

DATE: November 22, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-16991

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant had two federal tax liens and a civil judgment for personal injuries entered against him, and he refused to pay a florist's bill. He has four convictions for driving under the influence. He did not disclose the tax liens and civil judgment under the appropriate questions on his security clearance application, but he disclosed them under general remarks. He mitigated the security concerns based on financial considerations and alcohol consumption, and he rebutted the allegations of deliberate falsification. Clearance is granted.

STATEMENT OF THE CASE

On November 4, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleged security concerns under Guidelines F (Financial Considerations), G (Alcohol Consumption), and E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on December 8, 2003. He admitted the allegations under Guideline E and offered explanations, denied one allegation and admitted four under Guideline G, and denied the two allegations of falsifying his security clearance application under Guideline E. He requested a hearing.

The case was assigned to me on August 11, 2004. On August 23, 2004, DOHA issued a notice of hearing setting the case for September 15, 2004. Applicant appeared as scheduled. DOHA received the transcript (Tr.) on October 12, 2004.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also

make the following findings:

Applicant is a 50-year-old project quality engineer for a defense contractor. He has worked for his present employer since February 1999. (Government Exhibit 2, pp. 1-2) He does not have a security clearance. (Tr. 5)

Applicant was married in June 1982 and divorced in November 1983. (Government Exhibit 2, pp. 3-4) He has not remarried, but he is engaged to be married to a woman with whom he has lived since 1994. His fiancée's two daughters live with them. (Tr. 61, 80)

In August 1976, Applicant was arrested for driving under the influence (DUI) and convicted of reckless driving. He was sentenced to probation for 36 months and a \$100.00 fine. (Government Exhibit 7, p. 2).

In August 1985, Applicant was convicted of DUI. He was placed on probation, fined, and sentenced to 180 days in confinement, suspended pending completion of probation. He was ordered to complete a first conviction program. (Government Exhibit 5, p. 1)

In August 1989, while returning from a party, Applicant ran a red light and was hit by another vehicle. Applicant was convicted of DUI, placed on probation for five years, served 150 days in a work furlough program, and fined \$1,000.00. (Government Exhibit 9) Several passengers riding in the open bed of his truck were injured in this incident. One passenger suffered serious injuries and obtained a civil judgment for \$150,000.00 against Applicant. Applicant had no insurance on the vehicle. (Tr. 68) He made an agreement with the injured person to pay \$250.00 per month until the judgment is paid. At the time of the hearing, Applicant still owed \$120,272.25. (Applicant's Exhibit C) He feels a strong obligation toward the injured person. (Tr. 71-72)

In 1994, Applicant moved from the west coast, away from his heavy-drinking companions. In February 1995, shortly after moving and starting a new job, Applicant was convicted of DUI. This offense occurred when Applicant completed a new job orientation and then drove to a bar to socialize with his new coworkers. The weather turned bad and his coworkers did not arrive, but Applicant continued to drink beer alone. He estimated that he drank "a six-pack or more" before attempting to drive home. He was stopped by the police for erratic driving, failed a sobriety test, and was arrested. He was placed on probation for one year and his driver's license was suspended for one month. (Government Exhibit 7, p. 2)

During his peak drinking years, Applicant would consume a 12-pack of beer in a night of drinking. (Tr. 60) However, he has never been diagnosed as alcohol dependent by a medical professional. Although Applicant abstained from alcohol as a condition of his period of probation, he continues to consume alcohol socially. When he was interviewed by a Defense Security Service (DSS) investigator in March 2002, he stated that he drank a "glass or two" of wine with evening meals, and on weekends he usually consumed a six-pack of beer during the afternoon and evening on Saturday and between three and six beers on Sunday. (Government Exhibit 6, p. 2)

At the hearing, Applicant testified he now confines his alcohol consumption to weekends because of his professional commitments and family responsibilities. He limits himself to a "couple of beers" when he is away from home to avoid DUI problems. (Tr. 58) At a typical weekend party at home, he will consume four beers in an afternoon. (Tr. 72-73) He usually drinks three to six beers over a weekend. (Tr. 60)

During the past five years Applicant has become active in a professional association, and he has held several leadership positions. (Applicant's Exhibit G) In the spring of 2001, he began taking college courses at night. As of the date of the hearing, he needed to complete only one more course before receiving a bachelor of science degree in aerospace management. (Tr. 37-39, Applicant's Exhibit E)

Applicant worked overseas for a 18-month period in 1992 and 1993. He hired a professional tax preparer to file his federal income tax returns. The Internal Revenue Service (IRS) disagreed with the tax preparer's computations and computed Applicant's tax liability to be much greater. (Tr. 45-46) In 1994, Applicant's mother died and he became the executor of her estate. He withdrew money from his retirement accounts and incurred a tax penalty for early withdrawal in order to pay his mother's taxes. The IRS filed two tax liens, in June 1997 and October 1997, when Applicant was unable to pay his federal income taxes in full for the years 1992, 1993, 1995, and 1996. Applicant negotiated an

agreement to pay \$500.00 quarterly and apply his tax refunds to the delinquent taxes. (Government Exhibit 6, p. 1) In June and July 2003, the two liens were released because the delinquent taxes were paid in full. (Applicant's Exhibit A, pp. 2, 3; Exhibit B, p. 1)

In June 2000, Applicant ordered a bouquet of roses to be sent to his fiancée, at a cost of \$74.00. The florist sent spring flowers instead of roses. When the florist refused to send the roses or reduce the cost, Applicant refused to pay the bill and filed a complaint with the Better Business Bureau. Because of the small amount involved, he did not ask the credit reporting agency to remove the disputed debt from his credit report. (Tr. 36-37)

Applicant's most recent credit report, dated August 18, 2004, shows a score of 706 on a scale of 330-830 and a "good" credit rating. (Applicant's Exhibit D, p. 11) His latest motor vehicle driving record, as of September 13, 2004, is "clear." (Applicant's Exhibit F)

Applicant executed a security clearance application (SF 86) on August 18, 2000. Question 36 of his application asked if any tax liens had been placed against his property in the last seven years, and question 37 asked if there were any unpaid judgments against him in the last seven years. Applicant answered both questions in the negative, notwithstanding the \$150,000.00 judgment arising from the 1989 traffic accident and the two federal tax liens filed in 1997. However, in the general remarks in response to question 43, Applicant stated that the garnishment based on the \$150,000.00 judgment had been removed and the parties had agreed to payments of \$250.00 per month. Applicant also stated that IRS had agreed to installment payments on the delinquent taxes. At the hearing, Applicant testified that his negative answers to questions 36 and 37 were an "unintentional mistake." (Tr. 41) At the hearing, department counsel announced the government did not intend to pursue the allegations under Guideline E. (Tr. 15, 76)

CONCLUSIONS

Guideline F (Financial Considerations)

Under Guideline F, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A disqualifying condition (DC 1) may arise where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 1 is established by Applicant's delinquent taxes for the years 1992, 1993, 1995, and 1996, and the garnishment of his pay to satisfy the civil judgment for injuries caused by his driving under the influence in 1989.

Security concerns based on financial problems can be mitigated by evidence that Applicant has received or is receiving counseling and there are clear indications that the problem is being resolved or is under control (MC 4), or by evidence that the Applicant has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts (MC 6). There is no evidence of the first prong of MC 4, the receipt of counseling. However, the record establishes that Applicant's tax problems have been resolved, and he has reached an agreement for installment payments of the civil judgment. The installment payments are for a reasonable amount and do not cause Applicant to be financially overextended. MC 6 is established by evidence of Applicant's good-faith efforts to pay his delinquent taxes and pay the civil judgment. I conclude Applicant has mitigated the security concerns arising from the two unpaid federal tax liens and the civil judgment.

The \$74.00 debt for flowers is a disputed debt, and the un rebutted evidence is that Applicant has refused to pay for flowers that were not delivered. I found Applicant's testimony regarding this debt credible. I conclude that he has rebutted the allegation regarding this debt.

Guideline G (Alcohol Consumption)

The security concern under Guideline G is that "[e]xcessive 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." Directive ¶ E2.A7.1.1. A disqualifying condition (DC 1) may arise from alcohol-related incidents away from work, such as driving under the influence. Directive ¶ E2.A7.1.2.1. Applicant's record of DUI convictions establishes DC 1. Applicant's drinking habits before his 1989 traffic accident, and his relapse in February 1995 establish DC 5 (habitual or binge consumption of alcohol to the point of impaired judgment).

Directive ¶ E2.A7.1.2.5. The disqualifying conditions based on medical diagnosis of alcohol abuse or dependence (DC 3, 4, and 6) are not established because no medical professional has diagnosed Applicant as an alcohol abuser or alcohol dependent. Directive ¶¶ E2.A7.1.2.3., E2.A7.1.2.4., E2.A7.1.2.6.

Security concerns under Guideline G can be mitigated by evidence that "[t]he problem occurred a number of years ago and there is no indication of a recent problem," or "[p]ositive changes in behavior supportive of sobriety." Directive ¶¶ E2.A7.1.3.2, E2.A7.1.3.3. The evidence shows that remission of Applicant's alcohol problems without formal treatment has occurred as he has matured and made major lifestyle changes. The tragic accident in 1989 had a major financial and emotional impact on him. He began a serious long-term relationship with his fiancée in 1994 and has become a father figure to her two daughters. He moved away from his hard-drinking companions and their lifestyle. Almost ten years have passed since Applicant's relapse in February 1995. He is a moderate drinker, but no longer a problem drinker. He has adopted a "two-drink" rule to avoid further DUI incidents. At age 50 he is about to complete his college education after four years of off-duty study. He is respected in his current job and has become a leader among his professional colleagues. Based on all these lifestyle changes and the absence of any alcohol-related problems for almost ten years, I conclude that Applicant has mitigated the security concerns based on alcohol consumption.

Guideline E (Personal Conduct)

A "deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire" can raise a security concern and may be a disqualifying condition. Directive ¶ E2.A5.1.2.2. When deliberate falsification is alleged there must be "a showing that the applicant acted with intent to mislead or deceive the government by not disclosing the information." ISCR Case No. 00-0302, 2001 DOHA LEXIS 337 at *5 (App. Bd. Apr. 23, 2001). Applicant admits answering questions 36 and 37 in the negative, but he denies that intentionally falsified his application.

Applicant's reference to the tax liens and civil judgment in his answer to question 46 supports his claim that his incorrect answers to questions 36 and 37 were unintentional mistakes. I found his testimony credible. Department Counsel chose not to contest his denial of intentional falsification. I conclude that Applicant has rebutted the allegations of deliberate falsification.

FORMAL FINDINGS

The following are my findings as to each allegation in the SOR:

Paragraph 1. Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Paragraph 2. Guideline G (Alcohol Consumption): FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Paragraph 3. Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: 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 a security clearance to Applicant. Clearance is granted.

LeRoy F. Foreman

Administrative Judge