

DATE: March 19, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-05918

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On October 5, 2001, 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 October 31, 2001, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the basis of the written record, without a hearing. Department Counsel submitted a File a Relevant Material (FORM) on December 19, 2001. The FORM includes 12 Government Exhibits (GX) 1 - 12. Instructions accompanying the FORM informed Applicant that any response to the FORM had to be submitted within 30 days of receipt of the FORM. Applicant has not submitted any response to the FORM. The case was assigned to me for decision on February 8, 2002.

FINDINGS OF FACT

Applicant is a 37-year-old engineer employed by a defense contractor, by whom he has been employed since 1987. The company is seeking a security clearance for Applicant in connection with his employment.

Based on the totality of the record evidence, I also make the following findings of fact under each of the allegations in the SOR:

Guideline J (Criminal Conduct)

SOR 1.a. - Applicant was arrested on May 24, 1997, and charged with (1) Driving under the influence of alcohol/drugs (DUI); (2) Driving under the influence of .08% alcohol; (3) Driving with a suspended license. On July 25, 1997,

Applicant pleaded nolo contendere and was found guilty of reckless driving. The above three counts were dismissed. He was fined \$1,238.00 and placed on three years probation (Government Exhibit (GX) 3, 4, 5, and 11).

SOR 1.b. - Applicant was arrested on April 25, 1995, and charged with disorderly conduct, soliciting a prostitute. He was sentenced to five days in jail and three years probation (GX 3, 4, 5, 6, 7, and 8).

SOR 1.c. - Applicant was arrested on November 3, 1990, and charged with (1) DUI, and (2) DUI of .08% alcohol or more. On December 4, 1990, he was sentenced to 48 hours in jail, fined \$1,004.00, ordered to participate in a 18-month program of treatment or counseling, and placed on summary probation for 3 years (GX 3, 4, 5, 6, 7, 8, and 12).

SOR 1.d. - Applicant was arrested on August 5, 1989, and charged with (1) use of a controlled substance, and (2) driving under the influence of alcohol/drugs. He pleaded guilty to driving under the influence and was fined \$1,200.00, and ordered to participate in an alcoholic awareness program (GX 3, 4, 5, 6, 7, 8, and 10).

SOR 1.e. - Applicant knowingly falsified material facts on an April 16, 1999 security clearance application (SCA), and in sworn statements to the Defense Security Service (DSS) on September 25, 1999, and November 25, 1999 (GX 3, 4, 5, 6, 7).

Guideline G (Alcohol Consumption)

SOR 2.a. - Applicant consumed alcohol, at times to excess and to the point of intoxication, from about 1986/1987 to October 1999 (GX 3, 5, 7, 8).

SOR 2.b. - the alcohol use related to the arrests cited in SOR 1.a., 1.c., and 1.d., above.

SOR 2.c. - Applicant continued to use alcohol after he became aware of the present investigative/adjudicative process (GX 3, 5, 6, 7).

Guideline H - Drugs

SOR 3.a. - Applicant used marijuana, at times three times a week, from approximately 1986 - 1987 to at least January 23, 2000 (GX 3, 5, 6, 7).

SOR 3.b. - Applicant was arrested in August 1989 for possession of a controlled substance, as cited in SOR 1.d., above (GX 3, 10).

SOR 3.c. - Applicant continued to use marijuana through at least January 2000. There is no evidence that he has used marijuana or any other illegal drug since that date and, specifically, there is no evidence that he is using or is addicted to marijuana or any other illegal drug at the present time (GX 3).

SOR 3.d. - 10 USC 986 is not applicable under the facts of this case and Applicant is not subject to disqualification solely on the basis of 10 USC 986.

Guideline F (Financial Considerations)

SOR 4.a. - Applicant is indebted to Bank A in the amount of approximately \$15,088.00 for a bad debt delinquent since about March 1999. As of October 25, 1999, this debt had not been satisfied (GX 3, 9).

SOR 4.b. - Applicant is indebted to Bank B in the amount of approximately \$1,803.00 for an account delinquent since about April 1999. As of October 25, 1999, this debt had not been satisfied (GX 3, 9).

SOR 4.c. - Applicant is indebted to County C in the amount of approximately \$5,450.00 for a child support account approximately 120 days delinquent as of ay 1999. As of October 31, 2001,

the date of his answer to the SOR, this debt has still not been satisfied (GX 3, 9).

SOR 4.d. - Applicant is indebted to Company D in the amount of approximately \$3,519.00 for a bad debt delinquent since about April 19, 1999. As of October 25, 1999, this debt had not been satisfied (GX 3, 9).

SOR 4.e. - Applicant is indebted to Utility Company E in the amount of approximately \$33.00 for a bad debt delinquent since about March 1997. As of October 25, 1999, this debt had not been satisfied (GX 3, 9).

SOR 4.f. - Applicant's wages were garnished in the amounts of approximately \$403.00 and \$490.00 in favor of a county Bureau of Family Support (GX 3, 9).

Guideline E (Personal Conduct)

SOR 5.a. - Applicant falsified material facts on a security clearance application (SF 86) dated April 16, 1999, when he answered "No" to: Question **"24 - Your Police Record - Alcohol/Drug Offenses."** He knew he had been charged with other offenses, specifically those cited in SOR 1.c. and 1.d., above (GX 3, 4, 5, 6, 7).

SOR 5.b. - Applicant falsified material facts on a security clearance application (SF 86) dated April 16, 1999, when he answered "No" to: "Question **26 - Your Police Record - Other Offenses."**

He knew he had been charged with the offense cited in SOR 1.b., above (GX 3, 4, 5, 6, 7).

SOR 5.c. - Applicant falsified material facts on a security clearance application (SF 86) dated April 16, 1999, when he answered "No" to: "Question **27 - Your Use of Illegal Drugs and Drug Activity."** He answered: "Yes" and cited limited marijuana use in 1992, when he knew he had used

marijuana more extensively and until at least April 1999 (the date of the SF 86) (GX 3, 4, 5, 6, 7). In fact, he continued using marijuana until January 2000 (GX 2).

SOR 5.d. - Applicant falsified material facts in his September 25, 1999 Sworn Statement to DSS, by minimizing the extent of his marijuana use (GX 3, 5, 7).

SOR 5.e. - Applicant falsified material facts in his November 2, 1999 Sworn Statement to DSS, by minimizing the extent of his marijuana use (GX 3, 6, 7).

POLICIES

GUIDELINE J - Criminal Conduct

The Concern: 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:

1. Allegations or admissions of criminal conduct, regardless of whether a person has been formally charged.
2. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

None that are applicable under the facts of this case.

GUIDELINE G - Alcohol

The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosures of classified information due to carelessness.

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

5. Habitual or binge consumption of alcohol to the point of impaired judgment.

Conditions that could mitigate security concerns:

None that are applicable under the facts of this case.

GUIDELINE H - Drugs

The Concern: Improper or illegal involvement with drugs raises questions about an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure

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

1. Any drug abuse
2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.

Conditions that could mitigate security concerns:

None that are applicable under the facts of this case.

GUIDELINE F - Financial

The Concern: An individual who is financially overextended is at risk to engage in illegal acts to generate funds.

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

1. A history of not meeting financial obligations.
3. Inability or unwillingness to satisfy debt.

Conditions that could mitigate security concerns:

None that are applicable under the facts of this case.

GUIDELINE E - Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, 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 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 security clearance eligibility or trustworthiness. . . .
3. Deliberately providing false or misleading information regarding relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination.

Conditions that could mitigate security concerns:

None that are applicable under the facts of this case.

CONCLUSIONS

The number and diversity of the allegations, all of which are supported by substantial evidence, makes a strong case for the Government that Applicant has demonstrated poor judgment, unreliability, and untrustworthiness over a considerable period of time and in a variety of ways.

Guideline J - The arrests and convictions in 1989, 1990, 1995, and 1997 establish a pattern that has not been shown to have been broken. Applicant's multiple falsifications on his security clearance application (April 16, 1999) (Government Exhibit (GX) 4) and in his sworn statements to a Defense Security Service (DSS) agent (September 25, 1999 and November 2, 1999 (GX 5)) are all criminal violations of 18 USC 1001. From the totality of this conduct, I find the conduct and the impact of the conduct to still be recent and not an isolated incident.

Guideline G - Applicant's excessive use and abuse of alcohol began in 1986 or 1987, when he was 23/24 years old. He admits excessive use of alcohol use after his 1997 alcohol-related arrest, but claims it was at a lower rate. He also claims (1) he is "in complete control right now" and (2) no present use of alcohol in his October 31, 2001 response to the SOR (GX 3). Based on the totality of the evidence, I am unable to give much credibility to this undocumented claim.

Guideline H - Applicant admits all of the SOR's drug allegations but claims he last used marijuana in January 2000, which was after the current security clearance process began. Although I conclude that Applicant is not currently using, or is addicted to, marijuana, his drug use is clearly recent, not isolated, without a favorable prognosis by a credentialed medical professional, and no rehabilitation has been demonstrated.

Guideline F - The debts are mostly admitted by Applicant, with explanations that he simply has not had the funds to pay them off, but that the debts would not lead him to perform illegal acts to generate funds (GX 3). I conclude Applicant has not made any good faith efforts to resolve the debts, which exceed \$30,000, with several thousand dollars more in child support arrearage.

Guideline E - Applicant admits, with explanations, all five allegations under this guideline. After considering all of his explanations, I conclude he has not mitigated the impact of the evidence in support of the SOR.

Although Applicant sees himself as a trustworthy and reliable person, his past conduct indicates otherwise. With so much misconduct over so long a period of time, a longer AND documented period of rehabilitation is necessary before he can establish his eligibility for access to the nation's secrets. The totality of the evidence in the FORM does not provide such evidence.

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

Subparagraphs 1.a. - 1.e. Against the Applicant

GUIDELINE G (Alcohol) Against the Applicant

Subparagraphs 2.a. - 2.c Against the Applicant

GUIDELINE H (Drugs) Against the Applicant

Subparagraphs 3.a. - 3.d. Against the Applicant

GUIDELINE F (Financial) Against the Applicant

Subparagraphs 4.a. - 4.f. Against the Applicant

GUIDELINE E (Personal Conduct) Against the Applicant

Subparagraphs 5.a. - 5.e 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