



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



In the matter of: )  
)  
) ISCR Case No. 15-07438  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: Zekiah N. Wright, Esq.

11/30/2017

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the personal conduct concerns raised by his intentional falsification of three questionnaires for investigations processing and his deliberate false statements in two background interviews between 2012 and 2015. Clearance is denied.

**Statement of the Case**

On May 23, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the personal conduct guideline.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be

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<sup>1</sup> The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on September 1, 2006.

submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing. On May 22, 2017, I issued a prehearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses, and the parties complied.<sup>2</sup> At the hearing, convened on June 7, 2017, I admitted Government's Exhibits (GE) 1 through 6 and Applicant's Exhibits (AE) A, without objection. DOHA received the transcript (Tr.) on June 16, 2017.

## **Procedural Matters**

### **Implementation of Revised Adjudicative Guidelines**

While the case was pending decision, the Direct of National Security (DNI) issued Security Executive Agent Directive 4, establishing the National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The 2017 AG superseded those implemented in September 2006, and they are effective for any adjudication made on or after June 8, 2017. Accordingly, I have decided this case under the 2017 AG.

## **Findings of Fact**

Applicant, 32, has worked for several federal contracting companies since 2012. He has been in his current position as a systems developer since October 2015. He started the position as a temporary employee in 2014. In 2012, Applicant was granted public trust eligibility. He received a security clearance in June 2013, and applied for an upgraded clearance in March 2015. Applicant completed questionnaires for investigations processing in 2012, 2013, and 2015. On each application, Applicant reported that he earned a college degree in June 2010. He confirmed his degree status in February 2012 and May 2015 interviews with background investigators. The most recent investigation revealed that Applicant, who attended college between October 2006 and June 2010, was not awarded a degree. In a follow-up interview in August 2015, Applicant admitted that he intentionally falsified his April 2015 security clearance application and provided false information to the background investigator during his May 2015 interview.<sup>3</sup>

In June 2010, Applicant participated in his university's commencement ceremony, knowing that he needed to complete one online course before being awarded his bachelor's of science degree. Applicant decided to start working with the intention of completing the class in the future. During his unsuccessful, yearlong job search, Applicant realized entry-level positions in his field required a bachelor's degree.

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<sup>2</sup> The prehearing scheduling order and the discovery letter are appended to the record as Hearing Exhibits (HE) I and II.

<sup>3</sup> Tr. 26, 31. GE 1-6.

He began listing a bachelor's degree on his resume in hopes of securing full-time employment, which he did in August 2011. Since then, Applicant applied for and obtained three other positions with false education credentials. As of the hearing, Applicant had not confessed his deception to his employer or his family members, fearing the consequences of revealing the truth.<sup>4</sup>

Applicant returned to school in February 2017. He is expected to complete his degree requirements in June 2017.<sup>5</sup>

### **Policies**

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

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." 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 to obtain 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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**

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an

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<sup>4</sup> Tr. 16-25, 28-33, 35, 41-42.

<sup>5</sup> Tr. 25-26; AE A.

individual's reliability, trustworthiness, and ability to protect classified information. Of special interest is any failure to cooperate or provide truthful answers during national security investigative or adjudicative process.

Applicant admits disqualifying conduct under the personal conduct guideline, specifically: AG ¶ 16(a) the deliberate falsification of relevant facts on a personnel security questionnaire used to conduct investigations, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and AG ¶16(b) deliberately providing false or misleading information concerning relevant facts to an investigator involved in making a recommendation relevant to a nation security eligibility determination. Between 2012 and 2015, Applicant intentionally falsified three questionnaires for investigations processing and made false statements during two background interviews regarding his education credentials.

None of the personal conduct mitigating conditions apply. Applicant made no effort to correct the falsification. He only admitted providing false information to the government after being confronted by a background investigator in August 2015. Applicant's falsifications are not minor. An applicant is expected to provide full, frank, and candid answers throughout the investigative process. Anything less provides a rational basis for a finding against an applicant's security worthiness. Here, Applicant has repeatedly provided false information to the government for years, establishing a history of misconduct. Furthermore, Applicant's falsifications are ongoing. Applicant has chosen not to reveal the truth to his employer or family members. This decision exacerbates the concerns about Applicant's current security worthiness as the falsifications remain a potential source of vulnerability and exploitation.

### **Whole-Person Concept**

I have significant reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). The purpose of the security clearance adjudication is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."<sup>6</sup> For five years, Applicant has lied to his employers and the government about his credentials. He is neither trustworthy nor reliable, and unlikely to self-report derogatory information that may adversely affect his self-interest. These risks cannot be ignored and must be resolved in favor of the government. Clearance is denied.

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<sup>6</sup> AG ¶ 2(d).

## 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, Personal Conduct: **AGAINST APPLICANT**

Subparagraph 1.a: 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. Clearance is denied.

Nichole L. Noel  
Administrative Judge