

KEYWORD: Personal Conduct

DIGEST: Applicant deliberately falsified her response to an inquiry on her Security Clearance Application and omitted her termination from a company. She subsequently tried to justify and explain her actions. Her explanations, in light of her background and experience, were not reasonable. In the absence of direct evidence pertaining to Applicant's departure from another company, the government is left with weak, not compelling, circumstantial evidence such as mere speculation and her own exculpatory comments. Her deliberate falsification raises doubts about her security eligibility and suitability. Clearance is denied.

CASENO: 04-06248.h1

DATE: 03/15/2006

DATE: March 15, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06248

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esquire, Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant deliberately falsified her response to an inquiry on her Security Clearance Application and omitted her termination from a company. She subsequently tried to justify and explain her actions. Her explanations, in light of her background and experience, were not reasonable. In the absence of direct evidence pertaining to Applicant's departure from another company, the government is left with weak, not compelling, circumstantial evidence such as mere speculation and her own exculpatory comments. Her deliberate falsification raises doubts about her security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On May 17, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons, under Guideline E (personal conduct), 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 Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated May 25, 2005, Applicant responded to the SOR allegations, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on December 16, 2005. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to Applicant, and she was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. No submission was made by the January 26, 2006, deadline. The case was assigned to me on February 9, 2006.

FINDINGS OF FACT

Applicant admitted a portion of one factual allegation pertaining to personal conduct under Guideline E (a portion of subparagraph 1.a.). That admission is incorporated herein as a finding of fact. She denied the remaining allegations. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 36-year-old employee of a defense contractor, and she is seeking to retain a secret security clearance granted to her in 2001. She was previously granted a top secret clearance in 1997. ⁽²⁾ Applicant served in an enlisted status on active duty with the U.S. Navy from 1989 until 1993. ⁽³⁾ She has been employed by a number of different companies, in a variety of positions, since 1996: administrative assistant with Company A from March 1996 until February 1997; ⁽⁴⁾ security administrator with Company B from February 1997 until April 2000; ⁽⁵⁾ unspecified administrative position with Company C from April 2000 until May 2000; ⁽⁶⁾ legal secretary with Company D from April 2000 until May 2001; ⁽⁷⁾ facility security officer with Company E from May 2001 until February 2003; ⁽⁸⁾ and senior security assistant with Company F from February 2003 until an unspecified date. ⁽⁹⁾ She now works for Company X, ⁽¹⁰⁾ but the starting date has not been divulged. Likewise, it is not known if she has been employed by any other employers between her employment with Company F and Company X. The quality of her work performance in all of those positions, with the exception of Companies B and D has not been provided. Applicant was married in November 1991 and separated in September 2000. She has two daughters, born in 1991 and 1993.

The government alleges (subparagraph 1.a.(2) of the SOR) that Applicant was terminated from Company B "in about 2000," due to "excessive tardiness." Applicant denied she was terminated from Company B, but did acknowledge some problems with the Company. ⁽¹¹⁾ She concedes there was an "attempt" to terminate her because she had been absent too many days while caring for her two children who were home with chicken pox. When she furnished the full story to her human resources department, and to avoid any awkwardness with her supervisor, Applicant was transferred to another Company facility where she had the option of remaining for up to four weeks or obtaining another Company position. ⁽¹²⁾ It was subsequently mutually determined that her new placement was "not a good fit." ⁽¹³⁾

Applicant contends she was told at her exit interview that she was not being terminated, that term would not appear in her personnel records, and she would be eligible to reapply for other Company positions in the future. ⁽¹⁴⁾ There is no government evidence to rebut her contention or to indicate the departure was for misconduct, unsatisfactory performance, or under unfavorable circumstances.

The government also alleges (subparagraph 1.a.(1) of the SOR) that Applicant was terminated from Company D on March 16, 2001, "due to excessive unexcused absences." She admitted the allegation and attributed it to (1) her being in an unfamiliar working environment without the benefit of promised training; ⁽¹⁵⁾ (2) going through a marital separation; ⁽¹⁶⁾ (3) being a single parent; ⁽¹⁷⁾ and difficulty in commuting the 50 miles to work each day. ⁽¹⁸⁾

On February 14, 2003, Applicant completed her Security Clearance Application (SF 86). ⁽¹⁹⁾ One question referred to her employment record and inquired if any of the following actions happened to her in the past 7 years: ⁽²⁰⁾

- Fired from job
- Quit a job after being told you'd be fired
- Left a job by mutual agreement following allegations of misconduct
- Left a job by mutual agreement following allegations of unsatisfactory performance
- Left a job for other reason under unfavorable circumstances

Applicant responded "no." ⁽²¹⁾ She certified that her response was true, complete, and accurate. It was not, for she had omitted and concealed her termination from Company D, as described above. Applicant subsequently admitted that she had omitted her termination from Company D, but denied the omission was deliberate. ⁽²²⁾ Instead, she attributed the omission to several factors: (1) she was only employed by Company D for a short period of time, and did not believe it had to be included; ⁽²³⁾ confusion on her part because she had a "lack of knowledge with completing the SF 86;" ⁽²⁴⁾ at the time she was completing the SF 86, she had to be escorted and was trying to minimize the inconvenience to her escort and supervisor; ⁽²⁵⁾ she went through the form quickly "without thoroughly reviewing and understanding the questions;" ⁽²⁶⁾ and she rushed to complete the SF 86 due to anxiety over possible job opportunities. ⁽²⁷⁾

Seven months later, in September 2003, Applicant was interviewed by a special agent of the Defense Security Service (DSS). During that interview, Applicant conceded her response on the SF 86 was neither accurate nor correct. ⁽²⁸⁾ She did not identify the inaccuracy or elaborate on her concession. There is no admission that her omission was "intentional or deliberate."

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. 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 set forth 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 is a conscientious scrutiny 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, 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 individual'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 or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Personal Conduct--Guideline E: 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security," ⁽²⁹⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I conclude that both standards are one and the same. In reaching this decision, I draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I avoid drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.

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 that 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 that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that 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." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline E. Examination of Applicant's actions, if accurate, reveals conduct involving questionable judgment, untrustworthiness, and unreliability. However, there is substantial dispute surrounding Applicant's pattern of potentially deceptive actions, for she has denied the essential elements of some of the allegations while only acknowledging an incorrect response. Her certification, oath, and affirmation attested that her SF

86 response was true and accurate, but Applicant omitted or concealed material facts pertaining to her employment history. The government concedes there is "no direct evidence that Applicant intentionally falsified her [SF 86], however, there is compelling circumstantial evidence that has not been mitigated. . . ." [\(30\)](#)

The government is quite correct when it states that question 20 of the SF 86 is clear and unambiguous and requires no interpretation. Likewise, considering Applicant's employment history, and the positions she has held, especially those of security administrator and facility security officer, and noting she had previously completed security clearance applications on several occasions before 2003, it would not be unreasonable to expect her to have been more familiar with the form and to have paid better attention to the questions and her responses to them. Applicant admitted having been terminated from employment, but her varying explanations and purported justifications for the false response, in light of her background and experience, are not reasonable. Accordingly, as it pertains to Applicant's termination from Company D, the evidence establishes her falsification was deliberate.

Applicant's actions regarding Company D fall within 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 qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities)*, and PC DC E2.A5.1.2.4. *(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)*.

Regarding her departure from Company B, Applicant denied the basic allegation and the government, despite its best efforts, has offered no direct evidence to support the allegation. In the absence of a letter from Company B, or an extract from Company B's personnel files, pertaining to Applicant's departure, the government is left with weak circumstantial evidence, speculation, and Applicant's own exculpatory comments. It was her contention that she wasn't terminated and she was supposedly advised of same. Even if she, in fact, was terminated, and was unaware of that fact, or was simply mistaken regarding it, there is insufficient evidence to indicate intentional or deliberate falsification. Making a simple mistake does not, in the absence of evidence to the contrary, constitute a deliberate action. Accordingly, as it pertains to Applicant's departure from Company B, the evidence fails to establish her deliberate falsification.

The same is true regarding Applicant's September 2003 interview with DSS. As noted above, she conceded her response on the SF 86 was neither accurate nor correct, but she did not identify the inaccuracy or elaborate on her concession. The investigator failed to elicit if the responses were simply incorrect and inaccurate or whether they were intentional and deliberate falsifications, and Applicant made no such admission. Accordingly, as it pertains to Applicant's September 2003 interview, the evidence fails to establish her deliberate falsification, and PC DC E2.A5.1.2.3. *(deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination)* does not apply.

The government has failed to establish a pattern of dishonesty by Applicant by commenting on her failure to provide

complete and accurate information in her SF 86s of July 1997 and February 2003. The 1997 incident was explained to the satisfaction of the authorities, the issue was dropped, and Applicant was granted her top secret security clearance. The allegation does not appear in the SOR. While Applicant was deceptive in her 2003 SF 86 regarding her termination from Company D, in the absence of other evidence of dishonesty, not simply failed allegations of same, there is no application of 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).*

Applicant's ensuing forthrightness regarding her falsification, omission, and deception pertaining to her termination from Company D was insufficient to apply Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.3. *(the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts).*

Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate, meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. The nature of Applicant's actions and activities, therefore, poses a serious potential risk to the nation's security precautions which go to the very heart of the nation's security system. An applicant's responsibilities associated with the granting of a security clearance are considerable in terms of protecting the national security and in maintaining appropriate personal conduct. Along with the responsibilities is accountability. In this instance, Applicant is now held accountable for those past actions and activities.

Based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, and my application of the pertinent factors and conditions under the Adjudicative Process, I find Applicant has failed to mitigate or overcome the Government's case. The evidence leaves me with doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegation 1.a.(1) of the SOR is concluded against Applicant. The remaining allegations are concluded in her favor. For the reasons stated, 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 THE APPLICANT

Subparagraph 1.a.(1): Against the Applicant

Subparagraph 1.a.(2): For the Applicant

Subparagraph 1.b.: For 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 Applicant. Clearance is denied.

Robert Robinson Gales

Chief Administrative Judge

1. The government submitted 10 items in support of the allegations.
2. Item 5 (Security Clearance Application, dated February 14, 2003) at 8.
3. *Id.* at 5.
4. *Id.* at 3.
5. *Id.*
6. *Id.*
7. *Id.* at 2-3.
8. *Id.* at 2.
9. *Id.*
10. Item 3 (Receipt, dated May 24, 2005).
11. Item 4 (Response to SOR, dated May 25, 2005) at 2.
12. *Id.*

13. *Id.*
14. *Id.*; Item 6 (Statement, dated June 30, 2004) at 2.
15. *Id.* Item 6.
16. Item 4, *supra* note 11, at 1.
17. *Id.*; Item 6, *supra* note 14, at 2.
18. *Id.* Item 4.
19. Item 5.
20. Item 5, Question 20.
21. *Id.* at 6.
22. Item 4, *supra* note 11, at 1.
23. *Id.*
24. *Id.*
25. *Id.* at 3.
26. *Id.*
27. *Id.*
28. Item 6, *supra* note 14, at 3.
29. Exec. Or. 12968, "*Access to Classified Information*," as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.)
30. FORM at 6.