



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 14-06923
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

09/23/2016

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate security concerns raised by his dishonest conduct. Specifically, he was able to obtain employment with a federal contractor by deliberately providing false and misleading information about his educational qualifications. His false representations allowed him to obtain and retain an industrial security clearance. Clearance is denied.

**History of the Case**

On June 4, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under the personal conduct guideline.<sup>1</sup> Applicant answered the SOR and requested a hearing to establish his eligibility for continued access to classified information.<sup>2</sup>

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<sup>1</sup> This action was taken under Executive Order (E.O.) 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 Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

<sup>2</sup> Applicant was previously represented by counsel (Alan V. Edmunds, Esq.) who withdrew from the case before the hearing was scheduled. See Hearing Exhibit (Hx.) I. See also, Transcript (Tr.) 26-27.

On January 11, 2016, Department Counsel was ready to proceed and requested that an administrative judge be assigned to hear the case. On March 3, 2016, I was assigned the case and, after coordinating with the parties, scheduled the hearing for April 28, 2016.<sup>3</sup> The hearing was convened as scheduled. Applicant chose to testify at the hearing and the exhibits offered by both sides were admitted in evidence without objection.<sup>4</sup> The hearing transcript (Tr.) was received on May 13, 2016.

### **Findings of Fact**

Applicant, 39, is married, with two children. He submitted a letter from the principal of his high school, confirming that he completed all requirements for graduation in June 1996. He also submitted his June 1996 high school diploma, which documents the highest level of education he completed.<sup>5</sup>

Applicant served in the U.S. military, either with the National Guard or on active duty, from approximately 1995 to about 2002. His military service included a deployment in support of early U.S. combat operations in Afghanistan. He is currently seeking a position with the National Guard. He was initially granted a security clearance in approximately 1995 in connection with his military service.

After leaving the military, Applicant and his wife purchased a home. He was working at a chain store of a large retail computer and electronics company, which has since filed for bankruptcy. He worked at the chain store for a year and was in the company's accelerated management program before obtaining a job with Employer A, a federal contractor. Applicant listed his employment at the chain store on his security clearance application, but not on the resumes or employment applications he submitted to Employer A. He received a starting annual salary of \$88,000 from Employer A, which was far higher than any of his previous salaries.<sup>6</sup>

Applicant worked for Employer A from 2003 to 2011. On the resume Applicant submitted to Employer A (2003 resume), he stated that he was seeking a position as a "senior subject matter expert/systems engineer."<sup>7</sup> Applicant falsely claimed on his 2003 resume that he earned a bachelor's degree and two master's degrees from two top U.S. universities. He did not attend nor earn a degree from either university. Instead, in approximately 2002, he paid about \$5,000 to an unaccredited private college for a fraudulent college degree. His father would not lend him the money because he (Applicant's father) was concerned about the legitimacy of the unaccredited college.

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<sup>3</sup> Prehearing scheduling correspondence and the notice of hearing are attached as Hx. II and III, respectively.

<sup>4</sup> Government exhibits (Gx.) 1 – 18 and Applicant's exhibits (Ax.) A – G.

<sup>5</sup> Gx. 1; Ax. G.

<sup>6</sup> Gx. 1; Gx. 4 – 6; Gx. 8 – 10; Tr. 33-34, 43-45, 65-74.

<sup>7</sup> Gx. 4.

Applicant was surprised when he was sent a college and a master's degree by the unaccredited college. He claims that he listed the two universities on his 2003 resume because he was purportedly told by a representative of the unaccredited college that they were affiliated with these top-tier schools. He further claims that he was unaware that the degrees he received were bogus. Applicant's claims were not credible.<sup>8</sup>

Applicant claimed in his 2003 resume that he graduated with top honors, with grade point averages of 3.8 or higher. He claimed to have earned a bachelor's and a master's degree from University A, and a second master's degree from University B.<sup>9</sup> In his employment application for a position with Employer A, Applicant no longer listed the second master's degree. He, however, continued to claim to have earned a bachelor's and master's degree from University A. He further claimed to have earned these degrees after attending University A for a combined total of six years, including starting his purported studies at University A before graduating from high school.<sup>10</sup> When questioned about his purported attendance at and degree from these top-tier schools, Applicant testified as follows:

Q: So just to be clear, from 1999 to 2000, were you at [University A]?<sup>11</sup>

A: Say that again, Your Honor.

Q: From 1999 to 2000, were you at [University A]?

A: No, Your Honor.

Q: In 2000 to 2001, were you at [University B]?

A: No, Your Honor.

Q: Did you receive a degree in U.S. National Security Policy from [University B]?

A: No, Your Honor.

Q: Did you receive a computer engineering degree from [University A]?

A: No, Your Honor.

Q: Did you receive an information systems management degree from [University A]?

A: No, Your Honor.<sup>12</sup>

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<sup>8</sup> Gx. 2; Gx. 4; Gx. 5; Gx. 12 – 14; Tr. 32-45, 70-72. Applicant initially only claimed that he was told by the unaccredited college that they were affiliated with University A. (Gx. 2; Tr. 30) Upon being questioned by Department Counsel, Applicant claimed for the first time that he was also told by a representative from the unaccredited college that they were also affiliated with University B. (Tr. 40-41). He provided no documentation to corroborate his self-serving claims. (Tr. 45)

<sup>9</sup> Gx. 5; Tr. 46-48.

<sup>10</sup> Compare, Gx. 5, with, Ax. G.

<sup>11</sup> The dates and degrees asked about correspond to the information Applicant listed on his 2003 resume.

<sup>12</sup> Tr. 70-71.

In an October 2014 affidavit that Applicant submitted as part of his recent security clearance reinvestigation, he admitted that he would not have received the job offer from Employer A without a college degree. At hearing, he attempted to minimize his previously sworn statement, claiming that when he left Employer A, his former employer was hiring former military members without college degrees “left and right.”<sup>13</sup>

In June 2003, Applicant submitted a pre-employment statement to Employer A. He signed the statement attesting to it and his 2003 resume's accuracy. Instead of listing the two top-tiered schools, which he had previously identified on his 2003 resume, Applicant listed the unaccredited college as the institution from which he had earned a bachelor's and a master's degree. He also claimed in the pre-employment statement to have graduated from the U.S. Army's General Staff College in 2001.<sup>14</sup>

In June 2003, Applicant also submitted to Employer A a disclosure and authorization form to initiate his security clearance background investigation. On the authorization form, Applicant claimed he earned a bachelor's degree in business administration (not information management systems) and a master's degree from University A. He listed the dates of his attendance at University A from “Fall 1995 – Spring 1999,” which, if accurate, would mean that Applicant started attending college before he graduated from high school.<sup>15</sup>

Applicant submitted a security clearance application (SCA) in December 2003 in connection with his employment with Employer A. He listed earning a bachelor's degree from the unaccredited college. He claimed that his dates of attendance at the unaccredited college were from October 1995 to June 1999, which would overlap with the time he was completing high school and on active duty. He recertified the accuracy of the information he provided on the SCA in June 2004.

In 2006, in connection with a job transfer, Applicant submitted another false resume to Employer A. Applicant claimed in his 2006 resume to have earned a bachelor's and a master's degree from University A, and to have been on the dean's list and graduated *summa cum laude*.<sup>16</sup>

Applicant's work performance while an employee of Employer A was good. As of March 2009, he was receiving a base salary of over \$140,000, and earned a cash award and stock options totaling over \$12,000. In 2010, he was promoted to a vice president (VP) position, with a total compensation package of nearly \$170,000.<sup>17</sup>

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<sup>13</sup> Compare, Gx. 2 at 4, with, Tr. 53-54.

<sup>14</sup> Gx. 6. *But see*, Tr. 42 (Applicant testified that the highest rank he attained in the military was corporal, E-4). *Contrast with*, Ax. G, DD Form 214 (highest rank achieved listed as specialist, E-3).

<sup>15</sup> Compare, Gx. 7, with, Ax. G.

<sup>16</sup> Gx. 9 at 111. *But see*, Tr. 70-72.

<sup>17</sup> Ax. A; Ax. C; Ax. F; Ax. G.

In March 2011, Employer A discovered that Applicant did not possess the educational degrees he listed on his resumes and employment application. After being asked to provide proof of his listed education, Applicant submitted the transcript and copies of the diplomas he received from the unaccredited college.<sup>18</sup> At hearing, he acknowledged he never attended the unaccredited college, which was essentially run out of a store front.<sup>19</sup> He also supplied to Employer A's HR department an undated training certificate, which he purportedly received while in the military after completing a 20-credit-hour course, as proof of a second master's degree in U.S. national security policy.<sup>20</sup> Applicant then submitted his resignation "effective immediately."<sup>21</sup> Applicant testified that his resignation from Employer A had nothing to do with the discovery that he had falsified his educational qualifications.<sup>22</sup> His testimony was not credible.

In 2012, Applicant submitted an SCA in connection with his employment with another federal contractor. He did not disclose that he "left . . . [Employer A] following charges or allegations of misconduct." Instead, he listed his reason for leaving Employer A as a "career growth opportunity."<sup>23</sup> He subsequently stated in an affidavit, which he provided in the course of his recent security clearance reinvestigation that he decided to resign from Employer A "to pursue self-employment."<sup>24</sup> Yet, in the same month he resigned from Employer A, Applicant started a full-time position with another federal contractor.<sup>25</sup> As of October 6, 2014, the date when Applicant submitted the affidavit, he had not told his wife about what he described as the "invalid degrees."<sup>26</sup>

Applicant also claimed on his 2012 SCA that he received a "Continuing Ed Certificate" from X State University. He subsequently explained in his 2014 affidavit that

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<sup>18</sup> Gx. 12 – 16, Tr. 35-36, 55-61. The transcript Applicant provided to Employer A's HR department lists a number of college-level courses he purportedly took and received an "A" grade, including "Macroeconomics," "Modern Physics," "Elementary Accounting I and II," and "International Management." Applicant admitted he had never taken these classes or even been to the unaccredited college. Instead, the college allegedly assessed his past military experience as justifying the courses and grades listed on the transcript. The "unofficial education assessment" that Applicant received from the Army National Guard in 2006 does not support the college-level credits he received. (Gx. 15; Ax. G; Tr. 38-39, 72-74)

<sup>19</sup> Tr. 38-39, 55-56.

<sup>20</sup> Compare, Gx. 16 at 158, with, Gx. 4 and Gx. 14.

<sup>21</sup> Gx. 17.

<sup>22</sup> Tr. 62.

<sup>23</sup> Gx. 1 at 16.

<sup>24</sup> Gx. 2 at 4. Applicant's failure to disclose the adverse circumstances under which he resigned from Employer A and the misinformation he provided during the recent security clearance reinvestigation were not alleged in the SOR. I have not considered this information as a separate basis for disqualification, but have considered it in assessing Applicant's mitigation case, credibility, and whole-person factors.

<sup>25</sup> Gx. 1 at 14; Tr. 61-62.

<sup>26</sup> Gx. 2 at 5.

“he attended a two-week course through the [University of X State] sponsored by [Employer A].”<sup>27</sup> These colleges have similar sounding names and their main campuses are located in the same state, but are two separate educational institutions.

After resigning from Employer A in 2011, Applicant posted a resume online noting his work experience for the federal government and the different levels of security clearances he has held. He also claimed in this online resume to have earned a bachelor’s degree in information systems management from a different top U.S. school, which he had not previously listed on any application, resume, or security clearance application. Applicant misspelled the name of this other top school from which he had purportedly earned a degree. At hearing, Applicant admitted that he did not earn a degree from this other top U.S. school. He has supposedly taken two courses, earning about 6 credit hours towards the 120 credits needed to graduate.<sup>28</sup>

In the 2014 affidavit that Applicant submitted as part of his current security clearance reinvestigation, he stated the following regarding his lack of the requisite education required for his previous employment with Employer A:

I do not feel like the lack of education obtained impacted my ability to perform my duties at [Employer A]. I feel that my military and previous educational background allowed me to work competitively with other individuals that possess college degrees. I did not experience any disciplinary issues or performance issues . . . .<sup>29</sup>

Applicant currently works for a different federal contractor and has been with his current employer, Employer C, since April 2012. His 2013 performance appraisal from Employer C reflects that he received a \$5,600 performance-based promotion and earns an annual salary in excess of \$145,000. He submitted numerous certifications and achievements he has received over the years. He also submitted favorable references regarding his past work performance and competence in handling and managing information technology systems. He has not disclosed the adverse circumstances that led him to resign his VP position with Employer A to his current employer.<sup>30</sup>

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<sup>27</sup> Compare, Gx. 1 at 10, with, Gx. 2 at 3.

<sup>28</sup> Gx. 10; Tr. 37, 47-53. Applicant also claimed on his 2011 online resume to be working on earning a bachelor’s degree from another school, with an expected graduation date of 2012. He also listed this information on his 2012 SCA. He registered with the school in 2006 or 2008, but never took any classes. Instead, he stopped pursuing the degree after the school would not provide an assessment crediting him with completion of college-level courses for his past work and military experience. Compare, Gx. 1 at 10-11 and Gx. 11, with, Tr. 50-51. Applicant has over the years approached a number of other schools and “battled” with them over the amount of credit they are willing to extend to him for his past work and military experience. Until recently, he continued to request credit for the classes he had purportedly completed at the unaccredited college. (Tr. 36-37, 50-51)

<sup>29</sup> Gx. 2 at 4.

<sup>30</sup> Gx. 1; Gx. 2 at 5; Gx. 8; Ax. B; Ax. D; Ax. E; Ax. G; Tr. 63-70.

## Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15.

Administrative judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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

## **Analysis**

### **Guideline E, Personal Conduct**

The personal conduct security concern is set forth at 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 falsified his 2003 and 2006 resumes, employment application, and authorization form to initiate his industrial security clearance background investigation. Applicant claimed in each of these documents that he had attended and earned college and master's degrees from University A. He further claimed to have received a second master's degree from University B on his 2003 resume. He never attended either of these top U.S. schools nor earned the degrees he claimed in these employment documents. He was only able to obtain his initial and subsequent positions with Employer A by deliberately misstating his educational qualifications. He was only able to apply for an industrial security clearance by obtaining the job with Employer A under false pretenses. Therefore, SOR 1.a, 1.b, 1.d, and 1.f, which reference these deliberate falsifications, were established.

Applicant also deliberately falsified his 2003 SCA and pre-employment statement with Employer A. Even though Applicant listed the unaccredited college as the institution from which he received his degrees, his claims that he attended the college, including before graduating from high school, are clearly false. Instead, in about 2012, Applicant paid a diploma mill for bogus degrees. His conduct after being caught by Employer A's HR department, notably, submitting his resignation from a job that was paying him over \$150,000 within a few short hours after receiving an e-mail questioning his educational qualifications, reflects a consciousness of guilt. Moreover, Applicant's claims of having been duped by the unaccredited school are undercut by the extent of his misrepresentations regarding his educational background that he made before, during, and after resigning his position with Employer A. Consequently, SOR 1.c and 1.e, which reference Applicant's deliberate falsification of his 2003 SCA and pre-employment statement, were also established.

Applicant's conduct after leaving Employer A reflects that he continues to deliberately falsify his educational qualifications to obtain high-paying positions with federal contractors. Specifically, as alleged in SOR 1.g, Applicant claimed in his 2011 online resume that he earned a bachelor's degree from another top U.S. school. He misspelled the name of the school and the record clearly reflects that he did not earn such a degree. He has at most earned 6 credit hours towards the 120 needed to graduate. Thus, the falsification allegation in SOR 1.g was also established.



Applicant's deliberate falsification of several employment forms that he submitted to Employer A allowed him to obtain his initial and subsequent positions, and allowed him to attain or retain a security clearance. Applicant's dishonesty raises the personal conduct security concern and establishes the disqualifying conditions listed at AG ¶¶ 16(a)<sup>31</sup> and 16(b).<sup>32</sup>

Once disqualifying conditions are established, the burden shifts to Applicant to present evidence demonstrating extenuation or mitigation sufficient to warrant a favorable security clearance decision. ISCR Case No. 15-01208 at 4 (citing Directive ¶ E3.1.15). The adjudicative guidelines set forth a number of potential conditions that may mitigate the personal conduct security concern. I have considered all the applicable mitigating conditions and none apply.

Applicant's dishonesty regarding his educational qualifications continued after he left Employer A. He provided misleading information during the course of the current security clearance investigation, notably, regarding the circumstances leading to his resignation from Employer A. He refuses to acknowledge his conduct. His hearing testimony was not credible and contradicted by the weight of the record evidence. Consequently, I find that none of the mitigating conditions apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of all the relevant circumstances, to include the factors listed at AG ¶ 2(a). I hereby incorporate my comments under the personal conduct guideline and highlight some additional whole-person matters. Applicant served honorably in the military. He is a skilled IT professional who despite not possessing a college degree has met and exceeded his employers' expectations. Yet, time and again, he has provided false and misleading information about his educational qualifications. His falsifications allowed him to obtain a position with a federal contractor and gain or maintain eligibility for a security clearance.

It appears from his testimony and the record evidence that Applicant is convinced he is as qualified for the positions he has held as a federal contractor as those who legitimately hold the prerequisite degree(s) required for the position. Instead of doing the work necessary to attain a college degree, he continues to look for shortcuts and provides false and misleading information about his educational background. Applicant's long history of dishonesty raises concerns about his judgment, reliability, and trustworthiness – essential character traits required of all clearance holders.

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<sup>31</sup> 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.

<sup>32</sup> Deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Overall, the record evidence leaves me with *substantial* doubts about Applicant's eligibility for continued 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 (Personal Conduct)	AGAINST APPLICANT
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Subparagraphs 1.a – 1.g:	Against Applicant
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### **Conclusion**

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge