

DATE: June 28, 2001

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 00-0734

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn A. Trowbridge, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's conduct raises security concerns over his criminal conduct and personal conduct as he deliberately misled the Government by material omissions from his security form. Thus, the Government established a case of criminal falsification under 18 U.S.C. section 1001 as he was clearly put on notice that he had a duty to reveal all adverse information on the SF 86. Instead he improperly certified that his answers were "true, complete, and correct." On the other hand his misdemeanor arrests can be mitigated as not recent. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on January 18, 2001. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) (Item 1) The SOR alleges specific concerns in criminal conduct (Guideline J) and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on February 16, 2001, where he admitted paragraphs 1.a. through 1.d. and provided explanations; he admitted paragraphs 2.a. and 2.b, and provided explanations. He requested a determination on the record. (Item 2)

The case was assigned to Department Counsel; on April 17, 2001, she prepared the File of Relevant Material (FORM) for the Applicant's review. Department Counsel advised Applicant that he had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that he had the right to be represented by counsel. A Personnel Security Specialist (PSS) sent the FORM to Applicant on April 23, 2001, and again notified the Applicant that he had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge.

Applicant received the FORM on April 25, 2001. However, he did not submit any response before the deadline of May 25, 2001. On June 11, 2001, the case was assigned to me.

## FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant is a 30 year old employee of a defense contractor in State #1. He began work there in March 1999. He applied for a security clearance in June 1999 by completing a Security Clearance Application (Standard Form 86) (SF 86). He is married and has two children born in 1989 and 1991. (Item 4)

### **Criminal Conduct and Personal Conduct**

On the SF 86 Applicant reported limited adverse information. However, Applicant did not reveal three arrests. (Answer, Items 4, 5) Despite his failure to reveal information about these arrests, Applicant certified that his statements on the form were "true, complete, and correct." The form itself advised that a knowing and willful false statement could be punished by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code. (Item 4)

Applicant was interviewed two times by Defense Security Service (DSS) investigators. In March 2000 he explained his 1993 arrest for Domestic Assault occurred after a neighbor called police when he was having a "verbal" argument with his wife. He contended that the charges were later dismissed after he and his wife appeared in court. Also, in 1989 he spent three days in jail after he was stopped for a traffic violation and found to have had a suspended license. He swore that he had no other arrests other than minor traffic violations. He also clarified that he had used cocaine in 1993 on three occasions. He does not intend to use any drugs in the future. He claimed he omitted his cocaine use and his 1993 arrest for domestic assault because he got confused by the form and listed only his marijuana use. He claimed he did not think he had to list the 1993 arrest where he remembered the charge was dismissed. While he claimed in his defense he openly disclosed both matters in his DSS security interview, there is insufficient evidence to establish he did so before or after he was confronted on the items. Therefore, I do not find his claim credible especially in the light of the fact that his statements in the initial interview were later partially contradicted by arrest records that documented he pled guilty to the Domestic Assault charge and did not identify other arrests identified later through a DSS records check. (Item 5; Answer)

In a second DSS interview eight days later in March 2000 Applicant contended that he did not remember that he pleaded guilty to the 1993 Domestic Assault Charge and was fined \$1000, suspended: court records document he assaulted his wife without cause. Further he argued he did not list his March 1997 Hit and Run offense as he received only a \$100 fine. He had hit the other car on the entry to a highway and neither he nor the other car stopped. (The court records document an initial \$200 fine plus court costs, his drivers license was suspended for six months which he appealed. As a result of appeal his fine was reduced to \$100 fine and he was given a 30 day suspension of his license; he paid the fine and costs and was released in July 1997.) (Items 6, 7; Answer) Also, Applicant was arrested in September 1990 for a July 1990 Unlawful Entry but the charge was nolle prosequi in September 1990; however, he was not questioned about this arrest by DSS (SOR 1.c.). (Item 6)

Weighing all of this evidence, I conclude Applicant did intend to mislead the U.S. government by omitting the arrests and cocaine abuse information from his SF 86 as the two DSS interviews do not indicate any clear effort on his part to voluntarily disclose this adverse information before he was confronted with the facts. Further, there were inconsistencies in the information he provided in the two interviews. He had a duty to disclose this adverse information.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

## **Guideline J - Criminal Conduct**

**A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.**

**Conditions that could raise a security concern and may be disqualifying include:**

(2) A single serious crime or multiple lesser offenses.

**Conditions that could mitigate security concerns include:**

(1) The criminal behavior was not recent;

## **Guideline E - Personal Conduct**

**Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.**

**Conditions that could raise a security concern and may be disqualifying also include:**

(2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities

**Conditions that could mitigate security concerns include:**

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

## **CONCLUSIONS**

### **Criminal Conduct**

The Government maintains security concerns over criminal conduct issues because of Applicant's three arrests which resulted in two convictions as well as his omission of other relevant and material information from his security form detailed in the Findings above. The 1990 arrest and 1993 and 1997 convictions may be mitigated under condition (1) as the criminal behavior was not recent and as the incidents were misdemeanors. He was also presented some evidence of successful rehabilitation as evidently he was reconciled with his wife after the most serious incident, the 1993 domestic assault conviction.

On the other hand, the Government has established a case of criminal falsification under 18 U.S.C. section 1001 as he was clearly put on notice of that section of the criminal code to emphasize that he had a duty to reveal all adverse information on the SF 86. Instead he improperly certified that his answers were "true, complete, and correct." For the reasons discussed above in my Findings, I conclude his conduct in omitting his adverse arrest and drug use information was willful. Thus, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 1.a. through 1.c, but against Applicant on subparagraph 1.d. under SOR Paragraph 1.

## Personal Conduct

The Government cited security concerns over personal conduct issues in that Applicant willfully falsified his SF 86 by omitting adverse information which was subsequently documented in his arrest reports. Such conduct (2) reflects questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information. While Applicant declared he did not intentionally omit this information from his SF 86, that assertion is an insufficient defense to the requirement to be forthcoming on a security investigation. Further, he does not meet the mitigating conditions as there is no evidence of MC 3: The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts or of MC 4: Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided. Thus, I conclude Applicant did deliberately mislead the Government by these omissions. Thus, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 2.a. and 2.b. under SOR Paragraph 2.

## FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: Against Applicant

Paragraph 2. Guideline E AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against 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.

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Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. **Conditions that could raise a security concern and may be disqualifying also include:** (2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.