

DATE: December 30, 2003

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-03042

## **DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Eric Borgstrom, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Security concerns persist over Applicant's continuing and long-standing debts which total over \$25,000; his alcohol and drug abuse, including several alcohol-related convictions and work-related issues; and his criminal and personal conduct. He provided no evidence that he has reformed his conduct. 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 March 24, 2003. 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. <sup>(1)</sup> The SOR alleges specific concerns over finances (Guideline F) in paragraph 1, alcohol issues (Guideline G) in paragraph 2, illegal drug issues (Guideline H) in paragraph 3; criminal conduct (Guideline J) in paragraph 4, and personal conduct (Guideline E) in paragraph 5. Applicant responded to these SOR allegations in an Answer notarized on April 14, 2003, where he requested a decision be made without a formal hearing.

Department Counsel on July 25, 2003, prepared a File of Relevant Material (FORM) for the Applicant's review and 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 July 25, 2003, 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 August 20, 2003, with a response due on September 19, 2003. The Applicant submitted no response. The DOHA Director assigned the case to me for a decision on the record on October 3, 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 a defense contractor in State #1 since 1983. He married in 1989 and was legally separated in March 1999; he has three children. To be upgraded to a Department of Defense (DoD) confidential clearance, he completed a National Agency Check Security Information form in October 1999.

### **Finances**

Applicant admits that he owes eleven of the fifteen debts alleged in the SOR which total over \$25,000; I accept his denial of the debts to creditors alleged in SOR 1.e., 1.f., 1.g.<sup>(2)</sup> and 1.k. even though previously in a sworn statement to the Defense Security Service (DSS) Applicant admitted two of the four debts, 1.f. and 1.k. In August 2001 Applicant admitted that his financial situation was in "a bad state" as he did not have the means to pay his debts because his household and living expenses consumed his monthly salary. At the same time, he disclosed in a Personal Financial Statement in August 2001 that he had a net monthly remainder of \$200 per month after expenses which he did not use toward resolving his debts. His net monthly income was approximately \$1,400 per month, expenses were approximately \$1,200; he made no monthly debt payments. While he claimed that many of his financial problems relate to his prior marriage and child support obligations, he did not explain why he remained unable to pay these bills. He provided no information as to how he was reformed his financial practices or that he has received or is receiving counseling for his financial problems. He failed to respond to the FORM and provide an updated Personal Financial Statement.

### **Alcohol Consumption**

Applicant started drinking when he was 14 or 15 years old, and has continued to drink despite a series of Drinking While Intoxicated (DWI) arrests and convictions in 1989, 1994, and 1996. Further, in 2000 he was held in contempt of court after he appeared for a child support motion with a strong odor of alcohol on his breath and was ordered to spend 24 hours in jail. He attributes these incidents to "bad luck" and has not seen them as an indication of a drinking problem even though he was in a treatment program in 1998 where he was diagnosed with polysubstance abuse and advised to stop drinking alcohol. On the first day back to work after treatment, Applicant had alcohol on his breath and was sent home until March 1999. In August 2001 he admitted he was drinking one pint of liquor per week and one quart of beer, mostly on weekends. In April 2003 Applicant denied he was still drinking at this level, but he provided no evidence of how he has reduced on his consumption of alcohol or of his commitment to sobriety.

### **Drug Abuse and Criminal Conduct**

Applicant admitted in August 2001 that he first smoked marijuana while in high school in the late 1970's and last smoked marijuana in fall 1998; he smoked marijuana two times per week for the entire time he used it and bought marijuana about twenty per cent of the time; he never sold marijuana. He first used cocaine in 1988 and used it about four to six times a year, but never purchased cocaine. While on probation, he tested positive for cocaine in May 1998 and received a verbal warning from his probation officer. In August 1998 Applicant failed a drug test administered by his employer when he tested positive for marijuana and cocaine. His job was jeopardized by his use of marijuana and cocaine, so the Employee Assistance Program (EAP) referred him to an intensive drug counseling program where he was diagnosed with polysubstance dependence. In March 1999 Applicant was assessed with substance abuse issues; the counselor recommended in May 1999 that Applicant attend long term substance abuse counseling. He attended a 30-day outpatient program and subsequently returned to work. However, he has provided no information as to how he was reformed and whether or not he continues to use drugs or has made a commitment to abstinence. He failed to respond to the FORM.

### **Personal Conduct**

As discussed above, Applicant showed poor judgment in 2000 when he appeared for a child support motion with a strong odor of alcohol on his breath and was held in contempt of court. In August 1998 he failed his drug test by testing positive for marijuana and cocaine. Further, when Applicant applied for a security clearance in October 1999, he failed to disclose on the form in answer to Question 34 that he had financial issues and a wage garnishment in 1996 to satisfy his child support obligation. In April 2001 Applicant admitted to DSS that many of his other debts were also not

disclosed on his security form. Although he answered "No" to Question 27 concerning his illegal use of drugs in the past seven years when he failed to disclose his use of marijuana and cocaine until 1998, Applicant established in his April 2001 DSS interview that he had no intent to falsify as he had disclosed this drug use in Answer to Question 26 where he revealed his positive drug test for marijuana and cocaine at his work place. He had no intent to falsify Question 27.

## **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 F - Financial Considerations**

**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;
3. Inability or unwillingness to satisfy debts;

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

6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

### **Guideline G --Alcohol Consumption**

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

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

1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use;
2. Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;
5. Habitual or binge consumption of alcohol to the point of impaired judgment;

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

None

### **Guideline H - Drug Involvement**

**Improper or illegal involvement with drugs, raises questions regarding 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 of classified information.**

Drugs are defined as mood and behavior altering:

[First] Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and

[Second] Inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

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

1. Any drug abuse (see above definition);

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

None

**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
- b. A single serious crime or multiple lesser offenses.

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

None

**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:**

3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts;

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**

## **Financial Considerations**

Security concerns persist over Applicant's (1) history of financial problems and his (3) inability or unwillingness to satisfy all of his debts. He failed to show sufficient efforts to resolve these debts as the majority of his debts to a dozen creditors remained unresolved: he provided no documentary evidence of his having resolved his multiple debts which total over \$25,000. Clearly, Applicant has not made managing his finances a priority. Nor has he documented that under MC 4 that he has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control. For example, he provided no current budget. Thus security concerns persist because of long-standing nature of these debts, and his failure to resolve them. As Applicant denied his debts to four creditors, I conclude Applicant has made some progress and give him credit for resolving these debts even where the record is not totally clear with respect to the debts detailed in SOR 1.e., 1.f., 1.g. and 1.k. Applicant mitigated<sup>(3)</sup> some of his debts under mitigating condition (MC) 6 as he initiated a good faith effort to repay those overdue creditors. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude that he has mitigated the allegations in SOR subparagraphs 1.e., 1.f., 1.g. and 1.k., but failed to mitigate 1.a., 1.b., 1.c., 1.d., 1.f., 1.h., 1.i., 1.j, 1.l., 1.m., 1.n., and 1.o. I rule against Applicant under SOR Paragraph 1.

## **Alcohol Consumption**

The Government established security concerns over Applicant's past alcohol abuse as he has a history of drinking to excess and has had multiple alcohol-related incidents in 1989, 1994, and 1996, as well as an incident where he was found in contempt of court in 2000 for appearing in court with the strong odor of alcohol on his breath. Even after he attended an alcohol treatment program, Applicant returned to work with the odor of alcohol on him and was sent home. There is evidence in the record that he was diagnosed with an alcohol abuse problem, and he admitted his rehabilitation program advised him not to drink any alcohol. Thus, Applicant's conduct falls within DC 1, 2, and 5. While these problems occurred a number of years ago, Applicant has not provided evidence to demonstrate that he falls within any of the mitigating conditions.<sup>(4)</sup> Although in his Answer to the SOR he denied drinking at his past levels, he failed to provide persuasive evidence of his current sobriety or that there is no indication of a recent problem. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 2.a. through 2.f. under SOR Paragraph 2.

## **Drug Use**

The Government established security concerns over Applicant's long term marijuana use and cocaine use which led him to fail a drug test at work in August 1998. Further, he admitted he tested positive for cocaine use in May 1998 while he was on probation and was issued a warning by his probation officer. Conditions that could raise a security concern and may be disqualifying include: 1. Any drug abuse and 2. Illegal drug possession, including purchase. Applicant failed to mitigate<sup>(5)</sup> his past drug abuse as he provided no evidence that he has reformed his lifestyle nor that he has made a convincing commitment to avoid all future drug use. Further, he provided no positive work record. Thus, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 3.a., 3.b., 3.c., and 3.d., incorporated under SOR Paragraph 3.

## **Criminal Conduct**

The Government established security concerns over his criminal conduct as related to his drug use, SOR 3.b., 3.c., and 3.d., as discussed above. Conditions that could raise a security concern and may be disqualifying include: a. allegations or admissions of criminal conduct, regardless of whether the person was formally charged; and b. a single serious crime or multiple lesser offenses. As discussed above, Applicant provided no evidence that he has reformed<sup>(6)</sup> his conduct. Consequently, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 4.a. incorporated under SOR Paragraph 4.

## **Personal Conduct**

Also, the Government established security concerns over personal conduct issues: Applicant showed poor judgment

both in 2000 when he was held in contempt of court after he appeared for a child support motion with a strong odor of alcohol on his breath and in August 1998 when he failed his drug test by testing positive for marijuana and cocaine. Further, when Applicant applied for a security clearance in October 1999, Applicant failed to reveal his wage garnishment on his security form. Applicant's omission of relevant and material information about this debt could reflect questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that he may not properly safeguard classified information.

Applicant overcame the Government's security concerns over his failure to answer "Yes" to Question 27 because in answer to Question 26 he revealed his positive drug tests for marijuana and cocaine use; thus, he has mitigated<sup>(7)</sup> this concern as this explanation is credible.

However, other personal conduct concerns are not mitigated as there is no evidence that Applicant made prompt, good-faith efforts to correct the omissions before being confronted with the facts. Further, Applicant provided no recommendations about his character. After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 5.a. and 5.b. under SOR Paragraph 5, but for him under 5.c.

### **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 F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Paragraph 3. Guideline H: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

Subparagraph 3.d.: Against Applicant

Paragraph 4. Guideline J: AGAINST APPLICANT

Subparagraph 4.a.: Against Applicant

Paragraph 5. Guideline E: AGAINST APPLICANT

Subparagraph 5.a.: Against Applicant

Subparagraph 5.b.: Against Applicant

Subparagraph 5.c.: For 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. Department Counsel asks that 1.g. be found for the Applicant as it appears the debt may have been misread or misinterpreted from the credit bureau report.

3. **Conditions that could mitigate security concerns include:** 1. The behavior was not recent; 2. It was an isolated incident; 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); 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; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to

repay overdue creditors or otherwise resolve debts.

**4. Conditions that could mitigate security concerns include:** 1. The alcohol related incidents do not indicate a pattern; 2. The problem occurred a number of years ago and there is no indication of a recent problem; 3. Positive changes in behavior supportive of sobriety; 4. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with after-care requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

**5. Conditions that could mitigate security concerns include:** 1. The drug involvement was not recent; 2. The drug involvement was an isolated or aberrational event; 3. A demonstrated intent not to abuse any drugs in the future; 4. Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable diagnosis by a credentialed medical professional.

**6. Conditions that could mitigate security concerns include:** a. The criminal behavior was not recent; b. The crime was an isolated incident; c. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life; d. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur; e. Acquittal; f. There is clear evidence of successful rehabilitation.

**7. 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.