



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
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SSN: -----	)	ISCR Case No. 08-02653
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 14, 2009

**Decision**

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits and testimony, Applicant's request for eligibility for a security clearance is denied.

On August 28, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a set of interrogatories to obtain clarification of and/or additional information about adverse information in his background.<sup>1</sup> After reviewing the results of the background investigation, including his response to the interrogatories (Gx. 2), DOHA adjudicators were unable to make a preliminary affirmative finding<sup>2</sup> that it is

<sup>1</sup> Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

<sup>2</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

clearly consistent with the national interest to allow Applicant access to classified information. On August 15, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raised security concerns addressed in the Revised Adjudicative Guidelines (AG)<sup>3</sup> under Guideline E (personal conduct).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on September 24, 2008, and I convened a hearing on October 22, 2008. The parties appeared as scheduled. The government presented two exhibits (Gx. 1 and 2). Applicant testified and submitted one exhibit (Ax. A). DOHA received the transcript of hearing (Tr.) on November 6, 2008.

### Findings of Fact

The government alleged that Applicant took a case of motor oil from work without permission in 2007 (SOR ¶ 1.a); that when asked if he had taken the oil he initially denied doing so (SOR ¶ 1.b); that he was fired for taking the motor oil (SOR ¶ 1.c); and that he intentionally falsified his answer to e-QIP question 22 (***Your Employment Record. Has any of the following happened to you in the last 7 years? 1. Fired from job. 2. Quit a job after being told you'd be fired. Left a job by mutual agreement following allegations of unsatisfactory performance. Left a job for other reasons under unfavorable circumstances.***) by answering "no." (SOR ¶ 1.d) Applicant admitted without explanation each of the allegations. I have also made the following findings of relevant fact.

Applicant is 61 years old and employed as a senior principal electronics technician. His work involves infrastructure communications systems installation at defense-related facilities worldwide. (Ax. A; Tr. 37) He was hired for his current job in August 2007. The same month, he was sent to the Middle East for three months for an installation job aboard oil rigs and other sensitive facilities in the region. (Tr. 43 - 44)

Applicant and his wife have been married for 33 years. They have two adult children. Applicant worked as a civilian federal employee for 29 years and retired in 2003 with 32 total years of federal service (counting unused sick leave). He has held a security clearance since 1974. In 2005, he and his wife moved from where they were living in retirement to be near his son, whose wife was ill. Applicant obtained a job at an industrial firm as a maintenance supervisor. According to Applicant, one day at work in July 2007, he drove his personal vehicle to a local supplier to get three cases of motor oil for use in the forklifts in his department. The locker where the motor oil was stored could only fit two cases, so he stored two and left one in his truck. It is unclear why, if he knew the locker would only store two cases of oil, he obtained three cases. When he left work for the day, Applicant the extra case of oil was still in his truck. When he got home, he took the oil out of the truck and put it in his garage. He did not take it back in to work the next day. The motor oil was a high-detergent 40-weight brand for diesel engines of

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<sup>3</sup> Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive.

the type used at Applicant's place of work. Applicant did not own a vehicle with a diesel engine and had no personal use for the motor oil he took home that day. (Ax. A; Tr. 23 - 26, 38) The next day, his supervisor asked him if he had taken the oil. Applicant denied having done so. Because his actions had been "eating" (Tr. 27) at him, he later went to his supervisor and told him what he had done. As required by company policy, the supervisor suspended Applicant, who was fired for theft a few days later. A letter from that supervisor advised that a fellow employee saw Applicant put the motor oil into his truck. (Tr. 26 - 27; Gx. 2; Ax. A)

On August 28, 2007, Applicant submitted his e-QIP as part of the hiring process for his current job. As alleged in SOR ¶ 1.d, Applicant intentionally omitted from his e-QIP the fact that he had been fired from his previous job. Applicant did so because he was embarrassed by the fact he had been fired for theft. While he was overseas working for his company, he asked his company's Facilities Security Officer (FSO), without explaining why he would want to do so, how to make changes to the e-QIP he had submitted. Applicant was told there was no way to do so and that he should just wait until he returned to the United States and was interviewed by investigators. Although he claims his deception caused him a great deal of stress, it was not until mid-December 2007, and after he learned that co-workers who had applied around the same time were being granted their clearances while his was still in an interim status, that he told his boss that he had lied on his e-QIP. (Tr. 31 - 33, 45 - 46)

Applicant was interviewed for his clearance by a government investigator on December 28, 2007. The investigator proceeded to review the questions and answers in the e-QIP. Applicant made corrections to some of the information as the investigator went question-by-question. When she came to question 22, Applicant told her he had been fired from his previous job and stated he had lied when he submitted the form. (Gx. 2; Tr. 28 - 29, 45 - 47) Applicant did not offer to correct his e-QIP answer until the government investigator came to question 22 during her review of the e-QIP. The government investigator did not confront Applicant during the interview with any other record of his firing in order to contradict the "no" answer to question 22. (Tr. 49 - 51)

Aside from the facts surrounding his firing and his false answer on his e-QIP, Applicant's background is devoid of any misconduct or other questionable behavior. He served with distinction for 28 years in the U.S. Army and National Guard, retiring in 2002 as a Command Sergeant Major. His civilian record is equally impressive and he received numerous awards for his work as an employee of the Departments of the Navy and Army through 2003. More recently, the manager who hired him for his current job, and to whom Applicant confessed he had lied on his e-QIP, regards Applicant as a valued, honest and trustworthy employee. Applicant is viewed in a similar light by his program manager. The supervisor who fired him in July 2007 feels Applicant has learned his lesson. Applicant's most recent performance evaluation shows he is an excellent worker. (Ax. A)

## Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</sup> and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole person” concept, those factors 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 extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent 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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable 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. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG ¶ 15 (Guideline E - Personal Conduct).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>6</sup>

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Thus, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of

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<sup>4</sup> Directive. 6.3.

<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

any reasonable doubt about an applicant's suitability for access in favor of the government.<sup>7</sup>

## Analysis

### Personal Conduct.

The government presented sufficient information to support, and Applicant does not contest that he was fired from his job in 2007 for taking company property, that he initially lied to his boss about taking the property, and that he tried to conceal that information from the government by answering "no" to question 22 of his e-QIP. Available information raises security concerns about Applicant's personal conduct as addressed in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicants are required to provide truthful answers at all times during the investigative and adjudicative process. Withholding relevant information about one's background can potentially impede the government's ability to make an accurate decision about granting access to sensitive information. Applicant deliberately lied to his employer about the fact he took the motor oil and he deliberately lied to the government when he answered "no" to e-QIP question 22. He concealed relevant information from his e-QIP because he was embarrassed by the fact he had been fired from his previous job. These facts require application of the disqualifying conditions at AG ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant 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*). Applicant's initial denial of his conduct when asked if he had taken the motor oil requires application of the disqualifying condition at AG ¶ 16(b) (*deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*).

I have also considered whether the disqualifying condition at AG ¶ 16(d) (*credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly*

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<sup>7</sup> See Egan; Revised Adjudicative Guidelines, ¶ 2(b).

*safeguard protected information. This includes but is not limited to consideration of...(4) evidence of significant misuse of Government or other employer's time or resources*) is applicable to Applicant's taking of the motor oil. Applicant's position is that he took the oil home by mistake. However, he has not explained why he obtained three cases of oil when he knew the storage locker would only hold two. Also unexplained is why he put the extra case of oil, for which he had no use, in his garage when he returned home if it was a mistake and he intended to return it the next day. Also, if it was a mistake, why did Applicant deny he had the oil when his boss asked him about it? Balanced against Applicant's version of events is a letter from his supervisor, who, although supportive of Applicant, makes clear that Applicant stole the motor oil. All of the information bearing on this part of Applicant's conduct requires application of AG ¶ 16(d).

As to the mitigating conditions with potential relevance here, he is not entitled to the benefit of AG ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*). He initially lied to his employer, who apparently knew there was a case of oil missing and asked Applicant directly whether he had taken it. As to his e-QIP, he may have been unable to correct his e-QIP owing to his remote work location immediately after he submitted the form. However, long before he returned home and was interviewed, he could have alerted his boss and the FSO that he had made a false statement on his e-QIP. He did not do so until he became concerned that there may be a problem getting his clearance. The foregoing undermines any benefit he might realize from the fact he corrected his falsification during his interview.

Finally, Applicant does not contest that he acted improperly in concealing his conduct at work and that he was fired. However, he avers his actions, while stupid, were isolated and not indicative of his judgment and reliability. I have considered the possible application of AG ¶ 16(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*). This mitigating condition is not applicable here because Applicant's conduct was recent. Nor was his offense minor, in that he violated the trust of a former employer and failed to meet his obligation of candor when responding to the government's questions. It was not infrequent because the record shows three instances of deception and misconduct. Nor were the circumstances of his conduct unique – Applicant lied to his boss because he got caught and he lied on his e-QIP because he was embarrassed or was worried he would not get his clearance. On balance, Applicant has failed to mitigate the security concerns about his personal conduct raised by the government's information.

### **Whole Person Concept.**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline E. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is a mature, responsible, and accomplished 61-year-old defense contractor employee. Until this issue arose, he had held a security clearance without incident for nearly 30 years as civilian employee of the Departments of the Navy and Army. Applicant has been a

model of stability and reliability at work, in the military and at home, where he and his wife of 33 years raised a family. However, in 2007, he exhibited poor judgment and dishonesty on at least three occasions. He acknowledges his conduct and has taken responsibility for it. His current employer is aware of his conduct, but still endorses Applicant as a fine employee suitable for a position of trust. Even the employer who fired him in 2007 provided a positive recommendation and endorsement of Applicant's character. Nonetheless, this favorable information is insufficient to overcome the security significance of Applicant's falsifications and his conduct at work. The personnel security program is fundamentally reliant on the willingness of applicants to be honest, forthright and candid at all times in dealing with the government. Applicant's experience through his military career and as one who has held a security clearance throughout much of his adult life means he knew or should have known how important it was to be honest about relevant information in his background.

A fair and commonsense assessment<sup>8</sup> of all available information shows Applicant has not overcome the doubts about his ability or willingness to protect the government's interests as his own raised by the adverse information in his background. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.<sup>9</sup>

### **Formal Findings**

Formal findings 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 - 1.d:	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. His request for a security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge

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<sup>8</sup> See footnote 4, *supra*.

<sup>9</sup> See footnote 7, *supra*.