

DATE: February 19, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-13568

**REMAND DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Erin C. Hogan, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant rebutted the government's personal conduct concerns over his not including his two misdemeanor arrests and details of his financial problems in response to questions on his 2001 security questionnaire. He established credibly and persuasively that he had no deliberate intent to falsify. Further, he has a general reputation for honesty both in his work life and in his personal life. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) Appeal Board ("Board") issued an Appeal Board Decision and Remand Order on February 13, 2003, concerning personal conduct (Guideline E) issues raised by allegations in paragraph 1 of the Statement of Reasons (SOR). The Government appealed a favorable decision issued on September 24, 2003. The Board concluded that this initial decision was "equivocal as to whether the Judge did or did not find Applicant engaged in a knowing and deliberate falsification." (ISCR Case No. 02-13568 (February 13, 2004) at p. 4) As this equivocation concerned a key issue in the case, the Board remanded the case with instructions for the judge to issue a new decision with "clear findings and conclusions as to the SOR allegations concerning falsification of the security clearance application." The Board directed in its Conclusion that " If the Judge finds no knowing and deliberate falsifications occurred, then the Judge need not discuss extenuation or mitigation unless the Judge articulates a basis for doing so." The favorable ruling on financial issues in the SOR was not challenged on appeal.

The DOHA Director returned the case to me by Memorandum dated February 13, 2004, which requested that the case be given priority attention. I received this document and the attached file on February 19, 2004.

**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, 48 years old, has been employed by Company #1, a defense contractor in State #1, since April 2001. Applicant received a certificate of appreciate for his outstanding attendance record from April to July 2001. From 1999 to 2001 he worked for Company #2, a company in State #1 that went bankrupt. From 1992 to 1998 he owned his own business in State #2. (Exhibit 1, Answer, Exhibit C, G; TR 21, 56-56, 71-72)

Applicant received a high school degree in 1973 in State #1. He married in 1983 and has four children. Although they were separated in 1997-98 and his wife filed for divorce in State #2 in 1997, they reconciled and are now living together in State #1. (Exhibit 1; TR 28-29, 41-43; Exhibits A, F, I)

### **Finances and Personal Conduct**

When Applicant applied for a security clearance in April 2001, he completed a Questionnaire for National Security Position (Standard Form 86) (SF 86). (Exhibit 1) When he filled it out, he focused only on the question on whether or not he had ever been charged with a "felony," and knew he had not been. While he conceded he did not carefully read the remainder of the questions about past arrests, Applicant did not intend to mislead when he did not disclose his misdemeanor arrests. (TR 31-32, 55, 91-92)

Applicant provided credible explanations for the alleged omissions as follows:

- Applicant credibly established that he had no deliberate intent to willfully falsify his SF-86 when he answered "no" to Question 23.d. (SOR 1.a. and 1.a.(1)). While Applicant failed to disclose that he had a police record after he was charged in October 1996 with driving a motor vehicle while under the influence of intoxicating liquor (DUI) in State #2, he did not intend to conceal this misdemeanor. When he completed the form, this incident "never rang" to his mind as it was an isolated alcohol-related arrest that was reduced to negligent driving. (Exhibits 1, 2 6, 7, 8; Answer; TR 32-37, 58-63, 78-80; Exhibit I) record. (SOR 1.b. and 1.b.(1)) Applicant did not disclose his December 1997 arrest for Assault/Domestic Violence dismissed in January 1998 at the request of the victim. Before he knew the police were looking for him, Applicant independently decided to leave State #2 and return to State #1; so the police were unable to contact him. Significantly, he had never seen the arrest citation until the Government sent it to him in preparation for the hearing as he never in fact was arrested or detained by the police, and the charges were dropped after his wife provided a statement. He was not even aware his wife had pressed charges until after he left State #2. When advised of this record by a DSS Special Agent in December 2001, Applicant cooperated and disclosed details of the incident. His wife stated this "heated" argument occurred when he came to the family home while they were separated and after she had filed divorce papers. (Exhibits 1, 3; Answer; TR 37-40, 63-69; Exhibit I) police record. (SOR 1.c.) He did not believe his debts were beyond his ability to manage them. He had no intent to mislead over his financial delinquencies as he had substantial assets that outweighed his debts. (Answer; TR 73-77)

### **References**

A former supervisor who knew Applicant from April 1997 to August 2000 stated that he completed all tasks in "an outstanding manner." Applicant oversaw security guards and had overall protection of \$20 million in equipment, including the personal safety of over 250 workers for Company #2 . During his tenure, Applicant excelled in all assigned tasks. The supervisor concluded that Applicant could "be trusted in any situation at any time, in any position." (Exhibit G)

Applicant's current supervisor who has known him for 18 months observed that Applicant is "very dedicated to his job and is very focused in the performance of his duties." He assessed Applicant as honest and trustworthy with good leadership qualities. "He is trustworthy, reliable, shows sound judgment and uses discretion that's required for one in his position." (Exhibit G)

A co-worker attested that Applicant has "integrity of the highest standard" and is focused on doing his job. "He has shown strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment." (Exhibit G)

Another co-worker who has known him for two and one half years reported Applicant is a dependable person. After this co-worker sold Applicant a tractor on a trust loan, Applicant paid him on time. He observed that Applicant is well liked and respected by all. (Exhibit G)

A minister from his church who has known him for four years describes Applicant as a person of high character, honesty, and integrity. (Exhibit G)

## 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 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:**

None

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

None

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

### **Personal Conduct**

Applicant persuasively and credibly explained he had no intent to falsify his answers to any questions on his 2001 security questionnaire. He believed he was not required to disclose past misdemeanor arrests. Also, he had no willful intent to falsify with respect to his financial issues as he did not consider them serious given his assets. Thus, Applicant rebutted and overcame the Government's security concerns<sup>(1)</sup>

over his personal conduct as he did not deliberately omit, conceal, or falsify any relevant and material facts in response to questions on the security clearance questionnaire. In his words, the 1996 misdemeanor incident "never

rang" to his mind as it was an isolated alcohol-related arrest that was reduced to negligent driving. With respect to the 1997 misdemeanor incident, he was never actually arrested. Indeed, Applicant had never seen the citation until the Government sent it to him in preparation for the hearing. He was never detained by the police, and the charges were dropped after his wife provided a statement. He was not even aware his wife had pressed charges until after he left State #2. When advised of this arrest record by a DSS Special Agent in December 2001, Applicant cooperated and disclosed details of the incident. The DSS statement documents that Applicant fully cooperated with the agent after concerns were raised over these past misdemeanor arrests and financial difficulties.

Significantly, he has a reputation for honesty in the community which he established by references from his past and present supervisors and co-workers who establish Applicant is a person of integrity and honesty:

- A previous supervisor concluded that Applicant could "be trusted in any situation at any time, in any position."
- His current supervisor assessed Applicant as honest and trustworthy with good leadership qualities. "He is trustworthy, reliable, shows sound judgment and uses discretion that's required for one in his position."
- A co-worker concluded that Applicant has "integrity of the highest standard" and shows "strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment."
- Another co-worker reports Applicant is a dependable person. He sold him a tractor on a trust loan, and Applicant paid him on time.
- A minister described Applicant as a person of high character, honesty, and integrity.

After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 1.a.. through 1.c. under SOR Paragraph 1.

### 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.b.: For Applicant

Subparagraph 1.b. (1): For Applicant

Subparagraph 1.c.: 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.

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Kathryn Moen Braeman

Administrative Judge

**1. 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;