

DATE: November 2, 2004

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24989

**DECISION OF ADMINISTRATIVE JUDGE**

**BARRY M. SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Edward W. Loughran, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant was arrested and convicted in 2000 of two alcohol-related offenses. In his March 2002 Security Clearance Application (SF 86), he deliberately falsified his answer to Question 24 (alcohol/drug offenses). No mitigation has been adequately established. Clearance is denied.

**HISTORY OF THE CASE**

On February 6, 2004, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On March 3, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing by a DOHA Administrative Judge. The matter was first assigned to another Administrative Judge, but was reassigned to me for resolution on June 17, 2004. A Notice of Hearing was issued on July 1, 2004 setting the hearing for July 20, 2004. At the hearing, the Government did not call any witnesses but submitted three documents, which were marked for identification as Government's Exhibits (GX) 1 - 3. Applicant testified, but did not call any other witnesses, and did not offer any exhibits. The transcript was received at DOHA on August 6, 2004.

**FINDINGS OF FACT**

Applicant is a 34-year-old technician for a defense contractor who is seeking a security clearance for Applicant in connection with his employment. The SOR contains one allegation under Guideline E (Personal Conduct). In his response to the SOR, Applicant admitted the facts of the 2000 arrest and conviction, but denies he had falsified the

answer on his SF 86. The admission is adopted as a Finding of Fact.

After considering the totality of the evidence in the case file, I make the following additional FINDINGS OF FACT as to the SOR allegation:

### **Guideline E (Personal Conduct - Falsifications)**

Applicant falsified material facts on his Security Clearance Application (SF 86), signed on March 11, 2002, when he responded to the following question:

1.a.(1) - **2. Your Police Record - Alcohol/Drug Arrests:** . . . "Have you ever been charged with, or convicted of, any offenses relating to alcohol or drugs?", to which he answered "No"; whereas he deliberately failed to mention that he had been charged with and/or convicted, of an alcohol-related arrest; to wit, an arrest on April 29, 2000 in State A, for which he was charged with (1) Driving Under the Influence of Alcohol Causing Injury, and (2) Driving With a Measurable Blood Alcohol of .08% or more. Applicant initially pleaded "Not Guilty" on June 1, 2000, but later pleaded "Guilty" to Count (2) on August 11, 2000 and Count (1) was dismissed. Imposition of sentence was suspended and Applicant was granted summary probation (unsupervised) for three years, with specified conditions.

### **POLICIES**

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make critical judgments as to the credibility of witnesses.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an applicant for a security clearance, in his or her private life or connected to work, may be involved in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in a specific allegation relieves the Government of having to prove that allegation. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence

in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the

Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended,

at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

## CONCLUSIONS

### **Guideline E (Personal Conduct)**

I have carefully considered Applicant's admissions as to the alleged falsification. In his March 2004 response to the SOR, he states:

the fact that I checked "NO" on the line in question was due to a misunderstanding of the question on my part. I admit to the fact that I received a DUI on April 29 ,2000 and have fulfilled all requirements imposed on me by the state.

He clearly admits the underlying offense (GX 2 and GX 3). At the hearing, he expanded his explanation, which is fairly paraphrased as follows:

(1) He filled out the SF 86 "quickly" (Tr at 15, line 12).

(2) He "intended to go back through and double check everything" (Id., at lines 14, 15).

(3) He "was told to turn it in quickly and . . . failed to go back through and catch the error. I should have checked "Yes." I don't think there is, I really don't have any excuse for it. Other than the fact that I had done it in an expedited manner, and we were in a hurry to get the Clearances to start the project at work. . . . That's all I have" (Id, at lines 15 - 21).

Additional information was obtained during cross examination. There was a rush by the company to get the clearance application submitted, "a matter of a day or two" (Tr at 23). However, Applicant had time to speak with his wife to obtain information on where he had lived (Tr at 23, 24) and understood these questions and others (Tr at 24 - 26). Applicant claims he wasn't concerned that admitting a DUI on his SF 86 might prevent him from obtaining a security clearance (Id. At 27).

It is not clear what Applicant meant when he claimed a "misunderstanding" was the cause of the falsification.

Factually this is a relatively straightforward case. Applicant was arrested and convicted on alcohol-related charges, as alleged in the SOR. The court records contain evidence of Applicant's attendance at and completion of a court ordered counseling program, run by M.D.s and approved by the court (GX 3 at page 6). The sole issue to be decided is whether Applicant knew he should have answered "Yes" to Question 30. I find his excuses and explanations to lack credibility and to be unpersuasive. Among the reasons for this conclusion are the following:

\* It is too much of a coincidence that the two related questions: (24) - Alcohol/Drug Offenses) and (30) Alcohol-related treatment) are the only ones of the SF 86's 43 questions of which there is any evidence they were answered incorrectly.

\* There is no evidence of any nature supporting Applicant's claim that he erred because of haste or pressure from company officials.

\* The admonition at the end of the SF 86, immediately above where he signed his name, makes it clear that Applicant certified the correctness of all his answers. He should not have signed the SF 86 unless and until he had verified the accuracy of his answers. It was an act of extremely poor judgment on Applicant's part to act as he did.

\* His conduct clearly raises questions about his conduct in providing false answers on his SF 86. Under the Directive, where there is a doubt as to a material point, that doubt must be resolved against the granting of a security clearance.

Disqualifying Condition 2 (deliberate omission, concealment, or falsification of relevant and material fact from a security clearance application) is applicable, but none of the possible mitigating conditions have been established by the record.

Viewing the totality of the evidence, I cannot conclude Applicant has demonstrated the integrity, good judgment, reliability, and trustworthiness required of someone seeking access to the nation's secrets.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline E (Personal Conduct) Against the Applicant

Subparagraph 1.a. 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.

Barry M. Sax

Administrative Judge