

DATE: November 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-20528

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 33-year-old network engineer employed by a defense contractor. He was arrested for DUI three times, and for assault once before he quit using alcohol in 2004. He successfully mitigated security concerns about alcohol consumption and criminal conduct. He has allowed delinquent debts to remain unpaid for over four years. He gave false answers on a security clearance application and lied to a federal investigator about his police records and financial delinquencies. He failed to mitigate security concerns about financial considerations and personal conduct. Clearance is denied.**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1960), as amended, DOHA issued a Statement of Reasons (SOR) on July 22, 2004, detailing the basis for its decision - security concerns raised under Guideline F (Financial Considerations), Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in an undated writing and requested a decision without a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's case, a copy of which was received by Applicant on June 16, 2006. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by July 16, 2006. He filed no response. The case was assigned to me on August 15, 2006.

FINDINGS OF FACT

Applicant admitted 18 allegations contained in the SOR, but denied those in subparagraphs 2.a., 2.c., 2.e., and 4.f. The admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 33-year-old network engineer employed by a defense contractor. (1) He has never been married. (2) He served nearly three years as an enlisted airman in the U.S. Air Force (USAF). (3) He held a SECRET security clearance

in the USAF, and was granted the same clearance a year after he left the USAF. [\(4\)](#)

Financial Considerations

Applicant owes state income tax in the amount of \$3,118, for which a state tax lien was filed for that amount in March 2004. He has delinquent accounts in the amounts of \$234, \$300, and \$35,254. He had a department store account charged off in June 2000, in the amount of \$1,287, a credit union account charged off in October 2000, in the amount of \$1,998, and a mortgage in the amount of \$39,919, charged off in March 2001. He filed a voluntary Chapter 13 bankruptcy petition on March 19, 2001, and it was dismissed on July 31, 2001, at the request of Applicant. [\(5\)](#) He re-filed the Chapter 13 petition on October 25, 2001, and it was dismissed on January 25, 2002, for failure to attend the first meeting of creditors. [\(6\)](#) He claimed that all debts were paid except the debts for \$35,254 and \$39,919. [\(7\)](#) He is attempting to locate the debtor to whom he owes \$35,254 in an effort to set up a payment plan. The debt for \$39,919 was for a second mortgage on rental property. The renters stopped paying rent, he was unable to make his monthly mortgage payment, the lender commenced foreclosure proceedings, and he filed Chapter 13 bankruptcy petitions twice, to stop the foreclosure sales until he could obtain a new tenant. [\(8\)](#) An August 2005 credit report shows all debts still unpaid except the one for \$1,998. New delinquent debts indicated are child support (\$3,726), a credit instrument (\$8,242), and cell phone (\$805). [\(9\)](#)

Alcohol Consumption

Applicant was arrested on January 14, 1998, and charged with driving while intoxicated (liquor/drugs). He was granted probation before judgment. He was again arrested on May 27, 1999, and charged with driving under the influence (DUI). On November 30, 1999, Applicant was successfully discharged from a 6-week "Alcohol/DWI Education Treatment Program." [\(10\)](#) He was arrested a third time on February 25, 2000, for DUI, but no charges were subsequently filed.

Applicant consumed alcohol at times to excess and to the point of intoxication from about 1994 until at least April 2002. [\(11\)](#) He continued to consume one glass of wine per month, and an occasional drink on holidays and special occasions. [\(12\)](#) In his answer to the SOR in 2004, Applicant stated he no longer drinks alcohol. [\(13\)](#)

Criminal Conduct

In addition to the arrests for DUI in 1998, 1999, and 2000, he was arrested on September 28, 1997, for assault after he jumped on the bumper of a lady's car to avoid being hit by a friend parking his car. The lady came running and screaming across the street so Applicant threw a cup of soda in her face. In court, he apologized and the case was dismissed. [\(14\)](#)

Personal Conduct

Applicant falsified material facts on a security clearance application, dated January 23, 2001, on which he was required to respond to the following:

24. Your Police Record - Alcohol/Drug Offenses Have you ever been charged with or convicted of any offenses related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been sealed or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.

Applicant answered "No," failing to list the DUI arrests in 1998, 1999, and 2000. [\(15\)](#) Since he was given probation, his attorney advised him there would be no convictions on his record. [\(16\)](#) He also falsely answered the following question:

Question 26. Your Police Record - Other Offenses In the last 7 years, have you been arrested or charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25? (Leave out traffic fines of less than \$150 unless

the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been sealed or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.

He failed to list his arrest on September 28, 1997, for simple assault.⁽¹⁷⁾ Because the charges were dropped, he believed he did not have to answer the question.⁽¹⁸⁾ In response to the following, "**Question 38. Your financial delinquencies - 180 days** In the last 7 years, have you been over 180 days delinquent on any debt(s)?", he answered "No" knowing that he had seven delinquent accounts: the state income tax lien of \$3,118; collection accounts of \$234, \$300, and \$35,254; and charged off accounts of \$1,287, \$1,998, and \$39,919.⁽¹⁹⁾ Applicant claimed unawareness of these debts because his wife's credit report had merged with his own credit report.⁽²⁰⁾

During a subject interview by a special agent of the Defense Security Service (DSS) on January 30, 2002, more than once Applicant denied ever having been arrested or detained by police, concealing the arrests in 1998, 1999, and 2000. During the same interview, he denied his 1997 arrest for simple assault, claiming he had never been arrested in the city where he was charged. When asked if he had been arrested for DUI in May 1999, Applicant denied the incident, concealing the truth. He denied knowledge, because he received probation on the one DUI case, and the assault case was dismissed. His attorney told him there would be nothing on his record and he believed that applied across the board.⁽²¹⁾ He also denied the 1999 arrest because he "was scared that if I disclosed this arrest I would not get my security clearance."⁽²²⁾

Applicant worked in Iraq in 2004, and received commendation letters for helping rebuild that country.⁽²³⁾

POLICIES

"No one has a 'right' to a security clearance."⁽²⁴⁾ As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position....that will give that person access to such information."⁽²⁵⁾ The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."⁽²⁶⁾ Each security clearance decision "must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy."⁽²⁷⁾

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁸⁾

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽²⁹⁾ It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Financial Considerations

The available information demonstrates Applicant has a history of not meeting his financial obligations. He has been delinquent in payments on numerous accounts. Consequently, the government established its case under Guideline F. Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1. (*A history of not meeting financial*

obligations) and FC DC E2.A6.1.2.3. (*Inability or unwillingness to satisfy debts*) are both applicable.

Various conditions can mitigate the trustworthiness concerns arising from financial difficulties. The Directive sets out Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.1. (*The behavior was not recent*), FC MC E2.A6.1.3.2. (*It was an isolated incident*), and FC MC E2.A6.1.3.3. (*The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation)*), which do not apply. Applicant's most recent credit report (2005) shows all but one debt as unpaid, and notes three new delinquencies. So the conduct is recent and is not an isolated incident. There is no evidence of unexpected events that could mitigate failure to satisfy obligations. Likewise, FC MC E2.A6.1.3.6. (*The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts*) is not applicable because Applicant has made little effort over the past four years to resolve his debts. I conclude Guideline F against Applicant.

Alcohol Consumption

The government established its case under Guideline G. The following Guideline G Alcohol Consumption Disqualifying Condition (AC DC) applies: AC DC E2.A7.1.2.1. (*Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or their criminal incidents related to alcohol use*), because Applicant admitted his DUI arrests in 1998, 1999, and 2000.

Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.2. (*The problem occurred a number of years ago and there is no indication of a recent problem*), and AC MC E2.A7.1.3.3. (*Positive changes in behavior supportive of sobriety*) are applicable. The three are related incidents occurring more than six years ago, and only one case was charged. In his answer to the SOR in 2004, Applicant stated he no longer drinks alcohol. I conclude Guideline G for Applicant.

Criminal Conduct

The government established its case under Guideline J. Applicant admitted his DUI arrests in 1998, 1999, and 2000, although there are no convictions on his record. The 1997 assault case was a misunderstanding, and after an apology to the victim, the case was dismissed. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*) applies.

Criminal Conduct Mitigating Conditions (CC MC) E2.A6.1.3.1. (*The criminal behavior was not recent*) applies. Further, CC MC E2.A10.1.3.2. (*The crime was an isolated incident*) applies. Applicant's one DUI probation does not disqualify him from holding a security clearance. Applicant stopped consuming alcohol in 2004. The other cases were dismissed. I find the concern is mitigated. I conclude Guideline J for Applicant.

Personal Conduct

The government established its case under Guideline E. Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*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*) and PC DC E2.A5.1.2.3. (*Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination*) apply, because Applicant's answers were not truthful. He said he did not disclose the information because he received probation, or the charges were dismissed, or his wife's credit report merged with his, or he was unaware, or he wanted to get a clearance. None of these reasons justify lying on his SF 86 or to a DSS investigator. I believe he knew what the phrase "have you ever been charged with" meant. I do not find his explanations to be credible.

No mitigating conditions provided under the Directive are applicable. I conclude Guideline E against Applicant.

Whole Person Analysis

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."⁽³⁰⁾

"Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination."⁽³¹⁾

In evaluating Applicant's case, in addition to the disqualifying and mitigating conditions, I also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests.⁽³²⁾ I considered his age (33), his employment, his prior military service, his service in Iraq, and what might motivate him to be less than truthful. Applicant supplied false answers on a security clearance application. This is problematic because candor with the government about a person's negatives is the crux of a trustworthiness determination. If a person discloses the adverse information about himself, then he may be trusted with confidential or classified information. After sifting through all of the excuses, the real reason he lied is he "was scared that if I disclosed this arrest I would not get my security clearance." Although not alleged in the SOR, these false statements are separate violations of 18 U.S.C. § 1001. He has not paid his creditors, even though he claimed to have paid them. There were three new delinquencies that showed up on the latest credit report. This does not demonstrate a good-faith effort to pay creditors. This raises questions about his reliability and judgment. The totality of the record raises reasonable and persistent doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude it is not clearly consistent with the national interest to grant or continue Applicant's security clearance.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Paragraph 2. Guideline G: 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 J: FOR APPLICANT

Subparagraph 3.a: For Applicant

Subparagraph 3.b: For Applicant

Paragraph 4. Guideline E: 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

Subparagraph 4.f: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Christopher Graham

Administrative Judge

1. Item 4 (Security Clearance Application (SF 86), dated January 23, 2001) at 1-2.

2. *Id.* at 4.

3. *Id.* at 4-5.

4. *Id.* at 8.

5. Item 12 (Chapter 13 Bankruptcy Records, dated March 2001) at 1.

6. Item 3 (Applicant's Answer, undated) at 1; Item 11 (Chapter 13 Bankruptcy Records, dated October 2001) at 8.

7. Item 5 (Applicant's Statement, dated April 2, 2002) at 5.

8. *Id.*

9. Item 6 (Credit Report, dated August 15, 2005) at 1-3.

10. Item 10 (Alcohol Treatment Program Discharge Summary, dated December 1, 1999) at 1.

11. Item 5, *supra*, note 7, at 4.

12. *Id.* at 5.

13. Item 3, *supra*, note 6, at 1.

14. Item 5, *supra*, note 7, at 2.

15. Item 4, *supra*, note 1, at 7.

16. Item 3, *supra*, note 6, at 2.

17. Item 4, *supra*, note 1, at 7.

18. Item 3, *supra*, note 6, at 2.

19. Item 4, *supra*, note 1, at 9.

20. Item 3, *supra*, note 6, at 2.

21. *Id.*

22. Item 5, *supra*, note 7, at 7.

23. Item 3, *supra*, note 6, at 2.

24. ⁰*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

25. ⁰*Id.* at 527.

26. ⁰Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

27. ⁰Directive ¶6.2.

28. ⁰ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

29. ⁰*See* Exec. Or. 10865 § 7.

30. Directive ¶ E.2.2.1.

31. *Id.*

32. *Id.*