

KEYWORD: Personal Conduct; Financial

DIGEST: Applicant is an electronics technician for a defense contractor. She was released from active duty with the Army for fraudulent enlistment. She was terminated by a subsequent employer because she made unauthorized telephone calls. In completing two security clearance applications, she deliberately failed to provide correct and accurate information concerning non-judicial punishment in the military, other police records, and financial records of unpaid judgements and delinquent debts. Clearance is denied.

CASENO: 04-02030.h1

DATE: 01/23/2006

DATE: January 23, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-02030

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

Norman Cooper, Esq.

**SYNOPSIS**

Applicant is an electronics technician for a defense contractor. She was released from active duty with the Army for fraudulent enlistment. She was terminated by a subsequent employer because she made unauthorized telephone calls. In completing two security clearance applications, she deliberately failed to provide correct and accurate information concerning non-judicial punishment in the military, other police records, and financial records of unpaid judgements and delinquent debts. Clearance is denied.

**STATEMENT OF THE CASE**

On March 18, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on March 30, 2005. The SOR alleges security concerns under Guideline E (Personal Conduct), and Guideline F (Financial Considerations) of the Directive.

Applicant answered the SOR in writing on May 12, 2005. She admitted five and denied eight of the allegations under Guidelines E, and admitted the allegations under Guideline F. She requested a hearing before an administrative judge, and the request was received by DOHA on May 27, 2005. Department Counsel was prepared to proceed with the case on September 20, 2005, and the case was assigned to me the same day. A notice of hearing was issued on October 25, 2005, and the hearing convened on November 21, 2005. Fourteen government exhibits and two Applicant exhibits were received without objection. The testimony of three Applicant witnesses and the Applicant were received during the hearing. The transcript was received by DOHA on December 2, 2005.

## **PROCEDURES**

Department Counsel moved to amend SOR allegation 1.d. to conform to the evidence presented at the hearing. Applicant had no objection to the amendment. SOR allegation 1.d was amended to read:

On or about December 17, you accepted from the U.S. Army an Article 15 non-judicial punishment including reduction in rank (suspended) and extra duty, as the result of allegations of fraudulent entry and disrespecting a non-commissioned officer and disobeying an order. On or about March 4, 1998, you were chaptered out of the United States Army as the result of fraudulent entry. [\(1\)](#)

## **FINDINGS OF FACT**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 35 years old and employed for over five years as a tier II electronics technician for a defense contractor. She submitted security clearance applications in 1999, [\(2\)](#) and 2001. [\(3\)](#) She has a bachelor's degree in computer networking and is studying part-time for her master's degree in Engineering anagement. She now has two grown children, one in college and the other working for another defense contractor. [\(4\)](#)

In 1989 when Applicant was 19 years old, she was apprehended for shoplifting baby cloths, pled guilty, was fined, and spent two days in jail. Applicant was arrested and convicted in 1993 for shoplifting earrings, and fined. She was arrested and convicted for shoplifting a toothbrush in 1995, and spent one night in jail. [\(5\)](#)

Applicant's first child was born in 1987. She enlisted for active duty with the United States Army in 1996 and entered a child care plan for her mother to assume custody of the child. Applicant served on active duty from February 1996 to February 1998. After Applicant was on active duty for approximately 18 months, she became concerned about the living conditions for her child, regained custody of the child, and sought release from active duty. At the time, she was serving as an administrative clerk. She received non-judicial punishment under Article 15, Uniform Code of Military Justice on

December 11, 1997 for fraudulent entry on active duty, disrespect, and disobedience of a non-commissioned officer. She was reduced in grade, which was suspended, and performed extra duty for 14 days.<sup>(6)</sup> Applicant was the unit clerk so she initiated her own process to be released from active duty for fraudulent entry. She was released from active duty in February 1998 for fraudulent enlistment with a general discharge which was later up-graded by the Army to an Honorable Discharge.<sup>(7)</sup>

Applicant worked for various temporary agencies after her release from active duty. She did not list all of her assignments by the temporary agencies on her security clearance application because she did not believe it was required. From June 1998 to January 1999, she worked for a government contractor as an administrative assistant detailed to a government agency. She made unauthorized calls using her contractor employer's phone system. Her pay due was debited \$1,248.83 to pay the charges in full and she was terminated. Applicant stated the father of her second child had been reassigned by the military to Korea and she was calling him concerning support payments. Because of the time difference in locations, she had to call him from work. She had not requested or received permission to make the calls.<sup>(8)</sup>

The government agency to which she was detailed granted her a temporary security clearance, but revoked it during the background investigation. Applicant informed security investigators she was terminated for denial of security clearance. She made this statement after being advised by the security investigators that it was the reason for her termination.<sup>(9)</sup>

Applicant answered "NO" to question 25 on her 1999 and 2001 security clearance applications<sup>(10)</sup> asking if in the last seven years she had been subject to court-martial or other disciplinary proceedings under the Uniform Code of Military Justice (UCMJ). Punishment was imposed under Article 15, UCMJ on December 3, 1997.<sup>(11)</sup> Applicant stated she signed for an Article 15, UCMJ, but thought it was unofficial and she believed it was only for fraudulent enlistment and not for disrespect to and disobedience of a non-commissioned officer.<sup>(12)</sup>

On the 1999 security clearance application, Applicant answered "NO" to question 26 asking if in the last seven years, she was arrested, charged with, or convicted of any offense not already listed in the application.<sup>(13)</sup> Applicant was charged with shoplifting in May 1993 and November 1995. Applicant testified that when she completed the application there were a lot of issues in her life and she only guessed as to the dates of her arrest.<sup>(14)</sup>

On both applications, Applicant answered "NO" to question 37 asking if in the last seven years, she had any judgments against her that had not been paid. Applicant had unpaid judgments entered against her in July 1996 and March 1998. Applicant stated she did not list these judgments because she had reached agreement with the creditors to pay the debts.<sup>(15)</sup> A 2002 credit bureau report reflects that the July 1996 judgment had not been satisfied, but the 1998 judgment was satisfied in April 2001.<sup>(16)</sup>

On both applications, Applicant answer "NO" to question 38 asking if in the last seven years, she had been over 180 days delinquent on any debts. On both Applications, Applicant answered "NO" to question 39 asking if Applicant was currently over 90 days delinquent on any debts. Applicant had five debts delinquent over 180 days and, at the time she completed the forms, the debts were still currently over 90 days delinquent.<sup>(17)</sup> Credit bureau reports provided by the government show that at the time she completed both security clearance applications, Applicant had debts unpaid or listed as bad debts over 180 days past due or currently over 90 days past due.<sup>(18)</sup> Applicant stated she did not include past due accounts since she had settlement agreements with the creditors to pay the accounts.<sup>(19)</sup> She presented no information to verify the agreements with creditors, the timing of the agreement, payment on the agreements, or that they were settled in full upon payment of the agreed settlement amounts. She presented her latest credit bureau report showing she has no past due debts and all debts are being paid as agreed.<sup>(20)</sup>

Applicant present testimony from a former supervisor, her current supervisor, and her current senior supervisor concerning her reputation for truthfulness and her work performance. All of the witnesses testified she is trustworthy and has a reputation for trustworthiness in the workplace.<sup>(21)</sup> However, I find her testimony at the hearing to be evasive, contradictory, and elusive, and thus not credible.<sup>(22)</sup>

## **POLICIES**

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."<sup>(23)</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>(24)</sup>

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(25)</sup> An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other

pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.<sup>(26)</sup>

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>(27)</sup> 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>(28)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(29)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(30)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability."<sup>(31)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(32)</sup>

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

**Guideline E - Personal Conduct:** A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

**Guideline F - Financial Considerations:** A security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

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

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government established its case under Guideline E. Applicant's termination from employment for making unauthorized telephone calls, her inability to obtain a security clearance, her fraudulent entry into the United States Army, and her false answers on her security clearance applications brings the matter under Personal Conduct Disqualifying Conditions E2.A5.1.2.1 (*Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*), and 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 qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*). The government has presented reliable information that Applicant received non-judicial punishment for and was release from the Army because she fraudulently enlisted in the Army. The government presented reliable information that Applicant was terminated by an employer because she violated company rules on use of the telephone and incurred substantial telephone bills. She was denied a security clearance. The government's credit bureau reports are reliable information concerning unpaid judgments and delinquent debts outstanding at the time of the completion of the 1999 and 2001 security clearance applications. When completing her 1999 security clearance application, she did not provide correct and accurate information as to her 1993 arrest for shoplifting, non-judicial punishment, and financial status to include judgments and delinquent debts. When she completed her 2001 security clearance application, Applicant did list her shoplifting offense, but again failed to provide information on her non-judicial punishment and correct financial status. I conclude there is reliable unfavorable information concerning Applicant and that she deliberately did not correctly answer questions on her security clearance application.

Applicant's explanations are without merit. She violated her child care plan and initiated herself the fraudulent entry release from the military. She knew she had received non-judicial punishment and that it was official because she served the punishment. Her explanation that she thought the proceedings were not official because they were not included in her discharge papers is without merit. She knew of the judgments against her and her financial status because she was working with creditors to resolve them. Applicant presented no information to establish or verify her explanation that the information was not included on the application because she had settlement agreements with creditors. She had adequate information to provide the correct information on her security clearance application. There is a continued course of conduct from fraudulent entry to the military to omission of information on her security clearance application that shows questionable judgment, untrustworthiness, lack of candor, dishonesty, and unwillingness to comply with rules or regulations. The above disqualifying conditions have been established.

I have considered all of the Personal Conduct Mitigating Conditions, but especially E2.A5.1.3.1 (*The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*), and E2.A5.1.3.3 (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). Information on a security clearance application has a direct bearing on an individual's trust and security worthiness. The security process relies on an applicant providing complete and correct information. When an applicant deliberately does not provide accurate information, it shows questionable judgment, untrustworthiness, and unreliability. The correct

information for the security clearance application was substantiated by the government, and this information was pertinent to determine Applicant's trustworthiness and judgment. Applicant has yet to provide correct facts. Her testimony at the hearing was evasive, contradictory, and not believable. She did not present any information to verify her statements concerning her finances except for her latest credit bureau report showing all accounts are being paid as agreed. This does not establish that at the time she completed the security clearance applications she either had settled debts or had settlement agreements with creditors. In fact, the evidence shows that at the time the applications were completed, the accounts had not been settled and the judgments and debts were not paid. I conclude Applicant has not met her burden to mitigate the security concerns about her questionable judgment, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations.

The government has not established its case under Guideline F. SOR allegation 2 alleges financial consideration security concerns because Applicant was debited by her employer for unauthorized telephone calls, and for three offenses of shoplifting. The security concern for financial considerations is that a person who is financially overextended is at a risk of having to engage in illegal acts to generate funds. There is no factual question that Applicant used the telephone at her employment to make unauthorized calls incurring a large telephone bill which she paid as a deduction from her pay and was terminated. There is no question she was arrested on three occasions for shoplifting. However, these actions do not show she was financially overextended. They may show criminal or personal conduct, but not financial problems. Allegation 2 is resolved for Applicant.

I carefully considered all of the circumstances in light of the "whole person" concept. Applicant made some early mistakes in her life but has worked to better herself. She is a college graduate working on her master's degree. She has become financially stable, and is highly praised by her supervisors. However, this does not lessen the security concerns for omitting correct information or providing false information on her security clearance applications. I conclude Applicant is not eligible for access to classified information.

### **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.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j. Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Paragraph 2, Guideline F: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

### **DECISIONS**

In light of all of the circumstances in 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.

Thomas M. Crean  
Administrative Judge

1. TR. 102.
2. Government Exhibit 2 (Security clearance Application, dated Oct 1, 1999).
3. Government Exhibit 1 (Security Clearance Application, dated Jan. 8, 2001).
4. Tr. 47-48.
5. Tr. 47-49; Government Exhibit 5 (Applicant's statement, undated); Government Exhibit 6 (Arrest report, dated Dec. 27, 1989); Government Exhibit 10 (FBI Criminal Information Sheet, dated Jul. 26, 2000).
6. Tr. 50-56; Government Exhibit 9 (Record of Proceeding under Article 15, UCMJ, dated Dec. 22, 1997).
7. Tr. 55; Government Exhibit 10 (Certificate of discharge, DD Form 214, dated Nov. 30, 2003); Appellant Exhibit B (Discharge Certificate, dated Feb. 9, 1998).
8. Tr. 57-58; Tr. 87-89; Government Exhibit 7 (Employer's Memo, dated Jan. 27, 1999).
9. Government Exhibit 4 (Applicant's statement, dated May 13, 2002); Government Exhibit 8 (Government agency revocation of temporary security clearance, dated Oct 16, 1998).
10. Government Exhibit 1 (Security clearance application, dated Jan. 8, 2001; Government Exhibit 2 (Security clearance application, dated Oct. 1, 1999).
11. Government Exhibit 9 (Record of Proceedings under Article 15, UCMJ, dated Nov. 21, 1997).
12. Tr. 54-55; Tr. 67-71.
13. Applicant list the 1995 shoplifting arrest on her 2001 security clearance application. The 1989 and the 1993 offenses were outside the seven year window when this application was completed. The SOR does not allege falsification of the 2001 application for failing to list all of the shoplifting offenses.
14. Tr. 74-79.
15. Tr. 80-85; Tr. 91-98
16. Government Exhibit 11 (Credit Bureau Report, dated Jun 26, 2002) at 10.
17. SOR allegation 1.l and 1.m pertaining to question 39 reads "in the last seven years, have you been over 90 days delinquent on any debt(s)." The SOR allegation misquoted question 39 and Department counsel did not move to amend the SOR. For purposes of this decision, I will consider the correct wording of question 39, that is, is Applicant currently over 90 days delinquent on any debt(s).
18. Government Exhibit 12 (Credit Bureau Report, dated Aug. 29, 2001); Government Exhibit 13 (Credit Bureau Report, dated Feb. 25, 2000).
19. Tr. 83-85.
20. Applicant exhibit A (Credit Bureau Report, dated, Aug. 22, 2005).

21. Tr 22-29; Tr 31-36; Tr. 37-43.
22. *See*, Tr 62-87.
23. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
24. Directive ¶ E2.2.1.
25. *Id.*
26. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
27. *See* Exec. Or. 10865 § 7.
28. Directive ¶ E3.1.14.
29. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
30. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
31. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).
32. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.