

DATE: November 5, 2002

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 01-06884

## **DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Henry Lazzaro, Department Counsel

#### **FOR APPLICANT**

William F. Savarino, Esquire

### **SYNOPSIS**

In February 1998, the Applicants received non-judicial punishment, under Article 15, UCMJ, for wrongfully transferring copyright commercial software, copyrighted infringement for personal financial gain, and attempting to wrongfully impede his criminal investigation. In December 1998, the Applicant was retired in the grade of captain and not in the grade of major due to his inappropriate conduct. In a March 1999 security clearance application and in an August 2001 signed, sworn statement, the Applicant falsely stated his clearance had never been denied, suspended, or revoked. In September 2000, the Applicant filed Chapter 7 bankruptcy listing \$160,000.00 in liabilities and assets of less than \$12,000.00. Because of his false statements and the conduct leading to the copyright violations and bankruptcy, clearance is denied.

### **STATEMENT OF THE CASE**

On November 5, 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 27, 2001, the Applicant answered the SOR and requested a hearing. The case was assigned to me on May 15, 2002. A Notice of Hearing was issued on May 16, 2002, scheduling the hearing which was held on June 10, 2002. A second Notice of Hearing was issued changing the hearing's location.

The Government's case consisted of 17 exhibits (Gov. Ex.) and the testimony of two witnesses. The Applicant relied on his own testimony, the testimony of two additional witnesses, and 12 exhibits (App. Ex.). The transcript (tr.) of the hearing was received on June 18, 2002. The hearing was held open to allow the presentation of additional witnesses. On August 5, 2002, Department Counsel (DC) and Applicant's counsel agreed to present no additional evidence. On August 29, 2002, DC moved to amend the SOR to change the Applicant's bankruptcy from Guideline E to Guideline F. On September 4, 2002, Applicant's attorney stated he had no objection to the motion reclassifying the bankruptcy. DC and Applicant's counsel agreed to submit closing arguments electronically and on September 5, 2002, DC submitted closing

argument. On September 13, 2002, Applicant's closing argument was submitted. DC did not respond to Applicant's closing argument.

Prior to the presentation of evidence Department Counsel moved to withdraw SOR subparagraphs 1.e. and 1.k. (tr. 12) There being no objection by Applicant's counsel, the subparagraphs were withdrawn. DC requested rulings on the admissibility of Gov. Exs 5, 6, and 7 be held in abeyance until government witnesses testified. (tr. 39) No additional evidence or witnesses were presented. The three exhibits were not admitted into evidence and were not considered in preparation of this decision.

### FINDINGS OF FACT

The SOR alleges personal conduct (Guideline E) and criminal conduct (Guideline J). The Applicant denied the allegations in part and admitted them in part.

The Applicant is 52 years old, has worked for a defense contractor since 1999, and is seeking a security clearance. The Director of Command and Control, an AF brigadier general, considers the Applicant a big asset, an honorable individual, and trustworthy. Another supervisor, an AF colonel who works closely with the Applicant on a daily basis, believes the Applicant is a trustworthy, honorable person, who poses no risk, and whom the colonel would trust with his life.

In April 1996, while an AF major, the Applicant received a letter of reprimand (Gov. Ex. 11, 15) for making inappropriate comments which constituted sexual harassment. He was reprimanded for his lack of judgment. In the break room, the Applicant had made some comments which one of the female crew members found offensive. The Applicant acknowledges his comments were inappropriate. (tr. 54)

The Applicant was a member of "WAREZ<sup>(2)</sup>" or "Wares" which was a group of approximately 30 individuals who exchanged computer software. In 1996, the Applicant began to share software with others, (tr. 59) but never put any software he received through the WAREZ group on his work computer (tr. 60), nor did he own a CD ROM writer or burner. (tr. 58) The Applicant was aware that copyrighted software could not be sold or traded to others. Additionally, he was aware some of the software he obtained through WAREZ was acquired in violation of the copyright law. As an officer, the Applicant inappropriately exchanged copyrighted software with enlisted members in violation of copyright provisions. The Applicant "had a sense that it was wrong, I didn't feel that it was that wrong." (tr. 56) Although the Applicant believes his action was inappropriate, he does not know if it was illegal.

The Applicant had been sharing software with his next door neighbor for a while (tr. 61), when his neighbor expressed an interest in obtaining photoshop software and offered the Applicant photographs of a value equal to the software provided. (tr. 62) When the Applicant provided the requested software, the neighbor gave the Applicant outdoor photographs valued at \$1,200.00. When asked by acquaintances how they could express their appreciation to the Applicant for the software he had provided, on one occasion the Applicant said he could use some additional memory for his computer and was given three 16 meg RAM computer chips worth approximately \$40.00 each. On another occasion, he expressed his CD ROM drive was slow and was given a new 8X CD ROM drive.

In May 1997, special agents of the AF Office of Special Investigation (OSI), came to the Applicant's job site and asked him to accompany them to the Applicant's house where a search was being conducted. The Applicant drove his vehicle, which had a cellular telephone, the three blocks to his house. (Gov. Ex. 8) When he arrived at his house, special agents were already there. Sometime after the special agents arrived at his office and before their arrival at his house, the Applicant's wife received a telephone call from an unknown person telling her to get rid of the Applicant's computer and software if she wanted to help her husband (the Applicant). The Applicant and his wife (App Ex. C) both state the Applicant was not the individual who made the telephone call. Pursuant to the call, the Applicant's wife and children attempted to hide his computer and threw software into a dumpster. The material recovered from the dumpster contained copies of commercial computer software valued in excess of \$42,000.00. (Gov. Ex. 10)

At the time of the search the OSI removed the Applicant's computer, 10 CD ROMs, software and photographs. Later, the Applicant's computer, photographs, and 5 or 6 CD ROMs were returned to the Applicant. During the investigation, the Applicant was ordered not to contact or ask anyone to contact members of WAREZ on his behalf. (App. Ex. D and E) In February 1998, the Applicant received non-judicial punishment under Article 15 (Gov. Ex. 16) of the Uniform Code of Military Justice (UCMJ) for: (1) wrongful and dishonorable transfer of copyrighted commercial software, (2 and 3) copyright infringement for personal financial gain, and (4) attempting to wrongfully impede his criminal investigation. He was fined \$1,500.00 each month for two months and was reprimanded.

Due to the OSI investigation, the Applicant was placed on administrative hold and was "read out" (removed) from sensitive compartmented information (SCI) access. In June 1997, the Applicant was notified his access to SCI had been temporarily withdrawn. (Gov. Ex. 14, page 2) As of December 1997, the Applicant's clearance status was "pending adjudication." (App. Ex. H, page 3) When he questioned his commander about his clearance he was told his clearance was not being revoked, suspended, or denied, but merely put in a "pending status" until the investigation was completed and was told his access was being downgraded for administrative reasons. There is no evidence as to when this discussion occurred. All that can be deduced is that the discussion took place prior to the completion of the investigation. In February 1998, in his response to the Art. 15, (Gov. Ex. 3, page 1) the Applicant stated, he ". . . lost [his] security clearance and line badge . . ."

Between May 1970 and August 1998, the Applicant was a member of the United States Air Force. (Gov. Ex. 1) In August 1998, the Applicant was honorably discharged from the service. The Applicant had more than 27 years of military service (Gov. Ex. 12) of which almost 15 years were foreign service, approximately 17 years were commissioned service, and ten years were enlisted service.

In December 1998, an officer grade determination<sup>(3)</sup> recommended the Applicant be retired in the grade of captain. (Gov. Ex. 4) Although the Applicant's unit and group commanders (App. Ex. I) recommended retirement as a major and the Applicant's 27 years of otherwise distinguished service,<sup>(4)</sup> it was determined the Applicant had not served satisfactorily in the grade of major. The Applicant's actions were not a momentary lapse in judgment or a series of misjudgments, but a course of dishonorable behavior which spanned a considerable period of time during which he had ample opportunity to reflect upon his actions. The stated reasons for the determination that he had not serviced satisfactorily in the grade of major was:

. . . a full reading of the OSI report underlying the Article 15 action reflects the considerable scope of (the Applicant's) misconduct which included his extensive involvement in the active pirating and distribution of copyrighted software valued in the tens of thousands of dollars, his specific requests for (and receipt of) compensation in the form of computer hardware and commercial products, his brazen involvement of his military subordinates in this activity, and his patent obstruction of justice in having his teenage sons attempt to hide evidence from investigators. (Gov. Ex. 4)

Three weeks after the search of his home, the Applicant and his family went to Florida for six weeks of vacation. In April 1998, an early return of his dependents moved his family to their current location. During the investigation the Applicant and his family were under a great deal of stress. To relieve the stress the family ate out frequently. Additionally, the Applicant purchased clothes and other goods for his family and incurred moving expenses. He began to use his credit cards for living expenses and got cash advances from one card to make payment on another card. He maxed out his credit cards. The Applicant indicates he spent more than he should have with credit cards, but his usage was stable and he was not behind on payments prior to filing for bankruptcy protection. Although the Applicant was current on all his payments, the servicing of his monthly credit card obligations consumed his entire net income and reduction of the principal amounts owed was minimal.

In September 2000, the Applicant filed a Chapter 7 bankruptcy. (Gov. Ex. 13) He had assets of \$11,699.00, which included his two vehicles, and liabilities of \$160,763.00. His liabilities included two lines of credit and 17 credit cards. In December 2000, his debts were discharged. Since his discharge in bankruptcy, the Applicant's gross annual income is approximately \$130,000.00, which includes his military retirement of \$25,300.00 and his current salary of \$95,000.00. As of August 2001, his monthly net income after expenses is more than \$3,000.00 (Gov. Ex. 2) and is current on his financial obligations.

In January 1989, the Applicant received non-judicial punishment under Article 15, UCMJ, (App. Ex. I) for driving while intoxicated. In 1991, the Applicant received alcohol treatment at an Army Base after a three day drinking binge. In June 1991 the Applicant successfully completed treatment. (App. Ex. F and G) During an interview with a Defense Security Service (DSS) special agent the Applicant stated his treatment had been in 1992.

In March 1999, the Applicant completed his Security Clearance Application, Standard Form 86 (SF 86), and answered "no" to question 30 which asked if his alcohol use had resulted in treatment or counseling during the prior seven years. In March 2000, when the Applicant was interviewed by a special agent of the Defense Security Service (DSS) he was asked about his alcohol use and stated he was free and clear of any alcohol use since 1991. (tr.23) In July 2001, the Applicant had another DSS interview during which he was very cooperative. The Applicant stated he had gone on a three day drinking binge while stationed overseas(tr. 30) As a result of the binge, the Applicant felt he needed help concerning his alcohol use and admitted himself for alcohol rehabilitation with the service. The Applicant was mistaken when he gave the date of treatment as 1992 for it had actually occurred a year earlier. In June 1991, the Applicant successfully completed Track IV of the alcohol treatment program. (App. Exs F and G)

The Applicant also answered "no" to question 32, which asked if his clearance or access had ever been denied, suspended, or revoked. The question notes that an administrative downgrade or termination of a security clearance is not a revocation. In an August 2001 signed, sworn statement given to DSS, the Applicant stated his access to classified information had been placed in administrative hold status, but denied he his clearance had even been suspended or revoked. (Gov. Ex. 2)

The Applicant was employee of the year at his current job. (App. Ex. B) The award listed the Applicant's four key characteristics as: initiative, competency, leadership, and vision. Religion plays a significant role in the Applicant's life. (tr. 46) He is deeply involved in a ministry and has risen to the level of elder in that ministry. His ministry precludes him from using alcohol. (tr. 23) The Applicant expressed four regrets: his participation

in the WAREZ; that he never received a retirement ceremony; having to file bankruptcy; and, he regrets what his family went through.

## POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

**Personal Conduct (Guideline E)** 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 also include:

1. Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances. (E2.A5.1.2.1.)
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. (E2.A5.1.2.2.)
3. Deliberately providing false or misleading information concerning 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. (E2.A5.1.2.3.)
5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency. (E2.A5.1.2.5.)
6. Association with persons involved in criminal activity. (E2.A5.1.2.6.)

Conditions that could mitigate security concerns include:

7. Association with persons involved in criminal activities has ceased. (E2.A5.1.3.7.)

**Criminal Conduct (Guideline J)** 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:

- a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.

Conditions that could mitigate security concerns include:

None Apply.

**Financial Considerations (Guideline F)** The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

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

1. A history of not meeting financial obligations. (E2.A6.1.2.1.)

Conditions that could mitigate security concerns include: E2.A6.1.3.

None apply.

### **BURDEN OF PROOF**

Initially, the Government has the burden of proving any controverted fact(s) alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the Applicant who must remove that doubt and establish his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against the applicant.

### **CONCLUSIONS**

The Government has satisfied its initial burden of proof under guideline E, (Personal Conduct). Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness.

In 1996 and 1997, the Applicant became involved as a member of a group of approximately 30 individuals who used, shared, and exchanged copyrighted computer software acquired and shared in violation of the copyright law. The group's purpose was to make commercial software available to others free of charge. The Applicant was aware that copyrighted software could not be sold or traded to others. He inappropriately exchanged copyrighted software with others in violation of copyright provisions which he sensed was wrong, but did not feel was that wrong.

When the Applicant's neighbor expressed an interest in obtaining photoshop software and offered the Applicant outdoor photographs of a value equal to the software provided, the Applicant provided the software and was given \$1,200.00 worth of photographs. The material provided was commercial copyrighted software which the Applicant had not purchased, but got from the group's software exchange site. The Applicant wrongfully shared copyrighted software with two other acquaintances who showed their appreciation by providing the Applicant with memory chips and a new 8X CD ROM drive. Although neither of these transactions was the result of a stated exchange rate whereby a specific amount of the software was traded for a specific amount of goods received, they did involve the wrongful exchange of commercial copyrighted computer software.

The Applicant's inappropriate conduct resulted in a February 1998 Article 15, UCMJ for the wrongful and dishonorable transfer of copyrighted commercial software, copyright infringement for personal financial gain, and attempting to wrongfully impede his criminal investigation, which resulted in a fine of \$1,500.00 each month for two months and a reprimand. In December 1998, due to an officer grade determination the Applicant was retired in the grade of captain because the Applicant had not served satisfactorily in the grade of major. The Applicant's actions were not a momentary lapse in judgment or a series of misjudgments, but a course of dishonorable behavior which spanned a considerable period of time during which he had ample opportunity to reflect upon his actions. The Applicant's misconduct included extensive involvement in the active pirating and distribution of copyrighted software valued in the tens of thousands of dollars, his specific requests for and receipt of compensation, the involvement of his military subordinates, and for obstruction of justice. Disqualifying Conditions (DC) 5 <sup>(5)</sup> and 6 <sup>(6)</sup> apply.

The Applicant's association with members of the group has ceased which is a mitigating condition (MC 7 <sup>(7)</sup>). However this mitigator must be balanced by the recency and seriousness of the conduct which not only resulted in punishment under Art.15, UCMJ, but also resulted in his retirement as a captain in lieu of as a major. None of the other mitigating conditions apply. Because the sole applicable mitigating condition is insufficient for a favorable finding, I find against the Applicant as to SOR subparagraphs 1.b. , 1.c., 1.d., and 1.f.

In 1996, the Applicant received a Letter of Reprimand for making inappropriate comments. This incident is sufficiently remote in time as not to be of security significance. I find for the Applicant as to SOR subparagraph 1.a.

The Applicant completed alcohol related treatment in June 1991 (App. Ex. F and G) which was more than seven years prior to the completion his March 1999 SF 86. Question 30 asks about the prior seven year period of time which is the period from March 1992 to March 1999. The Applicant's answer to the question was not false. I find for the Applicant as to SOR subparagraph 1.g. For the same reason, the Applicant was truthful during the Applicant's March 2000 DSS interview when he stated his last alcohol treatment was in 1991 and he had experienced no alcohol related problems since then. I find for the Applicant as to SOR subparagraph 1.i.

When the Applicant was being investigated by the OSI, his SCI access was removed. When he asked his commander about his clearance and he was told his clearance was not being revoked, suspended, or denied, but merely put in a "pending status" until the investigation was completed. This statement may have been true when made, but there is no evidence indicating the Applicant's clearance was not revoked, suspended or denied once the investigation was completed.

In March 1999, the Applicant answered "no" to SF 86 question 32, which asked if his clearance or access had been denied, suspended, or revoked. In a signed, sworn statement dated August 2001, the Applicant again denied his clearance or access had been denied, suspended or revoked. These were false statements for it was the Applicant's belief as of February 1998, when he responded to the Art. 15, that he had lost his security clearance and line badge. DC 1, 2, and 3 apply. None of the mitigating conditions apply. I find against the Applicant as to SOR subparagraph 1.h. and 1.i.

SOR subparagraphs 1.e. and 1.k. were withdrawn. No findings as to these paragraphs have been made.

The Government has satisfied its initial burden of proof under Guideline J, (Criminal Conduct). Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness. In February 1998, the Applicant received non-judicial punishment under Art. 15, UCMJ, for wrongfully transferring copyrighted commercial software and infringing on copyrighted computer software for financial gain. He was fined \$1,500.00 each month for two months and reprimanded. The Applicant's underlying conduct was criminal and a violation of the Uniform Code of Military Justice even though it was treated non-judicially. The use of Art. 15 UCMJ is a choice of forum as to where the matter will be heard and does not bear on the criminality of the acts involved. Because there is criminal conduct, Disqualifying Condition (DC) a<sup>(8)</sup> applies.

None of the Mitigating Conditions apply. MC a<sup>(9)</sup> does not apply because the conduct occurred during 1996 and 1997, resulting in the February 1998 Art. 15, UCMJ, which makes the criminal behavior recent. MC b<sup>(10)</sup> does not apply because, as stated in the December 1998 officer grade determination, the Applicant's actions were not a momentary lapse in judgment or a series of misjudgments, but a course of dishonorable behavior which spanned a considerable period of time during which he had ample opportunity to reflect upon his actions. MC c<sup>(11)</sup> and d<sup>(12)</sup> do not apply because the Applicant's conduct was not the result of pressure, coercion, or an involuntary act. There was no acquittal, so MC e<sup>(13)</sup> is inapplicable.

There is evidence of rehabilitation (MC f<sup>(14)</sup>) in that religion plays a significant role in the Applicant's life, he is deeply involved in a ministry, and has risen to the level of elder in that ministry. Additionally, he was employee of the year at his current company and regrets his past conduct. All of these are signs of rehabilitation. Although this is evidence of some amount of rehabilitation, it is insufficient to overcome the seriousness of the Applicant's misconduct and for me to find for the Applicant as to his criminal conduct. I find against the Applicant as to SOR subparagraph 2.a.

The Government has satisfied its initial burden of proof under Guideline F, (Financial Considerations). Under Guideline F, the security eligibility of an applicant is placed into question when the applicant is shown to have a history of excessive indebtedness, recurring financial difficulties, or a history of not meeting her financial obligations. The United States must consider whether individuals granted access to classified information are because of financial irresponsibility in a position where they may be more susceptible to mishandling or compromising classified information or material for financial gain. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk that is inconsistent with the holding of a security clearance. Here, Applicant's overall history of financial difficulties, which resulted in his September 2000 bankruptcy provides concern. DC 1<sup>(15)</sup> applies.

The Applicant maxed out his credit cards using them for living expenses and to get cash advances from one card to pay other cards. He owed \$160,763.00 and had assets of less than \$12,000.00. Since his discharge, the Applicant has been able to meet his financial obligations. With such large liabilities and no assets to show for his extravagant spending, the

Applicant has a duty to explain what occurred and what will prevent recurrence of his past financial mismanagement. He has failed to sufficiently explain how such a large debt was incurred and if he has received financial counseling. None of the mitigating factors apply in the Applicant's favor. The conduct is recent (MC 1)<sup>(16)</sup> in that the debts were discharged less than two years ago. It is not an isolated incident (MC 2)<sup>(17)</sup> because there were 18 accounts incurred over a number of years. The debts were incurred by the Applicant's overspending and financial mismanagement and were not caused by loss of employment, a business downturn, medical bills, death, divorce, separation, or other factors beyond the Applicant's control. MC 3<sup>(18)</sup> does not apply. MC 4<sup>(19)</sup> does not apply because there is no evidence the Applicant has received financial counseling. Unexplained affluence (MC5)<sup>(20)</sup> was not alleged. Because the Applicant has failed to present sufficient mitigation to overcome his financial irresponsibility, Criterion F is resolved against the Applicant.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

In fairness to the Applicant, this decision should not be construed as a determination that the Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a DoD security clearance. To the contrary, his mitigating evidence suggests a sound potential for positive reform and outstanding accomplishments in the defense industry. Should Applicant be afforded an opportunity to reapply for a security clearance in the future he may well demonstrate persuasive evidence of his security worthiness.

### **FORMAL FINDINGS**

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

Paragraph 1 Guideline E (Personal Conduct): AGAINST THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Withdrawn

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: For the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: For the Applicant

Subparagraph 1.k.: Withdrawn

Subparagraph 1.l.: Against the Applicant

Paragraph 2 Guideline J (Criminal Conduct): AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

Guideline F (Financial Consideration) 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 the Applicant.

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**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. The motto of the group was to share the wares, which the Applicant did. (tr. 60)
3. Air Force policy requires all officers who have received an Article 15 within two years of retirement to undergo a formal grade review to determine the appropriate grade for retirement. (Gov Ex. 4)
4. Applicant's distinguished service is shown by the decorations listed on his DD Form 214 and App. Exs , I, and J.
5. DC 5. A pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency. (E2.A5.1.2.5.)
6. DC 6. Association with persons involved in criminal activity. (E2.A5.1.2.6.)
7. MC 7. Association with persons involved in criminal activities has ceased. (E2.A5.1.3.7.)
8. DC a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.
9. MC a. The criminal behavior was not recent.
10. MC b. The crime was an isolated incident.
11. MC c. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life.
12. MC d. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur.
13. MC e. Acquittal
14. MC f. There is clear evidence of successful rehabilitation.
15. DC 1. A history of not meeting financial obligations. (E2.A6.1.2.1.)
16. MC 1. The behavior was not recent.
17. MC 2. It was an isolated incident.
18. MC 3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation). (E2.A6.1.3.3.)
19. MC 4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.
20. MC 5. The affluence resulted from a legal source. (E2.A6.1.3.5.)



