

DATE: May 18, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-10694

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Nygina T. Mills, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

This 28-year-old employee of a defense contractor has an admitted history of criminal and other misconduct on at least 11 occasions, beginning in 1995 and continuing until at least 2001, an average of almost two a year. Mitigation has not been adequately established. Clearance is denied.

**STATEMENT OF THE CASE**

On July 17, 2003, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On September 8, 2003, Applicant submitted two responses to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on February 4, 2004. The Form instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. Applicant received the FORM on February 17, 2004. Any response was due by March 18, 2004, but no submission to the FORM has been received. The matter was assigned to me for resolution on April 2, 2004.

**FINDINGS OF FACT**

Applicant is a 28-year-old information security specialist for a defense contractor. The July 17, 2003 SOR contains one allegation under Guideline J (Criminal Conduct) and 10 allegations under Guideline E (Personal Conduct - Falsifications). In his two September 8, 2003 responses (Items 2 and 3) to the SOR (Item 1), Applicant denies (without explanation) allegation 1.a.; he admits the amount and status of the debt cited in allegation 1.b. The admitted allegations

are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence derived from the FORM and its attachments, including Applicant's two responses to the SOR, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation:

#### Guideline J (Criminal Conduct)

1.a. - On February 2, 1998, Applicant was charged with Disorderly Conduct. A warrant was issued for his arrest and he was charged with jumping bail on March 12, 1998. He was found guilty on September 17, 1998, sentenced, served two days, and was placed on house arrest. He was found guilty of Disorderly Conduct on December 2, 1998 and was sentenced to seven days home incarceration with credit for time served. He was fined \$100.00 and court costs;

#### Guideline E (Personal Conduct)

2.a. - On August 31, 2001, Applicant was arrested for speeding. He pleaded guilty. He was charged with court costs that were to be paid within a specified period. He requested and received state traffic school in lieu of a fine. As of December 2001, he had not satisfied either penalty.

2.b. - On August 3, 1999, Applicant was cited for speeding and failure to wear a seat belt. He was found guilty of speeding and fined \$20.00 plus court costs and found guilty of not wearing a seat belt and fined \$25.00;

2.c. - The facts cited in SOR 1.a., above;

2.d. - On November 11, 1998, Applicant was cited for speeding and failure to wear a seat belt. He was found guilty on both counts, ordered to pay court costs on both charges, and ordered to attend state traffic school;

2.e. - On October 15, 1998, Applicant was arrested for Alcohol Intoxication. He entered a not guilty plea and on December 2, 1998, the charges were dismissed at a pretrial conference;

2.f. - On March 20, 1997, Applicant was cited for Improper Signal and an Expired Driver's License. Both charges were dismissed on May 31, 1996;

2.g. - On December 30, 1996, Applicant was cited for Minor in Possession of Alcohol. He was found guilty and paid a fine of \$25.00 and costs;

2.h. - On September 5, 1995, Applicant was cited for speeding. He pleaded guilty and was fined \$25.00 and costs;

2.i. - On March 12, 1995, Applicant was cited for Minor in Possession of Alcohol. He was found guilty and was fined \$25.00 and court costs;

2.j. - Applicant falsified material facts on his security clearance application (SCA), dated December 4, 1999, in response to Question **24 Your Police Record - Alcohol/Drug Offenses**, when he deliberately failed to disclose the facts as listed in SOR 2g. and 2.i., Minor in Possession of Alcohol, which occurred when he was 19 and 20 years old.

Several of Applicant's friends and work colleagues view him as an "honest and trustworthy individual who refuses to compromise [his] integrity" and "a mature and responsible individual at all times" (Attachments to Item 3)..

### **POLICIES**

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 pertinent 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct. Because Applicant chose to have this matter decided without a hearing and without submitting any additional information in response to the FORM, all credibility determinations and findings of fact are necessarily based entirely on the contents of the FORM and applicant's response.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses, here based solely on the written record.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an applicant for a security clearance, in his or her private life or connected to work, may be involved in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant. I find that the financial issues in question do raise security concerns under Directive Guideline F.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

### CONCLUSIONS

Since this matter is being decided without a hearing, my evaluation is necessarily limited to the contents of the various documents that are found in the case file, the latest of which are Applicant's two responses to the SOR on September 28, 2003. In those responses, Applicant admits the single criminal conduct allegation, SOR 1.a. and all personal conduct allegations except for SOR 2.j., wherein he denies the deliberate falsification of his answer to Question 24. I have carefully considered his explanations for the falsification (Item 3) and conclude that while he denies any deliberate falsification, he really doesn't provide any alternative rationale that might be considered credible and mitigating.

Overall, the evidence of record establishes as a man of 28 with an unfortunate history of the exercise of poor conduct going back almost nine years. From 1995 to August 2001, he has been cited, arrested, convicted, and/or sentenced on nine separate occasions for offenses ranging from speeding and not wearing a seat belt to disorderly conduct and bail jumping. He began his history of criminal and other misconduct as a young man but he has continued it until, at least,

after the submission of his security clearance application in 1999 and shortly before he competed his sworn statement to an agent of the Defense Security Service in December 2001. The overall record is not one that inspires confidence in Applicant's integrity, judgment reliability and trustworthiness.

Under Guideline J (Criminal Conduct), Disqualifying Conditions (DC) 1 (allegations or admissions of criminal conduct, regardless of whether the person was formally charged) and 2 (a single serious crime or multiple lesser offenses) are clearly applicable. None of the listed possible Mitigating Conditions have been established by the record since the misconduct is not isolated, is still recent, and there is no clear evidence of rehabilitation (MC 1, 2, and 5).

Likewise, under Guideline E (Personal Conduct), the record shows both a deliberate falsification of material facts on his security clearance and a history and pattern of conduct that reflects poor judgment, unreliability, and untrustworthiness. None of the possible mitigating conditions listed in the guidelines has been established.

Overall, without questioning Applicant's sincerity, he simply has not overcome the negative impact of his long and trouble history of violating laws, rules and regulations that govern all of us. Much of this misconduct occurred after Applicant received a DoD security clearance in 1993 (Item 6 at Question 23). Pursuant to the requirements established in the Directive, Applicant has not yet demonstrated that his past misconduct is at an end and that he can be relied upon to avoid any future recurrence. For these reasons, and not withstanding the positive input from his two colleagues, the record compels the conclusion that Applicant has not yet established his eligibility for access to the nation's secrets,

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline J (Criminal Conduct) Against the Applicant

Subparagraph 1.a. Against the Applicant

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c.. Against the Applicant

Subparagraph 1.d. . Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. Against the Applicant

Subparagraph 1.j. Against 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 Applicant.

**BARRY M. SAX**

## Administrative Judge