

DATE: June 27, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-23615

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While completing a security form, Applicant failed to reveal his dated alcohol-related arrests. However, he mitigated this personal conduct and potential criminal conduct by his subsequent corrective action, including full disclosures in an investigative interview and by his outstanding conduct on the job where Applicant is highly regarded for his integrity and honesty overall. Thus I conclude that this one example of omitting information on his past conduct was an isolated incident of poor judgment. His current good work record and his several highly favorable references outweigh this one instance of his failure to disclose requested information. Further, he took steps to address the core problem that led to these arrests by voluntarily seeking alcohol treatment in 1990 which shows his willingness to take corrective actions. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on November 25, 2002. 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 Applicant. ⁽¹⁾ The SOR alleges specific concerns over personal conduct (Guideline E) and over criminal conduct (Guideline J). Applicant responded to these SOR allegations in an Answer notarized on November 17, 2002; on February 4, 2003, he submitted a supplemental response where he requested a hearing.

The case was assigned to Department Counsel, who on March 12, 2003, attested it was ready to proceed; and the case was assigned to me. Subsequently, a mutually convenient date for hearing was agreed to; and a Notice of Hearing issued on March 26, 2003, set the matter for May 1, 2003, at a location near where Applicant works and lives. At the hearing the Government introduced eight exhibits. (Exhibits 1-8; TR15-18) Applicant did not object to Exhibits 1-7 which were all admitted into evidence. However, he did object to Exhibit 8 as the writer of the memorandum was not present to testify, so Applicant had no opportunity to confront her. (TR 18) I reserved a ruling on the admissibility of Exhibit 8 until after Applicant had testified. (TR 18-19) Subsequently, Department Counsel conceded Exhibit 8 was an out of

court statement on a controverted fact, and she withdrew Exhibit 8. (I retained a copy of Exhibit 8 should it become an issue on appeal.) (TR 49-50) The Applicant represented himself, testified and offered four exhibits which were admitted into evidence (Exhibits A-D). The transcript (TR) was received on May 12, 2003.

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 Findings of Fact:

Applicant, 38 years old, has worked for Defense Contractor #1 in State #1 since January 2000. (Exhibit 1)

Applicant attended a computer center in State #1 and received a diploma in 1999. (Exhibit 1)

Applicant was married in 1992. He has two stepchildren born in 1979 and 1982. (Exhibit 1; TR 27)

Personal Conduct and Criminal Conduct

On May 11, 2000, Applicant completed and signed a Security Clearance Application (SF 86). In response to Question 24, Applicant failed to disclose three alcohol-related incidents from the 1989-90 period in response to the question "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" He admitted he intentionally left this information off the SF 86 thinking that it could affect his chance of getting the job; he believed the form would be used for employment purposes by the company; he did not understand the SF 86 form was for a security clearance. Further he did not know the dates of the convictions and thought that after seven years such convictions were dropped from his driving record. He subsequently graduated from a sobriety program and has been alcohol free. He now realizes he had a duty to disclose these arrests. At the time he did not reveal the information as he did not want "any preconceived notions" going to his employer as he saw these arrests as part of his past, not part of his future. He is now married and no longer conducts himself as he did when he was single and used alcohol in the 1989-90 period. He voluntarily went through alcohol rehabilitation in 1990 to address these issues after this third alcohol-related arrest; he subsequently attended Alcoholics Anonymous (AA) for two years. (Answer; Exhibits 1, 2, 3, 4, 5, 6, 7; Exhibit C; TR 21-29, 32) (SOR 1.a. (1), (2), (3))

Applicant denied the allegation in SOR 1.b. (Answer) Applicant had a dispute with his insurance company that provides health care benefits through his employer as the claim statements and forms contained his social security number (SSN) as an identifier. Since he lived in a mobile home park, he feared that if such mail were handled carelessly someone would be able to gain access to his SSN; and he could be subject to "identify theft."⁽²⁾ He requested that the SSN not be used as his identifier, but his company would not provide a separate identifier to him because that might cause confusion at the company. When he questioned why he had to have a SSN number, a Social Security Administration (SSA) representative explained that he needed a SSN to work in the United States (US); the representative claimed that if he did not have a SSN he would no longer be a citizen of the US and would be renouncing his citizenship; further she explained he would not get retirement benefits. He later had a conversation with a company representative (Ms. M)⁽³⁾ who told him that nothing could be done from the point of view of the company as use of the SSN was required for the company to administer the health plan. He explained to Ms. M what he had learned from SSA that to opt out of using his SSN would "in essence be renouncing his citizenship." He did not tell Ms. M that he intended to renounce his citizenship. He alluded to the possible use of a W-8 form, an Internal Revenue Form, used by persons working in the US without a SSN and explored with her the possibility of using that form. However, he never filed a W-8 form; and he never had any intention to renounce his US citizenship. He has no intent to get rid of his SSN. (Exhibit 2; TR 33-34, 36-38, 48-49)

References

Applicant's manager strongly recommended that he be granted a security clearance as he is "an extremely competent" technician, high motivated, an innovative problem solver, and extremely security conscience. On several occasion Applicant identified and reported security incidents. This manager considers Applicant "an honest, well-meaning, and trustworthy individual." In sum, the manager stated that Applicant is "a highly trusted individual of unwavering integrity

and is of especially great value to the Army in his current position." (Exhibit A; TR 40-42, 46-47)

A government manager also recommended that Applicant keep his security clearance; she "highly endorses his 'can do' attitude and his willingness to 'go the extra mile' during critical times." She concluded Applicant is a "trustworthy, honest and reliable individual." (Exhibit A; TR 37-40, 46)

Applicant's pastor who has known him for three years assessed him as a man of character and integrity. He recommended his security clearance be re-instated. (Exhibit A; TR 42-43, 46)

Another manager recommended that his security clearance be granted as Applicant has "proven reliable and honest." He often interacts and cooperates with Applicant on projects, and he has often volunteered to help on after-hours "cutover projects, where extra manpower is limited." He has observed Applicant to be a "responsible and reliable asset." (Exhibit A; TR 43-44, 46)

The agency network manager strongly recommended that Applicant be granted a security clearance. She praised Applicant as "an asset to our installation. He is dedicated, highly motivated to solve any network problems that may arise and is very security conscience. He has discovered and reported security incidents while performing his duties." (Exhibit A; TR 44-46)

Evaluations

Applicant submitted his performance management program for 2001-2002 which documents that he is fully qualified or exceptional in the performance of his job. (Exhibit B)

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, I weighed relevant Adjudication Guidelines as set forth below :

Guideline E - Personal Conduct

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:

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:

2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress;

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:

- a. Allegations or admissions of criminal conduct

Conditions that could mitigate security concerns include:

- a. The criminal behavior was not recent;
- d. . . .the factors leading to the violation are not likely to recur;
- f. There is clear evidence of successful rehabilitation.

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. 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

Personal Conduct

The Government advanced security concerns over personal conduct issues as Applicant on the May 2000 security form failed to disclose his past adverse alcohol-related issues in answering question 24. Applicant's behavior⁽⁴⁾ reflected questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that he may not properly safeguard classified information under Disqualifying Condition 2.

While Applicant conceded his mistake in failing to disclose his 1989-90 alcohol-related arrests, he rebutted and overcome the Government's concerns by demonstrating that he has mitigated⁽⁵⁾ this conduct under Mitigating Conditions (MC) 2, the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; and under MC 5, the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress. In his subsequent DSS interview he fully disclosed his alcohol-related arrests and explained his efforts in 1990 to seek treatment voluntarily for his condition. He has not subsequently had any alcohol-related arrests; thus, the Government conceded that these 1989-90 incidents would no longer be material to a current security assessment as these alcohol-related incidents have not recurred in over ten years.

Further, while Applicant now realizes he had a duty to disclose these arrests, he was unclear at the time he completed the form over who would have access to his SF 86: he did not want to reveal any adverse information to the company that would create "any preconceived notions" on how he worked. That justification alone would be insufficient to mitigate these concerns, but his subsequent conduct on the job is so well regarded as to lead to the conclusion that his one instance of omitting this information was an isolated incident of poor judgment. His current good work record and his several highly favorable reference letters outweigh this one instance of his knowing and willful failure to disclose required information on a government form. While he had a duty to inform himself and to fully disclose these issues, he took steps to address the core alcohol problem in 1990 in voluntarily seeking treatment which shows his ability to take corrective actions.

Consequently, I conclude that while Applicant misrepresented his background by his "No" answer on the security clearance form, he has mitigated this personal conduct by his subsequent sterling work record certified and endorsed by four managers from his company and from the government agency where he serves. For example, Applicant's manager strongly recommends that he be granted a security clearance as Applicant is "an extremely competent" technician, high motivated, an innovative problem solver, and extremely security conscience as on several occasions he identified and

reported security incidents. This manager considers Applicant "an honest, well-meaning, and trustworthy individual." The manager corroborated that Applicant is "a highly trusted individual of unwavering integrity and is of especially great value to the Army in his current position." Also, a government manager recommended that Applicant keep his security clearance; she "highly endorses his 'can do' attitude and his willingness to 'go the extra mile' during critical times." She concluded Applicant is a "trustworthy, honest and reliable individual."

The Government failed to establish security concerns over the matters alleged in SOR 1.b. While Applicant conceded concerns over identity theft led him to an acrimonious conversation with a Ms. M, a human resources specialist at his company, this matter alleged does not establish a Personal Conduct security concern. I find Applicant credible when he explained that he simply wanted to explain to Ms. M what he had learned from SSA that to opt out of using his SSN would "in essence be renouncing his citizenship." I accept his version that he did not tell Ms. M that he intended to renounce his citizenship and only alluded to the possible use of a W-8 form, an Internal Revenue form, used by person working in the US without a SSN and explored with her the possibility of using that form. While he admitted his conversation with her was made "in anger and also somewhat in jest," that is not a sufficient basis to raise personal conduct security concerns as he never filed a W-8 form and never had any intention to renounce his US citizenship. He had no intent to get rid of his SSN despite his concerns over identity theft.

Hence, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a.(1) through 1.a (3) and 1.b. under SOR Paragraph 1.

Criminal Conduct

The Government maintains security concerns over Applicant's criminal conduct in willfully falsifying his SF 86 forms by his failure to disclose the details of the 1989-90 alcohol-related incidents which raises a security concern under Title 18 United States Code Section 1001-[\(6\)](#)

; even though he was never prosecuted under this statute or convicted, his conduct, as discussed above under personal conduct, this conduct arguably falls within that statute as his "No" answers were given "knowingly and willfully." His failure to make these disclosures raises questions about his security worthiness. However, as discussed above under Personal Conduct, he has mitigated these concerns under Criminal Conduct. To his credit, Applicant has a successful work record and favorable references. Consequently, the actions that led to his 2000 omissions from the SF 86 are mitigated under condition (a) as the behavior was not recent, (d) . . . the factors leading to the violation are not likely to recur; and (f) there is clear evidence of successful rehabilitation from his several favorable references. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. incorporated 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 E: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.a.(1).: For Applicant

Subparagraph 1.a.(2): For Applicant

Subparagraph 1.a.(3): For Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

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. Applicant provided a series of articles that supported his concern about identity theft. (Exhibit D)
3. Applicant admitted his conversation with Ms. M was made "in anger and also somewhat in jest." (Exhibit 2; TR 33-34, 36-38, 48-49) Ms. M wrote a memorandum in August 2001 concerning this conversation, but that document, Exhibit 8, was not admitted into evidence after the Applicant objected to the hearsay nature of the report and the Government withdrew the exhibit. Applicant had never been provided a copy of this Memorandum by the company, but was given a copy by the Government counsel who initially intended to introduce it into evidence but withdrew it. (Exhibit 8; TR 18-19, 34-35, 49-50)
4. **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;
5. **Conditions that could mitigate security concerns include:** 1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; 3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; 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; 5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; 6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; 7. Association with persons involved in criminal activities has ceased.
6. **Title 18 United States Code Section 1001.** - Statements or entries generally
 - (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title or imprisoned not more than 5 years, or both.