

DATE: November 29, 2007

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-19447

**DECISION OF ADMINISTRATIVE JUDGE  
DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's long history of alcohol abuse that includes four arrests for Driving Under the Influence, and his excessive financial indebtedness, have not been mitigated by sufficient evidence of reform and rehabilitation. He did not intentionally falsify his security clearance application in response to question 20. Clearance is denied.

## **STATEMENT OF THE CASE**

On April 18, 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 May 3, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 6, 2007. A notice of hearing was issued on August 13, 2007, scheduling the hearing for September 6, 2007. At the hearing the Government presented ten exhibits. The Applicant presented four exhibits and called two witnesses. He also testified on his own behalf. The record was left open until September 27, 2007, to allow the Applicant to submit additional supporting documentation. On September 27, 2007, he submitted one Post-Hearing Exhibit consisting of five enclosures that was admitted into evidence. The official transcript (Tr.) was received on September 18, 2007.

## **FINDINGS OF FACT**

The Applicant is 43 years old and is a single parent. He has a tenth grade education and some college. He is employed by a defense contractor as a Badge and Lock Operator, and is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant admitted to each of the allegations set forth in the SOR under this guideline.

The Applicant began consuming alcohol at the young age of seventeen. At that time he drank between a six pack and a twelve pack of beer on the weekends. As time passed, his drinking increased, and he also began consuming hard liquor. His excessive drinking caused him to be arrested and convicted on four separate occasions for Driving Under the Influence of Alcohol.

The Applicant was arrested for Driving Under the Influence of Alcohol (DUI) in November 1987, January 1990, September 1995, and most recently in October 2006. Each arrest occurred while driving home after leaving a bar or a club where the Applicant had been consuming alcohol. Following each arrest, the Applicant was fined, sentenced to three years probation, and ordered to complete a DUI program. (See Government Exhibits 9 and 10).

During his most recent arrest for DUI in October 2006, the Applicant was rear-ended by a truck and based upon the police report of the incident it is a miracle that he survived the accident. This horrifying experience was an eye opener for the Applicant and caused him to re-evaluate his life. Following the accident and arrest, he joined a church, dedicated his life to God, and became a Christian. He is now a single parent of a ten year old son who depends on him for support and proper upbringing. He no longer consumes alcohol, smokes or uses any illegal drugs. He is also currently involved in a recovery program that is sponsored by his church. He will remain on probation for this arrest until 2009. He now realizes the seriousness of his past conduct. He has no desire to ever consume alcohol again. Although he tried to stop using alcohol in the past and was only able to abstain for as much as two months at a time, this time is different and he feels confident that he will be successful. The Applicant has been completely sober since his DUI in October 2006.

The Applicant attributes his excessive alcohol consumption to a period when he was under a lot of pressure and was responsible for taking care of his very sick mother who was in and out of the hospital. At that time he had no support system and self medicated to deal with the stress. His life has drastically changed since then. He no longer consumes alcohol, he does not smoke or use any illegal drugs. He testified that he plans to remain sober, stay faithful to his God, and that he has friends in the church to provide the support he needs to accomplish this. (Tr. p. 143).

Paragraph 2(Guideline F- Financial Considerations). The Government alleges that the Applicant is ineligible for clearance because he is financially overextended.

The Applicant admits each of the debts set forth in the SOR under this guideline.

The Applicant is indebted to seventeen separate creditors totaling an amount of at least \$18,787.00. (See Government Exhibits 2, 4, 5, 6 and 7). The Applicant has not been able to satisfy his debts because of the expense of his most recent DUI. A four month period on disability and periods of time where 25% of his wages were garnished by a creditor also caused him difficulties in paying his bills on time. Each of the debts listed in the SOR remain outstanding, except one. A debt owed to Fireside, set forth in allegation 2(b), of the SOR, was settled sometime last year by the Applicant in the amount of \$900.00 to \$1,000.00.

The Applicant's wages are currently being garnished in the amount of \$350.00 a pay period by a creditor who is not listed in the SOR. The Applicant's current financial situation is bleak. He is barely making ends meet and is living paycheck to paycheck. His present financial obligations include court costs, the cost of the DUI program, support for his son, rent, food and gas.

To resolve his current indebtedness he plans to file for Bankruptcy. The cost of filing is approximately \$500.00 that he does not have. He plans to get the money from his church. He plans to list all of his delinquent creditors, including all of the debts listed in the SOR, in the bankruptcy petition. (Tr. p. 73).

\_\_\_\_ Applicant's Post-Hearing Exhibit contains a letter from an attorney he retained to file his Chapter 7 Bankruptcy petition.

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is

ineligible for clearance because he engaged in criminal conduct.

The Applicant admitted to each of the allegations set forth in the SOR under this guideline.

On October 26, 2004, the Applicant completed a security clearance application wherein he was required to indicate whether he has ever been discharged, terminated, fired, or quit a job. The Applicant failed to disclose that he was discharged from employment on January 18, 2002, for excessive absences. (*See* Government Exhibit 1, Question 20). The Applicant testified that he was not aware that he was discharged from employment for absences and so he did not answer in the affirmative. The Applicant explained that the letter of termination was sent to an address that he had moved from two years prior. He never received the letter of termination and was not aware of it. Furthermore, there is evidence in the record indicating that the Applicant returned to work at the same place of employment after the period he was supposedly terminated. (*See* Applicant's Post-Hearing Exhibit). Under the particular facts of this case, I believe that the Applicant was not aware of the termination letter or the rationale concerning his employment termination. I do not find that the Applicant intentionally failed to disclose this information from the Government. Accordingly, I find for the Applicant under this guideline.

Two witnesses who are acquainted with the Applicant through the church that they attend, testified favorably on behalf of the Applicant. (Tr. pp. 109-119 and 121-125).

A letter from the Director of the twelve step recovery program in which the Applicant is an active participant since December 2006, indicates that the Applicant is progressing well in his recovery. (*See* Applicant's Exhibit A).

A letter from the Teaching Ministry Director at the Applicant's church attests to the Applicant's consistency, diligence, and dedication to the 40 week course focusing on the practical implications of Christianity. (*See* Applicant's Exhibit B).

A letter from the Leader of the Security Ministry at the Applicant's church indicates that the Applicant is a very dedicated, responsible and caring individual. He has a passion for serving and helping whenever possible. (*See* Applicant's Exhibit C).

A letter from the Applicant's Manager at work indicates that the Applicant has continued to perform his work in a satisfactory manner despite the occurrences in his personal life. (*See* Applicant's Exhibit D).

A letter from the Applicant's Pastor of Outreach from his church attests to the Applicant's growth as a Christian and his demonstrated commitment to stay sober through attending a 30 week recovery program and his continued commitment to this alcohol free life style. (*See* Applicant's Post-Hearing Exhibit).

## **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 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.

#### Conditions that could mitigate security concerns:

None.

#### 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 obligations.

#### Conditions that could mitigate security concerns:

None.

#### Guideline E (Personal Conduct)

15. *The Concern.* 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.

Conditions that could raise a security concern:

None.

Conditions that could mitigate security concerns:

None.

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."

## 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 alcohol abuse, excessive financial indebtedness and personal 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 alcohol abuse (Guideline G), financial indebtedness (Guideline F), and personal conduct (Guideline E). 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 not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines G, and F of the SOR.

Under Alcohol Abuse, Guideline G, 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. None of the mitigating conditions are applicable. Accordingly Guideline G is found against the Applicant.

The Applicant's extensive history of alcohol abuse resulted in four DUI arrests, the most recent which occurred in October 2006, just thirteen months ago. He remains on probation for the offense until 2009. Although there is no formal diagnosis in the record of alcohol dependence, the Applicant acknowledges that he is a recovering alcoholic. He has completely abstained from the use of alcohol since his last arrest. He is commended for his recent decision and commitment to abstain from alcohol. He is working a structured recovery program that includes Alcohol Anonymous meetings in order to stay alcohol free. He is absolutely on the right road to recovery. However,

presently, more time in rehabilitation is necessary in order to show the government that he is sufficiently trustworthy and that he will not relapse and return to his old ways.

I have also carefully considered the favorable words from his church colleagues, his manager, and his alcohol recovery program director, but that evidence does not come close to mitigating the negative effect of his numerous alcohol related arrests.

Under Financial Considerations, Guideline F, Disqualifying Conditions *19(a) inability or unwillingness to satisfy debts* and *19(c) a history of not meeting financial obligations* apply. None of the mitigating conditions are applicable. Accordingly, Guideline F is found against the Applicant.

Presently, the Applicant remains indebted to at least seventeen separate creditors totaling an amount of \$18,787.00. Although he plans to file Bankruptcy under Chapter 7 he has not yet done it, and his debts remain outstanding.

With respect to the Government's allegation concerning the Applicant's attempt to falsify his security clearance, I find that he did not. Under the particular facts of this case, I believe that the Applicant did not list his termination from employment on the security clearance application because he was not aware of the termination letter or the rationale concerning his employment termination because he never received notice. Accordingly, I find for the Applicant under Personal Conduct, Guideline E.

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

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### **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: Against the Applicant.

- Subpara. 1.a.: Against the Applicant.
- Subpara. 1.b.: Against the Applicant.
- Subpara. 1.c.: Against the Applicant.
- Subpara. 1.d.: Against the Applicant.

Paragraph 2: Against the Applicant.

- Subpara. 2.a.: Against the Applicant.
- Subpara. 2.b.: Against the Applicant.
- Subpara. 2.c.: Against the Applicant.
- Subpara. 2.d.: Against the Applicant.
- Subpara. 2.e.: Against the Applicant.
- Subpara. 2.f.: Against the Applicant.
- Subpara. 2.g.: Against the Applicant.



Subpara. 2.h.: Against the Applicant.  
Subpara. 2.i.: Against the Applicant.  
Subpara. 2.j.: Against the Applicant.  
Subpara. 2.k.: Against the Applicant.  
Subpara. 2.l.: Against the Applicant.  
Subpara. 2.m.: Against the Applicant.  
Subpara. 2.n.: Against the Applicant.  
Subpara. 2.o.: Against the Applicant.  
Subpara. 2.p.: Against the Applicant.  
Subpara. 2.q.: Against the Applicant.

Paragraph 3: For the Applicant.

Subpara. 3.a.: For the Applicant.

### **DECISION**

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

Darlene Lokey Anderson  
Administrative Judge

