

DATE: April 7, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-08073

**DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Marc E. Curry, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is an electronics technician for a defense contractor. He received non-judicial punishment while serving on active military duty for making two unrelated false official statements. His security clearance was revoked while on active duty partially for alcohol-related reasons. Just prior to being interviewed by a security agent in regards to his security clearance, Applicant was arrested for an alcohol-related offense. He told the security agent he had no alcohol-related arrests or incidents. On a security clearance application Applicant submitted after the arrest, he answered "no" to the question asking if he had any alcohol-related arrests. Applicant has a history of making false statements and deliberately provided false and misleading information to the government concerning alcohol-related incidents. Clearance is denied.

**STATEMENT OF THE CASE**

On June 22, 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 June 25, 2004. The SOR alleges security concerns under Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on July 12, 2004. He admitted two and denied two of the allegations under Guidelines E and requested a hearing before an administrative judge. The request for a hearing was received by DOHA on July 15, 2004. Department Counsel was prepared to proceed with the case on January 10, 2005, and the case was assigned to me on January 11, 2005. A notice of hearing was issued on February 22, 2005, and the hearing was convened on March 10, 2005. Five government exhibits, one Applicant exhibit, and the testimony of the Applicant were received during the hearing. The transcript was received on March 18, 2005.

**FINDINGS OF FACT**

Applicant is 34 years old and an electronics technician for a defense contractor. He is married with two children. He received his initial security clearance in 1988 while on active military duty. <sup>(1)</sup>

In 1994, Applicant received non-judicial punishment for two specifications of making a false official statement. Applicant made a false entry on his physical fitness test that the test had been completed when it had not been completed. Applicant also had an unauthorized person sign the form as the approving official. Applicant altered and falsified an official record that he had certain qualifications when he did not have such qualifications. <sup>(2)</sup>

Applicant's security clearance was changed to a conditional security clearance in 1994, for a variety of reasons including alcohol abuse. <sup>(3)</sup> Applicant appealed the determination of an interim clearance but his clearance was finally revoked. Alcohol abuse was cited as one of the reasons for the revocation. <sup>(4)</sup> Applicant left active military duty shortly thereafter.

Applicant applied for a security clearance in early 1998, when employed by a defense contractor. While the application was pending, Applicant was arrested on July 5, 1998, for driving while intoxicated. This charge was subsequently dismissed. On August 12, 1998, as part of the security clearance process, Applicant was interviewed by an agent from the Defense Security Service (DSS). In discussing his alcohol abuse, Applicant stated "I have had no alcohol related arrests or incidents." <sup>(5)</sup> Applicant was granted a security clearance at this time.

Applicant applied on January 29, 2002, to have his security clearance updated. In response to question 24 asking if the applicant has ever been charged with or convicted of any offense related to alcohol or drugs, Applicant responded "NO." <sup>(6)</sup> Applicant stated he misread the question and thought he did not have to list the offenses of driving while intoxicated since he was only arrested and the charge dismissed. <sup>(7)</sup> Applicant did tell a DSS agent about this arrest when questioned in December 2002. <sup>(8)</sup>

Applicant presented a statement from a former active duty military supervisor that he was a conscientious worker and of good character. <sup>(9)</sup>

## 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>(10)</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. <sup>(11)</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>(12)</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>(13)</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>(14)</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>(15)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(16)</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>(17)</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>(18)</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>(19)</sup>

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

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 guideline is 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 E. Applicant's non-judicial punishment for making false official statements, his false statement to the agent concerning alcohol-related offenses, and his false answer to question 24 on the security clearance application bring the matter under Personal Conduct Disqualifying Conditions Directive ¶ 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 . . . determine security clearance eligibility or trustworthiness*); Directive ¶ E2.A5.1.2.3 (*deliberately providing false or misleading information concerning relevant and material matters to an investigator. . . in connection with a personnel security or trustworthiness determination*); and Directive ¶ E2.A5.1.2.5 (*a pattern of dishonesty or rule violation*). Applicant has a history of making false statements. He received non-judicial punishment for false official statements. Approximately a month after being arrested for driving while intoxicated, Applicant told a security agent that he had no alcohol-related incidents or arrests. He did not list the alcohol-related arrest on his security clearance application submitted a few years later. He had a motive to not reveal the alcohol-related arrest because he already had a security clearance revoked based on alcohol-related issues. Another alcohol-related incident could adversely affect his latest security determination. I conclude Applicant engaged in a pattern of dishonesty when providing information in regard to alcohol-related incidents. Applicant deliberately provided false or misleading information about his driving while intoxicated arrest in 1998 to the security agent, and he deliberately omitted the arrest from his 2002 security clearance application.

Applicant has provided no information to mitigate security concerns for Personal Conduct. I have considered Personal Conduct Mitigating Conditions Directive ¶ E2.A5.1.3.2 (*the falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily*); and Directive ¶ E2.A5.1.3.3 (*the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts*). Applicant has a history of providing false official information so his falsifications are not isolated or recent. He provided false or misleading information on alcohol-related matters on two separate occasions. While Applicant did tell the security agent in an interview in December 2002 of the alcohol-related arrest, it was well after the incident and the agent would learn of the arrest in the normal course of the investigation. He made no good-faith effort to correct the false or misleading information or provide correct information. I conclude Applicant has not mitigated these security concerns.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information.

### **FORMAL FINDINGS**

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

Paragraph 1, Guideline E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

### **DECISION**

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

Thomas M. Crean

Administrative Judge

1. Tr. 26.
2. Tr. 17; Government exhibit 4 (Record of non-judicial punishment, dated Aug. 24, 1994).
3. Government exhibit 6 (Letter of revocation, dated Mar 1, 2004).
4. Government exhibit 5 (Applicant's letter, dated Jan. 30, 1995); Government exhibit 7 (Case summary, dated Apr. 12, 1995).
5. Government exhibit 2 (Applicant's statement, dated Aug. 12, 1998) at 3.
6. Government exhibit 1 (Security clearance application, dated Jan. 29, 2002).
7. Tr. 35-36.
8. Tr. 37-38.
9. Applicant exhibit A (Character statement, dated Mar. 7, 2005).
10. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
11. Directive ¶ E2.2.1.
12. *Id.*
13. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
14. *See* Exec. Or. 10865 § 7.
15. Directive ¶ E3.1.14.

16. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
17. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
18. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
19. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.