.S. degree when he had not in fact done so. The deliberate falsification of relevant and material facts from a questionnaire used to determine employment qualifications raises a security concern that may be disqualifying. DC E2.A5.1.2.2. He also deliberately provided false information (his signed, sworn statement) statement to the DSS agent concerning his personnel security determination. DC E2.A5.1.2.3. None of the mitigating conditions listed under Guideline E apply to Applicant. Applicant failed to mitigate security concerns raised by his personal conduct.

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

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against 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

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 (Directive).