

DATE: December 20, 2007

In Re:)	
)	
-----)	ISCR Case No. 07-00042
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
CHARLES D. ABLARD**

APPEARANCES

FOR GOVERNMENT

Nichole Noel, Esq., Department Counsel

FOR APPLICANT

Michelle Perry, Esq.

SYNOPSIS

_____Applicant, a 51-year-old engineer and subject matter security officer, failed to mitigate allegations of security concerns arising from misuse of corporate credit card for personal use in a gentlemen’s club in 2003 for which he was counseled, but did the same less than a year later for which he received a Level III final warning. He initially denied the misuse but later admitted that he was aware of the misuse. He mitigated security concerns under criminal conduct as to two sexual related matters each over 20 years ago but not as to his sexual behavior in attending adult entertainment clubs which led to his financial problems, and continues to do so but less frequently. He mitigated security concerns relating to financial considerations since his financial situation substantially improved over the past four years. Clearance is denied.

STATEMENT OF THE CASE

On February 22, 2007, the Office of Hearings and Appeals (DOHA) pursuant to Executive

Order 10865, *Safeguarding Classified Information Within Industry* as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, received March 15, 2007, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to another judge on July 23, 2007, and re-assigned to me on August 21, 2007. A Notice of Hearing was issued August 28, 2007 for a hearing held on September 11, 2007. The Government introduced eight exhibits and Applicant introduced three exhibits. All were accepted into evidence. A government investigator and a corporate employee who had once supervised Applicant testified for the government. Applicant and three witnesses testified on behalf of Applicant. The transcript was received on September 19, 2007.

FINDINGS OF FACT

_____ Applicant admitted with explanation the four SOR allegations relating to personal conduct security concerns. He admitted the three allegations relating to sexual behavior. Before the hearing the government moved on August 29, 2007 to amend the SOR to add one allegation of financial considerations security concerns based on the same allegations alleged as the personal conduct allegations. Applicant did not object to the amendment and the new allegation was added to the SOR at the hearing (Tr. 9). After a complete review of the record, I make the following additional findings of fact:

Applicant is a 51-year-old employee of a major defense contractor working as a principal systems engineer since October, 2001. He is also an information systems security officer. He holds a B.S. degree in electrical engineering. Before his present employment he worked in a similar field for another major defense contractor for four years between 1987 and 2001 when the company was purchased by his present employer. He has held a security clearance for 20 years.

In 1983 when he was 27 years old, Applicant used an outcall service for massage and sexual services. The service was a front for prostitution. Four years later in 1987, Applicant plead guilty to a charge of lewd act in a public place, his automobile in a park. He had picked up a hitchhiker who propositioned him and he accepted and paid for her services. He was fined \$300 but no punishment. He has had no similar problems in the past 20 years and testified that it would never happen again.

In 2003, while employed at his present employer Applicant mis-used a corporate credit card issued by his employer for company business for personal use including charges to adult entertainment clubs. He had developed a form of addiction to the entertainment provided especially lap-dancing and was spending as much as \$500 each night he went to the clubs. He still goes to the

clubs but less frequently and only spends approximately \$100 per evening when he attends. He also gambled in casinos but the debts only once exceeded \$1,000 during his occasional visits and were not a major contribution to his financial problems. At the same time he was adding to his delinquent debts, he was unable to pay his 2002 federal income taxes because of his financial situation.

Applicant was counseled by his supervisor about the mis-use of the credit cards in August 2003. In 2004 he misused the company credit card again despite the warning he had received. He then was issued a Level III final warning by his supervisor for his employer on March 24, 2004. He initially denied the offenses at that time blaming it on the similarity of appearance of his corporate card and his personal card and various other reasons to his supervisor (Tr. 30-40). When confronted with credit card statements, he acknowledged that he knew he was using the corporate card since his own had reached the maximum level of indebtedness (Tr. 40-41). His corporate card was canceled and the company denied him a merit pay increase for that year, and would not allow him to be promoted or transferred for 12 months. He continued to work at the company and has had no difficulty since then. The supervisor who first confronted him about the violations was one of those in the company who recommended him for a security clearance and did so at the hearing.

In past years both for his present and former employer, Applicant was permitted on request to use the corporate card for personal matters including travel to the funeral of his father and while on government business but using for personal purposes (Tr. 97). No request was made or permission was given for the personal use in 2003 and 2005 (Tr. 131).

Applicant was interviewed by a government investigator on April 19, 2005, where he outlined the conduct and said he did not realize he was using the corporate card until his supervisor advised him that records indicated that he had. He detailed some of the conduct alleged as well as the indebtedness that arose from that conduct. The investigator interviewed eight others in the investigation and all recommended that a security clearance be granted (Tr. 84).

Applicant's current financial records indicates that he has no debt problems (Exhs. A, B, and C). He re-financed his home in 2005 and resolved all his outstanding debts. The result was a substantial increase in his net worth from 2003 to 2007 (Exh. A and Tr. 109). He also eliminated some expenses so that his financial situation would be sound (Tr.105-106). He did so without the use of credit counseling. His annual salary is \$95,000 based on hourly wages that he receives every two weeks (Tr. 151).

Applicant has never served in the military except for a brief period as an officer candidate for the Marine Corps. He dropped out voluntarily because he decided he was not cut out to be a marine. However, he took an oath to become an officer candidate and still regards himself as obliged to live by that oath. Since he did not serve, he regards his present work as his contribution to the national defense. His work as a subject matter security expert for his company insuring compliance with NISPOM and working with a large number of documents and personnel was described at the hearing (Tr. 119-130).

Three corporate witnesses of Applicant's employer testified for him. One worked for him and Applicant served as his mentor. The second was a project leader for a program on which Applicant worked. The third was a colleague who worked with Applicant for many years in the security field. All have held security clearances for many years. They vouched for his trustworthiness, skills, and

dedication, and believe he is capable of holding a security clearance. They all were aware of the issues that were presented at the hearing and all supported his effort to keep his security clearance (Tr. 155-202).

Applicant has never been married and has no immediate family. He has no family financial obligations other than his own. His hobbies away from his job include home construction and repair, playing pool with friends, and photography.

POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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. Security clearances are granted only when “it is clearly consistent with the national interest to do so.” Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

_____ Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating it is clearly consistent with the national interest to grant or continue a security clearance. “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” ----- “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b).

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

The revised Adjudicative Guidelines (AG) are applicable to cases with an SOR dated after September 1, 2006. Applicant’s conduct regarding the misuse of the corporate credit card prompted security concerns under Guideline E (Personal Conduct) of the revised adjudicative guidelines (AG) effective September 1, 2006. Such conduct might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not

properly safeguard classified information (AG 15). The Government established each of the allegations under Guideline E Personal Conduct alleged in the SOR. The specific conditions applicable to this case are AG ¶ 16 (d) 1 and 4 concerning Applicant's pattern of rule violations and evidence of significant misuse of an employer's time and resources through misuse of the corporate credit card and his initial denial of the misuse.

Mitigating conditions (MC) that might be applicable include AG ¶ 17 (c) if the fact that the offense is so minor, or so much time has passed, or 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, or under AG ¶ 17 (d) that the individual has acknowledged his behavior and taken positive steps to alleviate the factors that caused the behavior, or under AG ¶ 17 (e) that the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress. While Applicant has resolved most of his debt problems and has made others aware of the circumstances of this case, the fact that he committed the violations of company policy (Exh. 8) not once but again less than a year later after having been warned and counseled with sanctions imposed after the second offense leads me to the conclusion that he has not mitigated this allegation.

Under Guideline D of the Directive sexual behavior is a security concern if it involves a criminal offense, and may subject the individual to coercion, exploitation, or duress (AG ¶ 12). Conditions that raise a security concern and may be disqualifying under AG ¶ 13 (d) are if the sexual behavior is of a public nature and reflects lack of discretion or judgment. Having established such reasons, Applicant has the burden to establish security suitability through evidence that refutes, mitigates, or extenuates the disqualifying conditions and demonstrates it is clearly consistent with the national interest to grant a security clearance.

Mitigating conditions might include under AG ¶ 14 (b) that the behavior was not recent and is unlikely to recur, or under AG ¶ 14 (c) if the behavior no longer serves as a basis for coercion, exploitation, or duress. I conclude the allegations from 1983 and 1987 are mitigated by the passage of time and unlikelihood that such incidents would recur. While attending an adult club is not criminal conduct, the fact that Applicant did so and continues to do so after the difficulties that have arisen from past attendance does not speak well for his judgement and reflects on his lack of discretion and judgment.

Applicant's delinquent debts prompted the allegation of the security concern under Guideline F because under AG ¶ 18 an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations under AG ¶ 19 (c), and evidence of inability or unwillingness to satisfy debts under AG ¶ 19 (a).

Mitigating Conditions (MC) that might apply include under AG ¶ 20 (c) the fact that there are clear indications that the problem is being resolved or is under control. Applicant has shown that his financial situation has substantially improved since 2003 primarily through the sale of his home but also by imposing financial discipline on himself. He will resolve the remaining current debts he has within 90 days of the hearing date and has no delinquent debts (Exh. C). The cited mitigating condition is applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person’s trustworthiness and fitness for access to classified information. The “whole person” concept recognizes we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

In evaluating his behavior in terms of the “whole person concept”(AG ¶ 2), an applicant may mitigate security concerns by demonstrating the factors leading to the violation are not likely to recur(¶ 9), and evidence of rehabilitation and other permanent behavioral changes (¶ 6). The incidents that gave rise to this proceeding may not be likely to recur. However, the SOR allegations all relate to the security clearance process and his willingness to be candid in providing responses. They also relate to an applicant who, in addition to his engineering responsibilities, has certain important security responsibilities about which he should have been acutely aware. His conduct belied that awareness and responsibility. After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude a security clearance should not be granted to him.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline E:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
_____ Paragraph 2. Guideline D:	AGAINST APPLICANT
_____ Subparagraph 2.a.:	For Applicant
_____ Subparagraph 2.b.:	For Applicant
_____ Subparagraph 2.c.:	Against Applicant
_____ Paragraph 3. Guideline F:	FOR APPLICANT
_____ Subparagraph 3.a.:	_____ For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard
Administrative Judge