

DATE: November 15, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06903

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 38 years old and works in an administrative position for a defense contractor. Applicant claimed she misread several employment forms she completed in 2003, and denied misrepresenting her college education on them. Applicant failed to mitigate the security concerns regarding her personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On January 28, 2005, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR, which is essentially an administrative complaint, 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 a security clearance to the Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

Applicant answered the SOR in writing. She admitted two of the allegations and denied four of them. She requested a hearing before an administrative judge and the case was assigned to me on August 26, 2005. A Notice of Hearing was issued on September 15, 2005, and the hearing was held on September 30, 2005. At the hearing, the Government introduced 16 exhibits into evidence without an objection from the Applicant. The Applicant did not introduce any documents. Neither party called any witnesses. I received the Transcript (Tr.) of the proceeding on October 11, 2005.

FINDINGS OF FACT

In her answer Applicant admitted the allegations contained in the SOR subparagraphs 1.b. and 1.d. under Guideline E. She denied the allegations in subparagraphs 1.a., 1.c., 1.e., and 1.f., under Guideline E. The admissions are incorporated herein as findings of fact. After a complete review of the evidence in the record, I make the following additional

findings of fact.

Applicant is 38 years old. She was married in April 1988, and is presently separated from her husband. ⁽¹⁾ Her 16-year-old daughter lives with her. ⁽²⁾ From December 1989 to November 1992, Applicant and her husband were stationed overseas. ⁽³⁾ After they returned to the United States Applicant "took computer classes at [a computer institute] from approximately Apr/May 93 to May 94, graduating with a diploma." ⁽⁴⁾ They were again sent overseas in May 1997. ⁽⁵⁾ While there Applicant attended college part-time from "approximately August 1997 to December 2000 . . . but did not graduate." ⁽⁶⁾

After returning home in February 2001, Applicant began working for a federal contractor as an administrative assistant. ⁽⁷⁾ In the following September, she completed a security clearance application (SCA), noting that she had a secret clearance as of August 18, 1997. ⁽⁸⁾ In response to Question 5 (*Where You Went To School: Have you attended school beyond high school?*), she answered "No," ⁽⁹⁾ despite having recently taken college courses overseas.

Applicant continued to work for the contractor until June 2003, at which time she learned of another position. According to the job description, the position required a bachelor's degree and security clearance. ⁽¹⁰⁾ On June 3, 2003, Applicant completed an application for the prospective employer. In the Education section, Applicant noted she attended college, wrote "2" under the heading # of Years Completed, and inserted "Early Childhood Education" in the ajor/Minor column. Under the heading for Degree/Certificate Received she wrote "Associates" and in the column for Year Awarded she put "2000." She also indicated she attended a computer institute for "1" year, had a "Business management" major, and received a certificate in "1994." ⁽¹¹⁾ Applicant presented herself as having an associate degree as recorded by the interviewer who wrote "Has an AA vice a Bachelor's degree. That's acceptable to the customer with an experience offset which is present." ⁽¹²⁾

On June 23, 2003, Applicant filled out another employment form for the company. She again stated that she attended a state college, majored in "Early Childhood Ed.," earned an "Associates," and in the column for Dates Attended, filled in "Associates." ⁽¹³⁾ On that date she also completed a form to verify her education. She listed the name of the college, wrote "Associates" under the heading Highest Degree Attained, inserted "Early Childhood Education" in the column for Major, wrote "2000" in the section entitled Year Degree Granted, listed "3.8" as her overall Grade Point Average (GPA), and recorded "09/99 - 5-01" under Dates Attended. ⁽¹⁴⁾ On July 2, 2003, the college verified her educational credentials. According to the college registrar, Applicant was enrolled in 1998 for two terms and earned six hours of credit in general studies with a grade point average of 1.20 on a 4.00 scale. She was also enrolled for four hours in the fall semester of 2000, but did not complete the term. ⁽¹⁵⁾ After receipt of that information, the company phoned the Applicant at work on July 7, 2003, to discuss the situation and asked her to investigate the matter. ⁽¹⁶⁾ Applicant left work shortly after that call, claiming she had a personal emergency and an uncomfortable office situation. ⁽¹⁷⁾ She never returned. ⁽¹⁸⁾ However, on the following day she sent an e-mail to the company, apologizing for abandoning her position. ⁽¹⁹⁾ Applicant denied that she left because of the telephone call regarding her education. However, the circumstances surrounding the abrupt departure were undoubtedly related to the call questioning her education, albeit exacerbated by her personal issues.

On August 21, 2003, Applicant completed an employment form for another company. In the Education section she listed the name of the college she attended, indicated "haven't completed" under the heading of Degree Received and Major, and listed her GPA as "3.6." She also noted that she had attended a computer institute for "1" year, received a "Certificate" and had a GPA of "4.0." ⁽²⁰⁾ In the section requesting her employment history, Applicant did not list her prior employer because she knew she would not get a good recommendation after she abandoned her job. ⁽²¹⁾ She denied that she withheld information based on the company's inquiry about her educational background. ⁽²²⁾

Applicant asserted in a previous interview with a government investigator and during the hearing that she did not falsify any information. She insisted that she misunderstood the questions on the three employment documents. ⁽²³⁾ She

thought the information requested about her education was prospective rather than retrospective, i.e., the questions asked what degree she was in the process of obtaining.⁽²⁴⁾ As to her 3.8 GPA, she called it a "guesstimation" because she was not sure what grades she earned.⁽²⁵⁾ In explaining this series of events, she said "This is a misunderstanding and has never happened before." While I believe this "misunderstanding" has not happened before, I find her actions were intentional. Her explanation of misreading the questions is not credible, given the clarity of these standard employment questions, as well as her previous administrative work history and training. I also find her claim that she was unaware of her grades at the time she completed the forms incredible.

POLICIES

Enclosure 2 of the Directive sets forth adjudication guidelines which must be considered in the evaluation of security suitability. 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 in Paragraph E2.2., Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁶⁾ The government has the burden of proving controverted facts.⁽²⁷⁾ The burden of proof is something less than a preponderance of the evidence.⁽²⁸⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.⁽²⁹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽³⁰⁾

As noted by the Court in *Department of the Navy v. Egan*, 484 U.S. 518 (1988), "it should be obvious that no one has a right to a security clearance"⁽³¹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽³²⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽³³⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽³⁴⁾ 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.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration relevant circumstances, and applying sound judgment, mature thinking and careful analysis.

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

Guideline E - Personal Conduct: A security concern may exist when 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. (35)

CONCLUSIONS

I have considered all the facts in evidence and the legal standards. The government has established a case under Guideline E.

Based on the evidence, 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*), applies to this case. Applicant misrepresented her college credentials to an employer in order to obtain employment. She knew a college degree was a prerequisite for obtaining a job and chose to provide false information with the intention to influence the prospective employer.

Applicant filled out three forms with the same false information and failed to correct the falsifications when given an opportunity in February 2004, in her discussion with a government investigator. Based on this conduct she engaged in a pattern of dishonest behavior, such that 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*), also applies to this case.

I have considered all the mitigating conditions and especially Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.2. (*The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*), and, PC MC E2.A5.1.3.3. (*The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). Neither applies. This was not an isolated incident as the Applicant submitted false information to one employer and withheld information from another. Applicant did not take the necessary steps to correct the falsification. The truth about Applicant's credentials surfaced as a result of a request for a degree verification and not as the result of Applicant's actions.

I have considered all the evidence in this case, including Applicant's explanation for the misstatement, her work history, background, age, the burdens of being a single mother, and the probability that similar conduct has not occurred in her past and will not occur in the future. I have also taken into account the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interest. However, all of those factors are insufficient to mitigate the security concerns regarding her personal conduct under these circumstances. Therefore, I am persuaded by the totality of the evidence that it is not consistent with the national interest to grant Applicant a security clearance at this time. Accordingly, Guideline E is decided against Applicant.

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 (Personal Conduct): AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Shari Dam

Administrative Judge

1. Government Exhibit 1 (Security Clearance Application, dated March 13, 2003) at 1.
2. Government Exhibit 4 (Statement of Subject, dated November 5, 2003) at 1.
3. Government Exhibit 2 (Statement of Subject, dated May 8, 2002) at 3.
4. *Id.* at 2-3.
5. *Id.* at 4.
6. *Id.* at 2.
7. Government Exhibit 1, *supra* note 1, at 13.
8. *Id.*
9. *Id.* at 3.
10. Government Exhibit 11 (Job Description for Program Mgt. Specialist III, dated June 3, 2003).
11. Government Exhibit 7 (Job Application, dated June 3, 2003) at 2.
12. Government Exhibit 8 (Interview Schedule & Evaluation Form, dated June 3, 2003).
13. Government Exhibit 6 (Employee Personal Data Form, dated June 23, 2003).
14. Government Exhibit 10, *supra* note 1, at 1.
15. Government Exhibit 10 (Request for Degree Verification, dated July 2, 2003) at 2.
16. Tr. 27.
17. Tr. 47; Government Exhibit 4, *supra* note 2, at 1.
18. Government Exhibit 5 (Adverse Report with attachments, dated June 23, 2003).
19. *Id.* at 2.
20. Government Exhibit 13 (Employment Application, dated August 21, 2003).
21. Tr. 39.
22. Government Exhibit 4, *supra* note 2, at 2; Government Exhibit 15 (Certified Results of Interview of December 3, 2003) at 1.
23. Tr. 33; Government Exhibit 15 (Certified Results of Interview, dated February 3, 2004) at 2.

24. Tr. 18; Government Exhibit 4, *supra* note 2, at 2.
25. Tr. 20.
26. ISCR Case No. 96-0277 at 2 (App. Bd., Jul. 11, 1997).
27. ISCR Case No. 97-0016 at 3 (App. Bd., Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
28. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
29. ISCR Case No. 94-1075 at 3-4 (App. Bd., Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
30. ISCR Case No. 93-1390 at 7-8 (App. Bd., Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
31. *Egan*, 484 U.S. at 528.
32. *Id.*
33. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
34. Executive Order No. 10865 § 7.
35. Directive, ¶ E2.A5.1.1.