

KEYWORD: Personal Conduct

DIGEST: Applicant deliberately falsified his December 2001 clearance application by omitting his May 1999 arrest for felony stalking, child abuse, and indecent exposure, and his subsequent court-ordered sex offender treatment. Clearance denied.

CASENO: 04-07508.h1

DATE: 01/31/2006

DATE: January 31, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-07508

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Esquire, Department Counsel

## FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant deliberately falsified his December 2001 clearance application by omitting his May 1999 arrest for felony stalking, child abuse, and indecent exposure, and his subsequent court-ordered sex offender treatment. Clearance denied.

### STATEMENT OF THE CASE

Applicant challenges the 5 May 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of personal conduct<sup>(1)</sup>. He answered the SOR 27 June 2005, and requested a decision without hearing. He did not respond to DOHA's 30 September 2005 File of Relevant Material (FORM). The record closed 11 December 2005, when his response was due. DOHA assigned the case to me 19 December 2005.

### FINDINGS OF FACT

Applicant admitted the allegations of the SOR, but denied intent to falsify his clearance application when he failed to disclose a 1974 burglary arrest, a 1977 burglary arrest, and a 1983 DUI arrest. I incorporate his admissions as findings of fact. He is a 49-year-old installation technician employed by defense contractors since approximately April 1990. He appears to have held a clearance since 1991; his most recent clearance date is November 1997.

When Applicant completed his December 2001 clearance application to begin his periodic reinvestigation, he

deliberately failed to disclose his May 1999 arrest for felony stalking, child abuse, and indecent exposure (question 21) and his ongoing court-ordered sex offender treatment (question 19). In his January 2004 sworn statement, he admitted omitting this information because "I was embarrassed and worried about my security clearance and worried about who in my office might see my EPSQ and pre-judge me badly."

Applicant also failed to disclose a 1974 felony arrest for burglary and a 1977 felony arrest for burglary (question 21) and a 1983 DUI arrest (question 24)--although he did disclose a 1987 DUI arrest. Applicant denies deliberately omitting these arrests, asserting that he filled the clearance application by memory and did not check his records. When Applicant applied for a clearance in 1990, he apparently forgot these arrests as well. However, he discussed the two burglary arrests in an April 1991 sworn statement, and vaguely recalled the 1983 DUI arrest in a May 1991 sworn statement while he was discussing his 1987 DUI. These three arrests were apparently adjudicated favorably in 1991 and 1997.

Applicant's employer appears to have learned of his sex offender status in August 2002, and the employer duly notified the Government. Applicant first discussed the details of his May 1999 arrest and subsequent treatment with Government agents in January 2004.

### **POLICIES**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline E (Personal Conduct).

### **BURDEN OF PROOF**

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>(2)</sup>

## **CONCLUSIONS**

The government established a Guideline E case and Applicant did not mitigate the conduct. He deliberately concealed his May 1999 arrest and sex offender treatment from the Government.<sup>(3)</sup> He did so because he feared he would not keep his job or his clearance if he was truthful. His employer did not learn of his sex offender status until August 2002 (at which time it notified the Government) and he did not disclose his May 1999 arrest and subsequent sex-offender treatment until his January 2004 subject interview. And no evidence suggests he voluntarily disclosed the information before questioning or confrontation.<sup>(4)</sup>

Applicant's conduct demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on in order to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline E against Applicant.

## **FORMAL FINDINGS**

Paragraph 1. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: 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 denied.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ;
4. However, I conclude that Applicant did not falsify his clearance application when he failed to report the 1974 and 1977 burglaries and the 1983 DUI, both because he lacked the intent to keep this information from the Government (having forgotten the arrests) and because the arrests were no longer relevant and material to a clearance determination, having been previously adjudicated twice.