

DATE: September 24, 2007

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In Re: )	
)	
----- )	ISCR Case No. 05-14064
SSN: ----- )	
)	
Applicant for Security Clearance )	
_____ )	

**DECISION OF ADMINISTRATIVE JUDGE  
DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Melvin A. Howry, Department Counsel

**FOR APPLICANT**

Kenneth M. Roberts, Attorney At Law

**SYNOPSIS**

Due to stress and depression brought on by his mother's illness and eventual death, the Applicant ignored his legal duties and responsibilities and failed to file and/or pay his state and federal annual taxes for tax years 1995, 1996 and 1997. He has since hired an attorney who has assisted him in resolving his tax matters. His history of alcohol abuse, resulting in 3 DUI's, the last occurring in 1999, over 8 years ago. This aberration in his behavior also occurred during his mother's disease and death. His financial problems, alcohol abuse and related criminal conduct have now been mitigated by sufficient evidence of reform and rehabilitation. Clearance is granted.

## STATEMENT OF THE CASE

On March 30, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on April 22, 2007, and requested a hearing before a DOHA Administrative Judge. The case was assigned to the undersigned Administrative Judge on June 20, 2007. A notice of hearing was issued on June 21, 2007, scheduling the hearing for July 25, 2007. At the hearing the Government presented 13 exhibits. The Applicant called three witnesses and presented 32 exhibits, referred to as Applicant's Exhibits A through Z and AA through FF that were admitted into evidence. The Applicant also testified on his own behalf. The record remained open until August 10, 2007 for receipt of an alcohol assessment by the Applicant's physician. The Applicant presented two Post-Hearing exhibits consisting of eight pages that were admitted into evidence, as Post-Hearing Exhibits A and B. The official transcript (Tr.) was received on August 3, 2007.

## FINDINGS OF FACT

The Applicant is 50 years old. He is employed by a defense contractor as a Video Teleconferencing Technician, and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and at risk to engage in illegal acts to generate funds.

Beginning in 1993, the Applicant experienced an extremely difficult time in life which caused him to neglect his duties and obligations, namely he failed to file his income tax returns on a timely basis and/or pay his taxes, which caused tax liens to be imposed against him. He explained that during this time, his mother became ill, exhibiting psychotic decay at first thought to be schizophrenia. Her paranoia and irrational behavior were medicated, but her physical conditions continued to decline. She was eventually diagnosed with Huntington's disease. During this period, the Applicant learned that the disease is genetically transmitted. The Applicant watched his mother become delusional, psychotic and exhibit distorted behavior and thought that it likely that he may one day be plagued with the disease. The Applicant became despondent and his feeling of hopelessness, unable to do anything about his mother, caused him to neglect his responsibilities and start consuming alcohol to medicate his stress and depression.

In November 1998, the State of California filed a lien against the Applicant for unpaid state income taxes in the amount of approximately \$19,590.00. As of March 28, 2007, this debt had not been paid. In an effort to straighten up his delinquent tax situation, in January 2006, the Applicant

hired a tax attorney to assist him in paying his back taxes owed and in filing his requisite income tax returns. Although the Applicant initially admitted the debt in response to his SOR, he had actually already paid the debt and the lien was released in February 2006. (See Applicant's Exhibits Y and Z).

On July 26, 1999, the a state tax lien was filed against the Applicant for unpaid state income taxes for tax years 1995 and 1997, totaling \$27,314.14 in taxes, penalties, interest and collection costs. Although the Applicant initially admitted the debt in his response to the SOR, he is currently paying in the debt in the amount of \$383.17 every two weeks, or \$766.34 per month, which is automatically deducted out of his payroll check. (See Applicant's Exhibit AA).

The Applicant failed to file state income tax returns for tax years 1995, 1996, and 1997. This is a misdemeanor violation of the state's revenue and tax code, Section 19701. The Applicant has now filed his income tax returns for tax years 1995 and 1996. He has not yet filed his returns for 1997. He testified that he has informed the California Franchise Tax board that his 1997 return will be filed before August 23, 2007, and indicates that he has been paying on his estimated earnings for that year since June 2003.

The Applicant indicates that he did file his federal income tax returns for tax years 1995, and 1996 in a timely manner. However, he has not yet filed his income tax return for tax year 1997. In regard to his taxes owed for 1995, the Applicant testified that his tax attorney is in the process of preparing an offer in compromise to pay those taxes. For tax year 1996, the Applicant has a credit of \$16,000.00 which will be applied to tax year 1995. The Applicant submitted documentation from the state tax authorities indicating that he owes a zero balance for tax year 1995 and 1996. (See Applicant's Post-Hearing Exhibit B). He owes nothing to the IRS for tax year 1997.

Paragraph 2 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

From 1993 through at least 1999, the Applicant numbed the pain of his mother's illness and deteriorating condition by consuming alcohol to excess. As a result, he was arrested on three separate occasions for Driving Under the Influence of Alcohol.

On June 26, 1993, the Applicant was arrested and charged with Driving Under the Influence of Alcohol. On July 30, 1993, he was found guilty and was sentenced to pay a fine, to have his driver's license revoked, and ordered to attend an alcohol rehabilitation program for 30 days. The Applicant failed to complete the alcohol rehabilitation program. Due to family problems, specifically his mother's disease, he procrastinated and did not fulfill this obligation.

In the summer of 1995, the Applicant was arrested by the officials patrolling the Colorado River and charged with operating a jet ski while under the influence of alcohol. He was found guilty and sentenced to pay a fine.

On January 15, 1999, the Applicant was arrested and charged with Driving Under the Influence of Alcohol. On April 15, 1999, he was found guilty and was sentenced to 48 hours incarceration, to pay a fine, issued a restricted driver's license, and ordered to complete an 18 month alcohol rehabilitation program and attend Alcoholics Anonymous meetings. The Applicant again

failed to complete his alcohol rehabilitation and attend the required number of Alcoholics Anonymous meetings.

Presently, the Applicant has enrolled in alcohol rehabilitation courses and plans to continue with the course. (See Applicant's Exhibit BB).

On July 30, 2007, the Applicant underwent a psychiatric and Substance Abuse evaluation by his psychiatrist who states under his diagnosis, "Even though he has had alcohol related problems in the past, according to the Diagnostic Statistical Manual of the American Psychiatric Association Edition IV-TR, he qualified for Alcohol Abuse syndrome rather than alcohol addiction. The Alcohol Abuse was in conjunction with an Adjustment Disorder and Depression. Since he has overcome his Adjustment Disorder, for him alcohol use is an option he can easily forego. His use pattern does not qualify as a life-long addiction." (See Applicant's Post-Hearing Exhibit A, p. 7).

Paragraph 3 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant's failure to file state income tax returns for tax years 1995, 1996 and 1997, is a misdemeanor violation of the California Revenue and Taxation Code Section 19701.

The record evidence indicates that the Applicant did file his federal income tax returns for tax years 1995 and 1996. His failure to file his federal income tax returns for tax year 1997 in a timely basis is a violation of Title 26, United States Code, Section 7203.

His two alcohol related offenses, namely DUIs that occurred in June 1993 and January 1999, also exhibit criminal conduct.

### Mitigation.

Three witnesses, including coworkers, professional colleagues and friends of the Applicant testified that the Applicant is extremely reliable, honest, loyal and forthright. He has been observed consuming alcohol and is considered a "social drinker" on weekends. He no longer drinks and drives. He was observed intoxicated about a month before the hearing at a backyard pool party where he had been consuming margaritas and he did not drive home. He is recommended for a position of trust.

## **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

### Guideline F (Financial Considerations)

18. *The Concern.* Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. 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:

19(a) inability or unwillingness to satisfy debts;

19(c) a history of not meeting financial obligation;

Conditions that could mitigate security concerns:

20(b) the conditions that resulted in the financial problem were largely beyond the person's control, (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

20(d) the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts.

Guideline G (Alcohol Consumption)

21. *The Concern.* Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Conditions that could raise a security concern:

22 (a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

22 (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

Condition that could mitigate security concerns:

23(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent or responsible use (if alcohol abuser).

23(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholic Anonymous or a similar organization and has received a

favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

#### Guideline J (Criminal Conduct)

30. *The Concern.* Criminal activity creates a doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

#### Conditions that could raise a security concern:

30 (a) a single serious crime or multiple offenses;

30 (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

#### Condition that could mitigate security concerns:

32 (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness or good judgment;

32 (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

\_\_\_\_\_ In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is “clearly consistent with the national interest” to grant an Applicant’s request for access to classified information.

The DoD Directive states, “The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

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## **CONCLUSIONS**

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in excessive financial indebtedness, alcohol abuse and criminal conduct that demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in Financial irresponsibility (Guideline F); Alcohol Abuse (Guideline G); and Criminal Conduct (Guideline J). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines F, G, and J of the SOR.

The ten through twelve year period of the Applicant’s life when he neglected his duties and obligations under the law was an isolated period related directly to the disease and eventual death of his mother. The pressures in his life that caused these aberrations have passed. This is a situation

that is not capable of being repeated and the Applicant has not exercised poor judgment outside of this time frame.

Despite the fact that the Applicant allowed his taxes to become delinquent, he has always paid his other debtors on time. He has no other delinquent debts, no history of collection accounts or overdue bills. He has one California tax lien that is currently being paid at the rate of \$766.00 monthly and he has tendered a 20% payment of \$3,200.00 to the IRS for a debt owed for federal back taxes owed for tax year 1995. He hired a tax attorney to assist him in filing his income tax returns and has now filed all of his returns except his returns for 1997 that are expected to be filed on or before August 23, 2007. His tax matters will be completely resolved soon. Under Guideline F, Financial Considerations, Disqualifying Conditions, *19(a) inability or unwillingness to satisfy debts* and *19(c) a history of not meeting financial obligation* apply. However, Mitigating Conditions *20(b) the conditions that resulted in the financial problem were largely beyond the person's control, (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances* and *20(d) the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts* also apply.

Under Guideline G, Alcohol Consumption, disqualifying conditions, *22(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent* and *22(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent* apply. The Applicant has had three alcohol related incidents, the last incident having occurred more than eight years ago, in January 1999. He is currently enrolled in an alcohol rehabilitation program.

The Applicant's psychiatrist, in his evaluation of the Applicant dated July 30, 2007, indicates that under the circumstances he is considered to be an alcohol abuser. The psychiatrist states, "He has risen above his problems and there have been no alcohol related problems since 1999. The reason he was able to contain his beer drinking to a few on the weekends is because his underlying psychological makeup is not that of an alcoholic. But since he values his position so much, he finds it easy enough to be totally abstinent like he has been in his life before. He is no longer depressed, and he is retiring the debt from the last phase of his life." (See Applicant's Post-Hearing Exhibit).

Mitigating Conditions *23(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if alcohol abuser), and 23(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program* apply.

The Applicant's willful failure to file state income tax returns for tax years 1995, 1996 and 1997 is a misdemeanor violation of California Revenue and Taxation Code, Section 19701. His failure to file his 1997 federal income taxes is a violation of Title 26, United States Code, Section 7203. His alcohol related incidents concerning his DUI arrests in June 1993 and January 1999 are also criminal conduct. Under Guideline J, Criminal Conduct, Disqualifying Conditions 30(a) a single serious crime or multiple offenses and 30(c) *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted applies. However Mitigating Conditions 32(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness or good judgment, and 32(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement also applies.*

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, or other characteristics indicating that the person will properly safeguard classified information.

Under the particular facts presented, this Applicant has demonstrated that he is trustworthy, and that he does meet the eligibility requirements for access to classified information. Accordingly, I find for the Applicant under Guidelines F (Financial Considerations), G (Alcohol Consumption), and J (Criminal Conduct).

On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2, and 3 of the SOR.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

- Subpara. 1.a.: For the Applicant.
- Subpara. 1.b.: For the Applicant.
- Subpara. 1.c.: For the Applicant.
- Subpara. 1.d.: For the Applicant.
- Subpara. 1.e.: For the Applicant.

Paragraph 2: For the Applicant.

- Subpara. 2.a.: For the Applicant.
- Subpara. 2.b.: For the Applicant.
- Subpara. 2.c.: For the Applicant.
- Subpara. 2.d.: For the Applicant.

Paragraph 3: For the Applicant.

Subpara. 3.a.: For the Applicant.

Subpara. 3.b.: For the Applicant.

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson  
Administrative Judge