



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



In the matter of:)	
)	
)	ISCR Case No. 08-04050
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

January 28, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a Questionnaire for National Security Positions (SF 86) on December 5, 2006. On August 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline E, Personal Conduct for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On September 17, 2008, Applicant answered the SOR and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on October 28, 2008. The case was assigned to me on November 17, 2008. On December 3, 2008, a Notice of Hearing was issued scheduling the hearing for December 18, 2008. The hearing was held as scheduled. Applicant did not receive the Notice of Hearing within 15 days as required by the Directive. He waived the 15 day notice requirement. (Tr at 6.) The Government offered 13 exhibits which were admitted as Government

Exhibits (Gov) 1 – 13, without objection. Applicant testified and submitted nine exhibits which were marked as Applicant Exhibits (AE) A through I, and admitted without objection. The record was held open until January 9, 2009. One additional document was timely submitted and admitted as AE J. DOHA received the transcript of hearing on December 23, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant denied all of the SOR allegations.

Applicant is a 28-year-old employed with a Department of Defense contractor seeking a security clearance. He has been employed with the defense contractor since June 2006. He is single and has no children. (Tr at 7-8; Gov 1.)

From August 1998 to August 2002, Applicant was a full-time college student. On May 16, 2002, he met with the dean to discuss what courses he needed to complete to be eligible for graduation. At the end of the second summer session, he completed 126 semester hours but did not have the required credits to graduate. (Tr at 48; Gov 4; Gov 6; Gov 7; Gov 8; Gov 9.) He did not meet the requirements for graduation because he needed 27 credits in his major and only had 24. He needed four classes in his selected concentration and only had three. He needed three classes at the 100 level of his major but only had two. (Gov 4 at 7.)

The college where Applicant attended sends out e-mails 6-8 times a year to students advising them of deadlines for them to apply for graduation. When advisors meet with students, information related to application for graduation and degree requirements are discussed. In order to receive their degrees, students are required to apply for graduation. The application for graduation requirements is available on the school's website and is posted throughout the university. When students meet with the Dean, the Dean discusses graduation requirements for completing their degree and the application for graduation requirements. (Gov 4 at 6.)

Around September 2002, Applicant moved out of the area where his college was located. Prior to leaving the university, he had not talked with an advisor to insure that he met all of the requirements for his degree. He did not verify with the registrar that he met the requirements for graduation. Applicant did not apply for a degree. Although he never received his diploma, he never contacted the school to ask about his diploma. Applicant was disappointed with his performance in college and wanted to put his college career behind him. (Tr at 52-54, 58-60.)

In 2002, Applicant was hired as an administrative assistant with a defense contractor. In the spring 2003, he was promoted to the position of legislative analyst. This new position required a security clearance. He completed a security clearance application on April 7, 2003. In response to question 5 which asks about an applicant's educational background, he listed that he had been awarded a Bachelor of Arts degree

on August 15, 2002. (Gov 3.) He was granted an interim SECRET security clearance pending the outcome of his investigation. (Tr at 35.)

Applicant worked as a legislative analyst but moved to a position as an onsite contractor with a DOD agency. He worked at this location for approximately one and a half years. In November 2004, he was encouraged to apply for a federal employee position with the DOD agency. (Tr at 36-37.) He submitted a resume in conjunction with his application for federal employment on November 24, 2004. He listed on the resume that he received a Bachelor of Arts degree in 2002. (Gov 13.)

On March 21, 2005, Applicant completed a security clearance application in conjunction with his future status as a federal employee. In response to question 5, asking about his educational background, he listed that he had been awarded a Bachelor of Arts degree on August 15, 2002. (Gov 2.) He became a federal government employee in April 2005. His subsequent background investigation revealed that he had not been awarded a Bachelor of Arts degree. He was contacted by a security official in the fall 2005 about his academic credentials. (Tr at 37-40; 58-62.)

On March 29, 2006, Applicant was notified that he was to be separated from federal service effective April 5, 2006. He was barred from federal employment for a period of three years until February 17, 2009. The basis for his removal was his material intentional false statements pertaining to his educational credentials on his March 21, 2005, security clearance application and on a resume submitted on November 24. (Gov 4; Gov 5.)

Applicant claims that he was not aware that he had to apply for a degree. He believed that you had to apply if you wanted to attend the graduation ceremony but not for the degree. He was never concerned that his diploma was never sent to him. He never saw posters which were posted throughout the campus about applying for graduation. He first discovered that he was not awarded a degree in November 2005 after the security office asked him about his educational background during his background investigation. He contacted the university and discovered that he was not awarded a degree. (Tr at 48, 53, 55, 58-61.)

Applicant claims that he did not intend to falsify two security applications dated April 7, 2003, and March 21, 2005. He also did not intend to falsify his resume submitted in November 2004. He believed that he had completed his degree after attending summer school in 2002. (Tr at 26, 34, 52; Gov 4; Gov 10.)

Applicant asks that his superior performance over the past six years be considered. While not conceding that he intentionally falsified his educational credentials, Applicant states, "That while not insignificant, the offense is unique. The behavior is unlikely to recur. It should not case doubt on my reliability, trustworthiness, my good judgment." (Tr at 26.) After he was barred from federal employment, his superiors recommended him for a position with one of their contractors located at another site. (AE C; AE F; AE I.) Applicant states that he has maintained an excellent

record over the past six years, and that the security concerns raised by the alleged falsification are not representative of his behavior today and should not be the defining point regarding his suitability for a security clearance. (Tr at 27.)

Applicant's current supervisor states that he is impressed with Applicant's attitude, work ethic, and morality. Applicant's customers and peers speak very highly of him. He recommends Applicant for a security clearance. (AE E.) Applicant's recent performance review dated June 24, 2008, was favorable. The review indicates Applicant is a crucial member of the executive support staff. He is "independent and driven." He has "excellent planning and coordination skills coupled with social skills" which allow him to be effective at all levels of the agency. (AE B.)

Applicant's supervisor with the defense agency where Applicant worked as a federal civilian wrote a letter on his behalf. He supervised him during the one year that he was a federal employee. Applicant also worked for two years as a contractor for the agency prior to becoming a federal employee. His former supervisor states that Applicant is one of the most dedicated, conscientious, responsible, and skilled professionals that he was worked with during his nearly 30 years of experience in the private sector, military, and Federal service. While a federal employee, Applicant was in charge of the Security and Policy Review division. He was responsible for the thorough review of documents, presentations, video and still photography, briefings, new releases, testing plans, conference exhibits to ensure that all materials were appropriate for public release. His job included making sure the materials did not contain classified information or information that is contrary to U.S. government policy. They never had an inadvertent release of improper materials during the year Applicant was in charge of the division. Applicant excelled as no other person who previously held the position ever did. Since departing from federal service, Applicant has worked as a contractor assisting the government agency. He continues to exhibit the same skills, dedication and diligence in this new position. If a federal service position were to open in the future, he has no reservations encouraging Applicant to apply and compete for the position. (AE C.)

Other co-workers have written reference letters attesting to Applicant's professionalism, work ethic, and trustworthiness. (AE D; AE F; AE G; AE H.) During his career, he received numerous letters of appreciation. (AE A.) He attends church regularly. He coaches a team in an adult soccer league. He belongs to a rock climbing and spelunking group. (Tr at 40-43.)

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the 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.

Section 7 of Executive Order 10865 provides that 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out 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.

Applicant's case poses an interesting dilemma. Either he deliberately falsified his academic credentials on two security clearance applications and on his resume, or he was grossly indifferent about following the university policies and procedures as to what was required to complete his degree and obtain his diploma. The latter also raises concerns about Applicant's ability to safeguard classified information. If a person has difficulty following procedures as to what is required to complete their degree, it is likely they will have difficulty following the procedures required to safeguard classified information.

In Applicant's case, I find there is a preponderance of the evidence that he intentionally falsified his security clearance applications, dated April 7, 2003, and March 21, 2005, and his November 2004 resume when he listed that he obtained a B.A. degree in August 2002. Applicant appears to be a very intelligent individual. I find his testimony that he believed that he had a college degree less than credible. The university that Applicant attended takes significant efforts to publish the requirements for graduation as well as the need to apply for graduation throughout the campus. Applicant met with the dean in May 2002 to discuss the requirements needed for graduation. His professed ignorance of the need to apply for his degree conflict with the efforts the university takes to counsel students on degree and graduation requirements. Graduating from college is a significant milestone in a person's life. Applicant's lack of concern that he was never sent his diploma defies logic.

The following Personal Conduct Disqualifying Condition (PC DC) applies to the facts of this case:

PC DC ¶ 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) applies with respect to Applicant's intentional falsification of his educational background in response to question 5 on his security clearance applications, dated April 7, 2003, and March 21, 2005, when he listed he earned a Bachelor of Arts degree in August 2002. It also applies to the resume Applicant submitted on November 24, 2004.

The personal conduct concern can be mitigated. The following Personal Conduct Mitigating Conditions (PC MC) have the potential to apply to Applicant's case.

PC MC ¶ 17(a) (the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts) does not apply. Applicant did not admit that he did not complete his college degree until it was

discovered during his background investigation, and the issue of his lack of degree was raised by the investigator conducting the background investigation.

PC MC ¶ 17(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) does not apply. The government expects Applicants to be truthful with the government at all times. Applicant falsified that he had a college degree on three separate occasions. Contrary to Applicant's argument, this was not a one-time circumstance. He falsely held himself out as a college graduate on three separate occasions between April 2003 to March 2005. Applicant's conduct continues to raise questions about his reliability, trustworthiness, and good judgment.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(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) 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." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's six years of working for the federal government both as a contractor and a federal employee. While, Applicant is highly thought of by his supervisor, former supervisor, and co-workers, his lack of candor pertaining to his educational background raise serious security concerns under personal conduct. His deliberate falsifications outweigh the favorable information about his work performance. In security clearance cases, any doubt as to whether an applicant should be granted a security clearance must be ruled in favor of national security. Despite Applicant's outstanding work performance and favorable references, doubts remain about his ability to protect classified information because of his deliberate falsifications on two security clearance applications and a resume. I find against Applicant under Personal Conduct.

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

Conclusion

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

ERIN C. HOGAN
Administrative Judge