

DATE: January 9, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-18802

**DECISION OF ADMINISTRATIVE JUDGE**

**JOSEPH TESTAN**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's criminal conduct would have been mitigated if not for 10 U.S.C 986. Clearance is denied, but waiver recommended.

**STATEMENT OF THE CASE**

On January 17, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on May 5, 2003, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about August 19, 2003. Applicant did not respond to the FORM. The case was assigned to me on September 30, 2003.

**FINDINGS OF FACT**

Applicant is a 63 year old truck driver.

In 1959, applicant was arrested and charged with two counts of Burglary, 2<sup>nd</sup> Degree. He was found guilty and sentenced to six months to 15 years in prison. He served approximately three years and was paroled on January 16, 1963. On January 30, 1963, he was arrested and charged with Removing Vehicle Parts and Resisting Arrest. He was found to be in violation of his parole, and was returned to prison where he served another 16 months.

In 1967, applicant was arrested and charged with Receiving Stolen Property. He was found guilty and sentenced to six months to 10 years in prison. He served two years in prison and was paroled in March 1969.

In 1970, applicant was arrested and charged with Theft. He was sentenced to 180 days in jail (suspended), placed on probation for three years, and ordered to make restitution to the victim.

In his response to the SOR, applicant stated that he has not been involved in any criminal activity since 1970.

Letters from various people who know applicant well, including two officers of the trucking company that previously employed him, [\(U\)](#) his wife, and two church pastors, were admitted into evidence. The authors of these letters all state that applicant is a reliable and trustworthy individual.

## **POLICIES**

Enclosure 2 of the Directive sets forth Guidelines (divided into conditions that could raise security concerns and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Guidelines are applicable:

### **Criminal Conduct**

#### Disqualifying Conditions

- b. A single serious crime or multiple lesser offenses.
- c. Conviction in a Federal or State court of a crime and sentenced to imprisonment for a term exceeding one year.

#### Mitigating Conditions

- a. The criminal behavior was not recent.
- f. There is clear evidence of successful rehabilitation.

In addition to the formal Guidelines discussed above, Enclosure 2 of the Directive provides that each decision should take into consideration the following factors:

The nature, extent and seriousness of the conduct;

The circumstances surrounding the conduct, to include knowledgeable participation;

The frequency and recency of the conduct;

The individual's age and maturity at the time of the conduct;

The voluntariness of participation;

The presence or absence of rehabilitation and other pertinent behavioral changes;

The motivation for the conduct;

The potential for pressure, coercion, exploitation, or duress; and

The likelihood of continuation or recurrence.

## **CONCLUSIONS**

The evidence establishes that applicant was arrested and convicted of various crimes on four separate occasions prior to

1971. All of applicant's criminal activity was serious, and had any one of his crimes occurred recently, it would disqualify him from holding a security clearance.

The fact is, however, that applicant has, for the past 30 plus years, been a productive member of society. He learned a trade in prison, and he used that new skill to open and operate a business until 1995, when he and his wife decided to take up truck driving. Applicant has been continuously employed as a truck driver since that time. Letters from two officers of a trucking company that formerly employed applicant, and letters from two church pastors, each of whom has known applicant for over ten years, indicate that applicant is considered to be a reliable and trustworthy individual.

Based on the passage of time since applicant engaged in criminal conduct, and his clear evidence of reform and rehabilitation, I conclude that he is unlikely to engage in criminal conduct in the future. If it were not for 10 U.S.C. 986, I would conclude that it is now clearly consistent with the national interest to grant applicant access to classified information. In light of this statute, however, I must conclude that it is not clearly consistent with the national interest to grant applicant a security clearance. I recommend further consideration of this case for a waiver of 10 U.S.C. 986.

### **FORMAL FINDINGS**

PARAGRAPH 1: AGAINST THE 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 applicant.

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Joseph Testan

Administrative Judge

1. Although the March 7, 2003 letter from the President of the company refers to applicant as "our employee," applicant's Security Clearance Application indicates he left this company in May 2001.