

DATE: January 30, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-11869

**DECISION OF ADMINISTRATIVE JUDGE**

**ROGER E. WILLMETH**

**APPEARANCES**

**FOR GOVERNMENT**

Nygina T. Mills, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant has failed to mitigate: two false answers on his security clearance application; alcohol-related incidents, including a DUI and a DWI; 10 criminal arrests in addition to the two alcohol-related offenses; and six bad debts totaling \$3,672.00. Clearance is denied.

**STATEMENT OF THE CASE**

On December 27, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order<sup>(1)</sup> and Department of Defense Directive,<sup>(2)</sup> issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline E (Personal Conduct), Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline F (Financial Considerations). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On January 28, 2003, DOHA received Applicant's response to the SOR, in which he requested a decision on the written record, in lieu of a hearing. On July 30, 2003, Applicant received the File of Relevant Material (FORM), which contains 13 documents, and was notified that he had 30 days in which to reply. Applicant has not submitted a reply. The case was assigned to me on September 16, 2003.

**FINDINGS OF FACT**

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact:

Applicant is a 40-year-old tool parts attendant who is employed by a defense contractor. He is seeking a security clearance.

On August 3, 1989, Applicant was arrested for assault (SOR ¶ 3.a(1)).

On March 7, 1990, Applicant was arrested for criminal trespassing (SOR ¶ 3.a(2)).

In May 1993, opened an account with a clothing store (SOR ¶ 4.b ). He incurred a \$200.00 debt that he has not paid and that has been charged off as a bad debt.

On July 27, 1993, Applicant was arrested for driving under the influence (DUI) at or near Ft. Shafter, Hawaii (SOR ¶ 2.a and SOR ¶ 3.b).

On November 10, 1993, while serving in the United States Army, Applicant was placed into an alcohol rehabilitation program. Following his failure to comply with the alcohol rehabilitation program, Applicant was discharged from the Army on November 5, 1994 (SOR ¶ 2.b) .

In May 1995, Applicant established an account with the Army Air Force Exchange Service (AAFES) and incurred a debt in the amount of \$2,562.00 that he has not paid (SOR ¶ 4.a) .

On June 14, 1995, Applicant was arrested for entering a military installation from which he had been debarred (SOR ¶ 3.a(3)).

On March 3, 1996, Applicant was arrested for entering a military installation from which he had been debarred (SOR ¶ 3.a(4)).

On June 11, 1996, Applicant was arrested for assault against his domestic partner (SOR ¶ 3.a(5)).

On July 2, 1996, Applicant was arrested for an assault against his domestic partner (SOR ¶ 3.a(6)).

On December 16, 1996, Applicant was arrested for entering a military installation from which he had been debarred (SOR ¶ 3.a(7)).

On May 6, 1997, Applicant was arrested for burglary of a vehicle owned by his domestic partner (SOR ¶ 3.a(8)).

On April 10, 1999, Applicant was arrested for entering a military installation from which he had been debarred (SOR ¶ 3.a(9)).

In May 1999, Applicant established an account with a pager service and incurred a debt in the amount of \$142.00 that he has not paid (SOR ¶ 4.c).

In October 1999, Applicant established a credit card account and incurred a debt in the amount of \$499.00 that he has not paid (SOR ¶ 4.e).

In May 2000, Applicant established a second account with a pager service and incurred a debt in the amount of \$76.00 that he has not paid (SOR ¶ 4.c).

On June 25, 2000, Applicant was arrested for driving while intoxicated (DWI) and Evading Arrest (SOR ¶ 2.c) and (SOR ¶ 3.a(11)). He pleaded guilty and was convicted of DWI. Applicant was fined \$752.00 and had his driver's license suspended for 180 days.

In January 2001, Applicant established an account with a cable service and incurred a debt in the amount of \$193.00 that he has not paid (SOR ¶ 4.d).

On May 4, 2001, Applicant executed a security clearance application (SF 86). In response to question 9, "your relatives and associates," he failed to list his son (SOR ¶ 1.a).

In response to question 24-<sup>(3)</sup> on the same SF 86, Applicant answered, "yes,"and listed his DWI conviction in 2000 but

he omitted his DUI arrest in 1993 (SOR ¶ 1.b).

In response to question 26<sup>(4)</sup> on the same SF 86, Applicant answered, "no," and omitted his two arrests for assault in 1996 and his arrest for burglary of a vehicle in 1997 (SOR ¶ 1.c).

On September 29, 2001, Applicant was arrested for failing to provide identification to authorities (SOR ¶ 3.a(10)).

On October 24, 2001, Applicant provided a sworn statement to the special agent for the Defense Security Service (DSS) who conducted his background investigation. He acknowledged the debt to AAFES and said that he did not intend to pay it since it would be deleted from his credit report when it became seven years old. Applicant acknowledged the \$200.00 debt to a clothing store and the \$193.00 debt to a cable service. Applicant said he would begin making payments of \$50.00 per month to each of them in December 2001. Applicant acknowledged the debts to the pager service and said that he would make arrangements to repay them by December 2001. Applicant acknowledged a debt on the credit but disputed the amount based on his return of merchandise. With the exception of his violations of his debarment from a military installation, Applicant acknowledged his criminal arrests since 1996.

### POLICIES

Department Counsel is responsible for presenting evidence to establish controverted facts in the SOR. Directive E3.1.14. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines also includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion,

exploitation, or duress; and (9) the likelihood of continuation or recurrence. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

#### Guideline E: Personal Conduct

Guideline E, Personal Conduct, concerns conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that could indicate the person may not properly safeguard classified information. Conditions that could raise a security concern and may be disqualifying under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 addresses 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.

None of the conditions that could mitigate security concerns under Guideline E have been shown to be applicable in this case.

#### Guideline G: Alcohol Consumption

The concern under Guideline G is that 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 under Guideline G include E2.A7.1.2.1, 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 (Disqualifying Condition 1).

None of the conditions that could mitigate security concerns under Guideline G have been shown to be applicable in this case.

#### Guideline J: Criminal Conduct

The concern under Guideline J is 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 under Guideline J include E2.A10.1.2.1, allegations or admission of criminal conduct, regardless of whether the person was formally charged (Disqualifying Condition 1). They also include E2.A10.1.2.2, a single serious crime or multiple lesser offenses (Disqualifying Condition 2).

None of the conditions that could mitigate security concerns under Guideline J have been shown to be applicable in this case.

#### Guideline F: Financial Considerations

The concern is that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Conditions that could raise a security concern and may be disqualifying include E2.A6.1.2.1, a history of not meeting financial obligations (Disqualifying Condition 1). They also include E2.A6.1.2.3, inability or unwillingness to satisfy debts (Disqualifying Condition 3).

None of the conditions that could mitigate security concerns under Guideline F have been shown to be applicable in this case.

### CONCLUSIONS

#### Guideline E: Personal Conduct

Although Applicant failed to list his son on his SF 86, it is not clear from the record why he would have done so deliberately. Applicant attributes it to an unintentional error. The fact the information he failed to disclose does not appear to be of an adverse nature supports Applicant's explanation. I find in favor of Applicant with regard to SOR ¶ 1.a.

The situation is different with regard to SOR ¶ 1.b. and SOR ¶ 1.c. Although Applicant disclosed his DWI conviction in 2000 in response to question 24, he failed to disclose his DUI arrest in 1993. His failure to disclose such information that could have adverse security consequences raises Disqualifying Condition 2.

Since none of the mitigating conditions under guideline E are applicable in this case, Applicant has the burden of demonstrating that his failure to disclose the information in response to question 24 was not intentional. He gives three reasons for not reporting his 1993 DUI arrest. The first is that the charge was supposed to be reduced to reckless driving. Even if that is the case, it does not excuse his failure to report it since question 24 requires the disclosure of all alcohol-related charges. Applicant's alleged understanding that question 24 is limited to state and local charges is also without merit. The question is clearly not limited, as he indicates, so as to exclude a charge such as his that was incurred in the military. Finally, his alleged understanding that the question is limited to the past seven years is also without merit. Question 24 is limited to any time period. Since he has failed to provide any basis for his alleged understandings and they are inconsistent with question 24, Applicant has failed to demonstrate that his false response to question 24 was not deliberate. I find against Applicant with regard to SOR ¶ 1.b.

Applicant's failure to disclose his two arrests for assault in 1996 and his arrest for burglary of a vehicle in 1997 in

response to question 26 also raises Disqualifying Condition 2. Applicant told the DSS investigator that this was attributable to thinking the question was limited to the last five years. Even if the question was limited to the last five years, Applicant committed all three of the offenses within five years of his security clearance application. Apparently Applicant did his math before he answered the SOR. He now suggests his failure to respond is attributable to the events being "suppressed deep within the subconscious of my mind." In light of his inconsistent explanations, I do not find Applicant credible. I find against Applicant with respect SOR ¶ 1.c.

#### Guideline G: Alcohol Consumption

Applicant's two alcohol-related driving offenses raise Disqualifying Condition 1.

Although the first offense occurred over 10 years ago, the latest occurred less than a year before Applicant submitted his security clearance application that resulted in this case. Based on the record, Applicant failed to comply with the only alcohol rehabilitation program in which he has participated. He has not presented evidence of further rehabilitation efforts or of positive changes in his behavior supportive of sobriety. Applicant has not even acknowledged that he has an alcohol abuse problem. Based on this record, I find against Applicant under Guideline G.

#### Guideline J: Criminal Conduct

The record provides evidence of Applicant's 12 criminal offenses. This establishes Disqualifying Condition 1.

Applicant admits the offenses and asserts that those he committed over 7 years should not be considered. However, it is appropriate to consider them because they reveal a pattern of criminal behavior on the part of Applicant that has extended for more than 12 years. Moreover, the most recent arrest occurred after he submitted his SF 86. This demonstrates that Applicant has not been successfully rehabilitated. Accordingly, I find against Applicant under Guideline J

#### Guideline F: Financial Considerations

The evidence in the record establishes both Disqualifying Condition 1 and Disqualifying Condition 3. Since 1993, Applicant has incurred six bad debts to five creditors, which total \$3672.00. Applicant's bad debts, ranging from \$193.00 to \$2562.00, substantiate that he has both a history of not meeting his financial obligations, as well as an inability or unwillingness to satisfy his debts.

Applicant's statement to the DSS investigator demonstrates that he has no intention of satisfying the largest of these debts. Moreover, his inconsistent statements indicate that he has no serious intention of even satisfying the smaller debts. In his answer to the SOR, Applicant denies any knowledge of the debt to the clothing store. But over two years ago, he acknowledged the debt in his statement to a DSS investigator and said he would begin paying it off before the end of 2001. The same is true of his bad debts for pager service that he now disputes in his answer. Applicant has failed to mitigate any of his bad debts. Therefore, I find against Applicant under Guideline F.

### **FORMAL FINDINGS**

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1. Guideline E: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Paragraph 4. Guideline F: AGAINST APPLICANT

Subparagraph 4.a: Against Applicant

Subparagraph 4.b: Against Applicant

Subparagraph 4.c: Against Applicant

Subparagraph 4.d: Against Applicant

Subparagraph 4.e: Against Applicant

### **DECISION**

In light of the evidence of record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant

*Signed*

**Roger E. Willmeth**

**Administrative Judge**

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
3. "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?"
4. "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25?"