

DATE: June 17, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-01631

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's history of criminal conduct and alcohol abuse, involving nine separate arrests, five of which were alcohol related, two of which involved felony convictions, and his attempt to conceal his felony convictions and another arrest in 1999 on his security clearance application, have not been mitigated by sufficient evidence of rehabilitation. Clearance is denied.

**STATEMENT OF THE CASE**

On October 2, 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 the 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 the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 4, 2003, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on March 17, 2004. A notice of hearing was issued on March 17, 2004, scheduling the hearing for April 6, 2004. At the hearing the Government presented twelve exhibits. The Applicant presented three exhibits and testified on his own behalf. He also submitted one Post-Hearing Exhibit consisting of two pages. The official transcript (Tr.) was received on April 23, 2004.

**FINDINGS OF FACT**

The Applicant is 46 years old, he has a high school diploma and two years of junior college. He was recently laid off from his employment by a defense contractor as a Launch Service Mechanic. He is subject to being rehired if he can obtain a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the

Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant admitted to each of the allegations set forth in the SOR under this guideline. From 1989 through 2001, over a period of twelve years, the Applicant was arrested on at least nine separate occasions, five of which were alcohol related.

In October 1989, and again in January 1990, he was arrested for Assault, a misdemeanor. The police report of the incident in 1989 indicates that the Applicant struck a woman once in her face with the back of his hand and used obscenities. On another occasion he hit a man in the face with a closed fist. (*See* Government Exhibits 5 and 6).

In September 1990, he was charged with (1) Resisting Arrest, a felony, (2) Assault, a felony and (3) Disorderly Conduct, a misdemeanor. He was found guilty of (1) Resisting Arrest, and was fined \$700.00.

In April 1991, he was arrested again for (1) Disorderly Conduct, a misdemeanor, and (2) Resisting Arrest, a misdemeanor. He was found guilty of (1) Disorderly Conduct, and sentenced to one day in jail and fined \$200.00.

In December 1991, the Applicant was arrested for the following felonies: (1) Endangerment, (2) Criminal Damage, (3) Failure to Stop for Emergency Vehicle, (4) Aggravated Assault, and (5) Driving Under the Influence, a misdemeanor. He pled guilty to Unlawful Flight from a Law Enforcement Vehicle, a felony. He was sentenced to probation for three years, incarcerated for ninety days and required to abstain from alcohol. The Applicant explained that he was depressed after an argument with his fiancé. He had been drinking to excess, and made some very bad decisions. He stated that he was not aware of the police pursuit, at first, but when he realized what was going on, he thought he could make it home instead of stopping to be pulled over. The police report and/or court records of the incident indicate that the Applicant was clocked at speeds in excess of 90 to 100 miles per hour during a high speed chase attempting to elude the police. The Applicant ignored traffic lights, stop signs and caused minor property damage. When he was finally caught, a loaded, concealed .357 caliber handgun was found wedged between the seat. (*See*, Government Exhibits 8 and 10). The Applicant states that he now realizes how stupid he was and that it was a huge mistake. He is very remorseful for this misconduct.

In August 1999, the Applicant was arrested for (1) Driving Under the Influence, and (2) Violation of Probation. He was found guilty of Driving Under the Influence and was placed on probation for three years, ordered to pay a fine of \$1,500.00, ordered to abstain from alcohol, his drivers license was revoked and he was order to attend a drinking and driving program. The Applicant explained that he was arrested when he was driving a friend home. He had been consuming beer.

A month later, in September 1999, the Applicant was arrested for (1) Driving on a Suspended/Revoked License and (2) Driving with an Obstructed Window. He pled guilty to Driving on a Suspended/Revoked License and was fined about \$125.00. The Applicant explained that he did not realize that his driver's license had expired or was revoked at the time. He states that he was driving with factory tint on his car windows.

A year later, September 2000, the Applicant was arrested for Obstruction of a Police Officer. At the time of his arrest the Applicant had been drinking. The Applicant stated that late one night he, his girlfriend and friends were playing music and drinking beer, and hooting and hollering. The Applicant admits to having consumed at least ten beers in a four hour period that night. The Applicant contends that the police must have thought he was physically abusing his girlfriend because they knocked on his door, entered his apartment, knocked him to the ground, shot mace on his face, and arrested him for no reason. The Applicant contends that this was police brutality. The case was ultimately dismissed.

In November 2001, the Applicant was arrested for Battery. The Applicant pled nolo contendere and was fined about \$1,200.00, that included a \$500.00 fine, \$200.00 in court costs and \$500.00 to the victim for a chipped tooth. The Applicant explained that he was drinking at a bar and talking with a group of people. One of the women did not appreciate him talking to her friend and told him to leave. The Applicant told her that he was not talking to her. At that

point, the girl's boyfriend came around the table and put his hand on his shoulder. The Applicant thought the guy was going to hit him and reacted by punching him. The Applicant then walked to the door to leave but was detained until the police arrived. The Applicant was then arrested and spent one night in jail. (*See* Government Exhibit 2).

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant completed a Security Clearance Application (Standard Form 86) dated July 17, 2000. Question 21 of the application asked the Applicant if he had ever been charged with or convicted with or convicted of any felony offense. The Applicant failed to disclose that he had been charged with and/or convicted of felony offenses in December 1991, for Endangerment, Criminal Damage, Failure to Stop for Emergency Vehicle, and Aggravated Assault. He also failed to disclose his felony charges and convictions in September 1990, for Resisting Arrest and Assault. (*See* Government Exhibit 1). He stated that he did not understand the question completely, and that he thought his felony convictions would have been erased from his record by now.

The same questionnaire, question 26, asked the Applicant if in the last seven years had he been arrested for charged with, or convicted of, any offenses not listed in modules 21, 22, 23, 24, or 25. The Applicant answered "NO". The Applicant failed to disclose that he had been arrested for other offenses in the last seven years, namely his arrest in September 1999, for Driving on a Suspended/Revoked License and Driving With an Obstructed Window. (*See* Government Exhibit 1). The Applicant explained that he thought it had been seven years since this arrest.

I find that the Applicant knew or should have known to reveal his entire criminal record, including his felony arrests and convictions in response to question 21. Ironically, he did not reveal either of his two felony arrests. Furthermore, he failed to list his arrest in 1999, for Driving on a Suspended/Revoked license. I do not find his excuses credible. Accordingly, I find that the Applicant deliberately attempted to conceal this information from the Government on his security clearance application.

Paragraph 3 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant admits that he consumed alcohol from 1977 until September 2002 to excess and to the point of intoxication. The Applicant usually drank between Fridays and Sundays. After many arrests and convictions he realizes that alcohol has only caused serious problems for him. He regrets his drinking in the past. He stopped consuming alcohol in April 2002. (*See* Applicant's Answer to SOR). He believes that his life is much more productive now. He is a practicing Catholic and an altar-boy. He believes that he has now matured and that his whole life has changed for the better.

### Mitigation.

Ten letters of recommendation from the Applicant's friends, neighbors and coworkers collectively indicate that he is a dedicated employee with excellent technical knowledge in the mechanical field. He is a person of high integrity and honesty. He is kind and helpful to others. He is also considered a good friend. (*See*, Applicant's Exhibit A).

The Applicant also provided various newspaper articles and press releases on defense related projects he has worked on during his career in the industry. (*See*, Applicant's Exhibit C).

A letter from the Applicant's sister, a Vice President of a company attests to the fact that the Applicant has worked extremely hard to change his life to be more productive to his family, community and country. She is very proud of his sobriety, skill development in the aerospace industry, and his home ownership. (*See*, Applicant's Post-Hearing Exhibit).

A letter from a friend the Applicant grew up with and who has known the Applicant for close to 40 years attests to the Applicant's trustworthiness, religious upbringing and good morals. (*See*, Applicant's Post-Hearing Exhibit).

## **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline J (Criminal Conduct)

Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

Condition that could mitigate security concerns:

None.

Guideline G (Alcohol Consumption)

Conditions that could raise a security concern:

1. alcohol-related incidents away from work, such as driving under the influence . . . ;
4. habitual or binge consumption of alcohol to the point of impaired judgement.

Condition that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

Condition that could raise a security concern:

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.

Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes

- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in criminal conduct, dishonesty and alcohol abuse that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in criminal conduct (Guideline J); dishonesty (Guideline E); and alcohol abuse (Guideline G). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines J, E and G of the SOR.

The Applicant's criminal history began in 1989, when he was twenty-two, and continued until November 2001, when he was 44 years old. Much of the criminal conduct, consisting of nine arrests and convictions, were alcohol related. They involved disorderly conduct, resisting arrest, and assault and battery. Taken together, Applicant history and pattern of criminal conduct establishes that the exercise of poor judgment by him is not an aberration, but has been a basic part of Applicant's character for almost all of his adult life.

Under Guideline J (Criminal Conduct), Disqualifying Conditions (DC) 1 (any criminal conduct, regardless of whether the person has been formally charged) and 2 ( a single serious crime or multiple lesser offenses) are clearly applicable. None of the mitigating conditions apply. The Applicant's last arrest for criminal conduct occurred in 2001, just three years ago. However, in the context of so many criminal acts over so long a period, there is no substantive indication of a fundamental change in the Applicant's thinking process or character. On this basis, I conclude that the criminal conduct remains current and is clearly not an isolated incident (MC 1, 2). There is also no clear indication of the Applicant's rehabilitation. Accordingly Guideline J is found against the Applicant.

With respect to Guideline E, it is unclear from the record why the Applicant did not reveal his complete criminal history in response to questions 21 and 26 on his security clearance application. With the particular evidence that I have been provided, however, there is no reasonable excuse for his failure to answer the questions truthfully. Consequently, the evidence shows that the Applicant has not been completely honest with the Government regarding his criminal history and sought to conceal the truth. None of the mitigating factors set forth in the Directive under Guideline E apply. I find that the Applicant deliberately failed to reveal this information to the Government.

The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of his personal background. This Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

Applicant's extensive history of alcohol abuse began in 1977 and continued until at least November 2001, resulting in numerous alcohol related arrests and convictions. He stopped drinking only as recently as April 2002. Given his twenty-four year history of alcohol abuse, it is too early in his rehabilitation to determine whether he will remain sober or return to his regular pattern of drinking. Furthermore, there is no evidence that he has ever undergone a formal treatment program to help him with his condition. In any case, more time is needed in an alcohol free lifestyle to be assured that the Applicant will not revert to his old self. Accordingly, I find against the Applicant under Guideline J (Alcohol Abuse).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1,2, and 3 of the SOR.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara 1.g.: Against the Applicant.

Subpara 1.h.: Against the Applicant.

Subpara 1.i.: Against the Applicant.

Subpara 1.j.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.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 the Applicant.

Darlene Lokey Anderson

Administrative Judge