

DATE: April 27, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-24022

## DECISION OF ADMINISTRATIVE JUDGE

**THOMAS M. CREAN**

### APPEARANCES

#### FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant is a computer system analyst for a defense contractor. He was arrested for the criminal offenses of burglary, assault, domestic violence, and speeding. The burglary arrest was over 15 years ago when Applicant was a teenager. Applicant is divorced and not in the situation for domestic violence problems. There are no traffic offense for five years and there are clear indications of positive behavioral changes. He had delinquent debts that were either paid off or satisfied in bankruptcy. He did not deliberately answer two questions incorrectly on his security clearance application. Applicant mitigated all security concerns. Clearance is granted.

### STATEMENT OF THE CASE

On July 27, 2004, 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. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on July 29, 2004. The SOR alleges security concerns under Guideline J (Criminal Conduct), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on August 13, 2004. He admitted all of the allegations under Guideline J and five of the allegations under Guideline F. He neither denied nor admit three of the allegations under Guideline F and the three allegations under Guideline E. He requested a hearing before an administrative judge and the request was received by DOHA on August 16, 2005. Department Counsel was prepared to proceed with the case on January 25, 2005, and the case was assigned to me on January 31, 2005. A notice of hearing was issued on February 16, 2005, and the hearing convened on March 7, 2005. Eleven government exhibits, ten Applicant exhibits, and the testimony of the Applicant were received during the hearing. The record was held open for Applicant to submit additional documents. Applicant timely submitted additional documents on March 23 and March 24, 2005. The additional documents were included in the record without objection from Department Counsel. The transcript was received on March 15, 2005.

## FINDINGS OF FACT

Applicant is a 35 year old computer systems analyst for a defense contractor. He served seven years on active military duty. He has been divorced from his wife for five years and he was awarded the custody of their two children. [\(1\)](#)

When he was a teenager and still living at home in 1989, Applicant and some friends were waiting outside a friend's home for him to return. The friends had to use the bathroom, so they entered the friend's garage by opening the door. They were unable to get into the house to use the bathroom, so Applicant and another friend urinated against the side of the garage. A neighbor saw the boys enter the garage and called the police. The police arrived as the boys were urinating. Applicant and his friends were arrested for attempted burglary, minors in violation of state alcohol laws, and indecent exposure. When the owner of the home and father of the boy Applicant was waiting to see learned of the arrests, he did not press the case and the charge of burglary was dropped and Applicant paid a fine for violation of the alcohol laws and indecent exposure. [\(2\)](#)

Applicant was speeding on a residential street in 1991 when a resident on the street hit his car with a piece of wood. Applicant stopped the car and there was an altercation between Applicant and his passenger and two residents. Applicant hit one of the residents in the mouth with his fist. Applicant was charged with felonious assault but was convicted of a misdemeanor assault and received a suspended jail sentence and fined. Applicant did not serve any time in jail. [\(3\)](#)

Applicant and his wife had a stormy marriage and there were incidents of domestic assault and protection orders. Applicant was arrested in 1994 on the complaint of his wife for assault and battery. The charges were dismissed after Applicant paid court costs. [\(4\)](#) Applicant was arrested in 1996 at the request of his wife for assault and battery and the charges were dismissed. [\(5\)](#) Applicant's wife obtained a protective order against Applicant in 2003 after Applicant pushed her while he was picking up the couples children from the wife's home after a visit to the wife. The protection order is valid until 2005, but Applicant and his wife are on better terms and they mutually do not fully adhere to the order. [\(6\)](#)

Applicant was apprehended speeding on an interstate highway in 1997 and fined \$280. [\(7\)](#) Applicant was arrested in 2000 for speeding and fined \$130. [\(8\)](#)

There were six allegations of delinquent debt in the SOR. These debts started to accumulate after Applicant and his wife separated and he was supporting two households. Debts 2.a. and 2.b. in the SOR are the same debt and is a judgment based on a delinquent credit card debt. As discussed below, Applicant filed for bankruptcy protection and this debt has been discharged in bankruptcy. [\(9\)](#) Debts 2.c. and 2.d. in the SOR are the same debt for rent due on an apartment. Applicant moved from his apartment without timely notice and was required to pay another months rent. Applicant has paid this debt. [\(10\)](#) Debt 1.e. in the SOR is a utility bill to a municipality that has been paid. [\(11\)](#) Debt 1.f. in the SOR is a delinquent medical bill for care of Applicant's children. Applicant thought that the bill was covered by his health insurance. Since the issue had not been resolved, Applicant included this bill in his bankruptcy petition. This debt was discharged in bankruptcy. [\(12\)](#)

Applicant attempted to pay his debts until 2003 when there was a fire in his apartment. It was determined the fire was Applicant's responsibility. When he received a large bill for fire damage, Applicant could not pay his expenses and this bill so he petitioned for discharge in bankruptcy. Applicant's debts were discharged in bankruptcy. [\(13\)](#)

Applicant completed a security clearance application in 2002 as requested by his employer. [\(14\)](#) Applicant responded "NO" to question 21 asking if he had ever been charged with or convicted of any felony offense. Applicant had been arrested for felony assault in 1991. Applicant believed he did not have to list felonies over ten years old, but he does not remember who provided this advise. He did not know he should have listed the 1991 felony arrest until provided the SOR. [\(15\)](#) Applicant responded "NO" to question 26 asking if in the last seven years, he had been arrested, charged, or convicted of any other offense except traffic fines of less than \$150. Applicant had been arrested for a misdemeanor assault and battery in 1996 after a confrontation with his wife. Applicant was fined \$250 for speeding in 1997. Applicant explained that he misread the question and did not think offenses from juvenile and domestic relations courts were criminal offenses to list on the form. He did not completely read the question and did not think he needed to list any traffic offenses. He stated he did not falsely answer the question with an intent to hide his criminal conduct. Applicant stated he was careless in his reading of the question and erroneous in his understanding of the requirements of the question. [\(16\)](#)

Applicant has kept his finances in order and has sufficient monthly income to pay his expenses and save for his retirement. He now has a retirement account that he contributes to each month. He is continuing his education and is within one semester of receiving his college degree with excellent grades. [\(17\)](#) Applicant petitioned for custody of his two children. His wife objected, but the court awarded custody of the children to Applicant.

## POLICIES

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."<sup>(18)</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>(19)</sup>

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6.

"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." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.<sup>(20)</sup> An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant'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 of recurrence.<sup>(21)</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>(22)</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>(23)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(24)</sup> An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."<sup>(25)</sup> "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."<sup>(26)</sup> "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."<sup>(27)</sup>

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

**Guideline J - Criminal Conduct:** A security concern exists for a history or pattern of criminal activity which creates doubt about a person's judgment, reliability, and trustworthiness.

**Guideline F - Financial Considerations:** A security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

**Guideline E - Personal Conduct:** A security concern exists for conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. Any of these characteristics in a person could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guidelines are set forth and discussed in the conclusions section below.

## CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

The government has established its case under Guideline J. Applicant's arrests and convictions for various crimes from

1989 to 2000 brings the matter within Criminal Conduct Disqualifying Conditions Directive ¶ E2.A10.1.2.1 (*allegations or admission of criminal conduct, regardless of whether the person was formally charged*); and Directive ¶ E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*). Applicant was arrested six times in 11 years for offenses ranging from speeding and reckless driving to felonious assault. All of the offenses resulted in convictions and sentences to fines and suspended jail sentences. Applicant was not incarcerated as a result of the convictions. I conclude the disqualifying conditions have been established because there were allegations of criminal conduct against Applicant and the allegations were for multiple lesser offenses.

The Criminal Conduct Mitigating Conditions that apply in this case are Directive ¶ E2.A10.1.3.1 (*the criminal behavior was not recent*); Directive ¶ E2.A10.1.3.3 (*the person was pressured or coerced into committing the act and those pressures are no longer present in that person's life*); and Directive ¶ E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*). There is no recent criminal behavior by Applicant except for the 2003 protective order. The offenses of indecent exposure and violation of the state alcohol laws happened over 15 years ago when applicant was a teenager. Applicant's last traffic related offense was over five years ago. The offenses of domestic violence are the result of disputes with his wife. Since Applicant and his wife are now divorced, the pressures leading to domestic violence are no longer present. The protective order does not involve an arrest or conviction for a criminal offense but anticipated conduct between Applicant and his wife. The court would not have awarded Applicant custody of his children if he were not the better parent and not totally at fault for the domestic violence incidents. Applicant and his wife have settled their marital discord and do not even follow all of the directives of the court concerning visitation and protection orders. Applicant has shown that he has matured and is taking responsibility for his actions. He has custody of his sons and has to set a positive example for them. He is attending college and has almost completed the requirements for a degree. There are clear signs of successfully rehabilitation. I conclude Applicant has mitigated security concerns for criminal conduct.

The government established its case under Guideline F. Applicant's delinquent debts brings the matter under Financial Considerations Disqualifying Conditions Directive ¶ E2.A6.1.2.1 (*a history of not meeting financial obligations*); and Directive ¶ E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant had delinquent debts based on failure to pay on credit cards and judgments for failure to pay debts and rent. Applicant filed a petition in bankruptcy to resolve his indebtedness. Bankruptcy is a legal and permissible means of resolving debts. However, a discharge in bankruptcy does not preclude consideration of the security significance of the actions leading to the delinquent debts. <sup>(28)</sup> Applicant has a history of not meeting financial obligations and he had been unwilling or unable to satisfy his debts. I conclude the Financial Considerations Disqualifying Conditions listed above have been established.

The Financial Considerations Mitigating Condition that applies in this case is Directive ¶ E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). The approval of Applicant's petition in bankruptcy did resolve Applicant's indebtedness, but does not relieve the security concern. There were only four delinquent debts to consider from the SOR since two others were duplicates. Two of the four Applicant paid off. The remaining two were resolved by Applicant's bankruptcy. Applicant filed for bankruptcy because he was presented with a large bill for fire damage to his apartment. He could not pay this bill and continue to pay on his other debts. Applicant was making a good faith effort to pay his indebtedness before receiving the fire damage bill. Applicant is current on all of his present bills and has not incurred a delinquent debt recently. He is saving money monthly and has started to build his retirement account. I conclude Applicant established he initiated a good-faith effort to repay overdue creditors or other wise resolve debts and mitigated security concerns under Financial Considerations.

Applicant's incorrect answers to questions on the security clearance application brings the matter within Directive ¶ E2.A5.1.2.2 (*the deliberate omission, concealment, or falsification of relevant and material facts from any personal security questionnaire, personal history statement, or similar form used to conduct investigations. . . . determine security clearance eligibility or trustworthiness. . .*). A finding of falsification requires evidence that the Applicant acted with an intent to mislead or deceive the government. The record evidence as a whole must be considered to determine whether there is direct or circumstantial evidence concerning Applicant's intent or state of mind at the time the statement was made. Applicant's answer to question 21 was incorrect because he had been arrested for a felony in 1991. Applicant did not closely read the question and did not believe he had to list the arrest since it happened more than ten years before. Applicant's answer to question 26 was incorrect because he was arrested for a traffic offense and paid a fine of more than \$150. While a close reading of questions 21 and 26 would alert Applicant to the extent of the information required, it is reasonable for Applicant from a quick and light reading of the questions to conclude the felony arrest and the traffic fine were outside the scope of the questions. Applicant's testimony that he misread the questions and did not understand the information he was required to provide and that his answers were not intended to deceive the government was credible and understandable. I conclude Applicant's incorrect answers to questions 21 and 26 were not deliberate with an intent to deceive. He has mitigated any security concerns under Guideline E.

I carefully considered all of the circumstance in light of the "whole person" concept. Applicant has mitigated all of the security concerns and

demonstrated his security worthiness. I conclude Applicant is eligible for access to classified information.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline J FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Paragraph 2, Guideline F: 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

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: For Applicant

Paragraph 3, Guideline E: FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

Subparagraph 3.c.: For Applicant

### **DECISION**

In light of all of 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 Applicant. Clearance is granted.

Thomas M. Crean

Administrative Judge

1. Tr. 90.
2. Tr 55-57; Government exhibit 14 (Arrest record, dated May 26, 1989)..
3. Tr. 38-44; Government exhibit 10 (Record of conviction, dated Dec. 10, 1991).

4. Tr. 44-47; Government exhibit 11 (Warrant of arrest, dated Oct. 17, 1994).
5. Tr. 47-48; Government exhibit 12 (Warrant of arrest, dated Jul. 10, 1996).
6. Tr. 55-57; Government exhibit 13 (Protective order, dated Mar. 17, 2003); Government exhibit 7 (Petition for protective order, dated Mar. 10, 2003).
7. Tr. 58; Government exhibit 15 (Summons, dated Nov. 12, 1997).
8. Tr. 59; Government exhibit 16 (Summons, dated Apr. 19, 2000).
9. Tr. 70-71; Government exhibit 8 (Warrant in debt, dated May 14, 2001); Government exhibit 6 (Bankruptcy petition and discharge, dated Oct. 22, 2003).
10. Tr. 72-76; Applicant's additional documents (Judgment order, dated Dec. 13, 2002) at 2.
11. Tr. 77; Government exhibit 9 (Judgment, dated Aug. 29, 1996); Applicant's additional documents (Judgment satisfaction, dated Apr. 9, 1997) at 3.
12. Tr. 78.
13. Tr. 85-89; Government exhibit 6 (Bankruptcy petition and discharge, dated oct. 22,2003).
14. Government exhibit 1 (Electronic Security clearance application, dated Oct. 2, 2002); Government exhibit 2 (Security clearance application, SF 86, dated Sep. 10, 2002, signed on Jan/ 12, 2004).
15. Tr. 61-62; Tr. 66.
16. Tr. 59-69.
17. Tr. 86-110.
18. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
19. Directive ¶ E2.2.1.
20. *Id.*
21. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
22. *See* Exec. Or. 10865 § 7.
23. Directive ¶ E3.1.14.
24. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
25. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
26. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
27. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
28. ISCR Case No. 01-26675 at 3 (App. Bd. Jun 13, 2003), *See*, ICSR Case No. 97-0016 (app. Bd. Dec. 13, 1997).