

KEYWORD: Personal Conduct; Financial; Criminal Conduct

DIGEST: Applicant is a U.S. Department of State contractor employee. He served more than two years in prison 26 years ago. He listed an erroneous date of birth when he enlisted in the Army, and applied for two consecutive driver's licenses, a Social Security card, a State Department building pass, and a security clearance. He erroneously described his discharge from the Army on his security clearance application (SF 86). He incurred several delinquent medical bills, but has resolved all but one that could not be verified. He refuted the allegations of falsifying his birth date, and mitigated the security concerns based on criminal conduct and financial considerations. 10 U.S.C. § 986 is not applicable. Clearance is granted.

CASENO: 03-25413.h1

DATE: 01/31/2006

DATE: January 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-25413

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a U.S. Department of State contractor employee. He served more than two years in prison 26 years ago. He listed an erroneous date of birth when he enlisted in the Army, and applied for two consecutive driver's licenses, a Social Security card, a State Department building pass, and a security clearance. He erroneously described his discharge from the Army on his security clearance application (SF 86). He incurred several delinquent medical bills, but has resolved all but one that could not be verified. He refuted the allegations of falsifying his birth date, and mitigated the security concerns based on criminal conduct and financial considerations. 10 U.S.C. § 986 is not applicable. Clearance is granted.

STATEMENT OF THE CASE

On June 22, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guidelines E (Personal Conduct) and F (Financial Considerations). Under Guideline E, it alleges Applicant supplied a fictitious date of birth to various federal and state agencies on six occasions. Under Guideline F, it alleges eight delinquent debts totaling \$13, 750.

Applicant answered the SOR in writing on August 11, 2005. He denied falsifying his birth date, denied seven of the eight alleged delinquent debts, and requested a hearing. The case was assigned to me on November 28, 2005, and heard as scheduled on January 10, 2006. I kept the record open until January 25, 2006, to enable both sides to submit additional evidence and argument on the applicability of 10 U.S.C. § 986 to this case. DOHA received the transcript (Tr.) on January 18, 2006. I received timely submissions from both parties. Department Counsel's submission is incorporated in the record as Hearing Exhibit (HX) II, with one attachment marked "Attachment A." Applicant's post-

hearing submissions are incorporated as Applicant's Exhibits (AX) H, I, J, and K.

PROCEDURAL RULING

At the hearing, I granted Department Counsel's motion to amend the SOR. The amendment adds ¶ 3 and subparagraphs 3.a. and 3.b., alleging Applicant was charged and convicted of felonious use of a firearm and robbery in 1979 and served at least two and a half years in prison, and further alleging he is disqualified from holding a security clearance under 10 U.S.C. § 986. The amendment also adds an additional allegation that Applicant falsified his SF 86 by deliberately failing to disclose he received a less than honorable discharge from the Army. Although the motion to amend designated the additional allegation of falsification as ¶ 2.a., it was redesignated at the hearing as ¶ 1.g. (2) Department Counsel submitted a copy of the contract with the U.S. State Department on which Applicant works, incorporated in the record as HX I. (3)

Applicant admitted the conviction alleged in ¶ 3.a., did not concede the applicability of 10 U.S.C. § 986 alleged in ¶ 3.b., and denied the falsification alleged in the redesignated ¶ 1.g. (4)

The SOR ¶ 1.b. incorrectly identified the jurisdiction in which Applicant obtained his first driver's license. On my own motion, I amended to SOR to conform to the evidence. (5)

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I also make the following findings:

Applicant is a 45-year-old system administrator for a U.S. State Department contractor. He has worked for his current employer since September 2000. He has never held a security clearance. He does not work on any Department of Defense (DOD) contracts, and his employer does not anticipate assigning him to any DOD contracts. (6) A company employee testified all his company's current federal government contracts were with the Department of State, except for a few small contracts with the Federal Bureau of Investigation. (7)

Applicant grew up in a troubled family. He ran away from home in 1973, when he was about 13 years old. His stepmother committed suicide two years after he ran away. [\(8\)](#)

Applicant applied for a Social Security card in 1973. He testified he was unsure of his year of birth and guessed it to be 1958. His Social Security employment records listed his year of birth as 1958 for many years. [\(9\)](#) The record does not reflect how, if at all, his birth date was verified.

Applicant enlisted in the U.S. Army on March 26, 1975. According to Applicant, he could not provide a birth certificate when he enlisted. When his recruiter told him a baptismal certificate would suffice, he directed the recruiter to the Catholic church where he was baptized. His recruiter later told him he had obtained a baptismal certificate reflecting his birth date. [\(10\)](#) Applicant never saw the baptismal certificate. [\(11\)](#) His military records reflected his date of birth as October 28, 1957. He subsequently obtained a driver's license, using his military identification as proof of his date of birth. [\(12\)](#) He performed poorly in the Army, and he was discharged as unsuitable for military service on March 9, 1977, receiving a general discharge under honorable conditions. [\(13\)](#)

After his discharge from the Army, Applicant obtained a driver's license in another jurisdiction, using his previous driver's license as proof of identity and age. This license also reflects his year of birth as 1957. [\(14\)](#)

In June 1979, Applicant was convicted of robbery and felonious use of a firearm, and sentenced to 15 years in the penitentiary, with the last six years suspended for a period of ten years. He was released on parole on May 15, 1981, and released from probation on September 19, 1985. [\(15\)](#) While incarcerated, he received outstanding evaluations and furthered his education. [\(16\)](#)

Shortly after being released on parole, Applicant began investigating his birth date, because his prison records reflected it as 1957 and there had been some discussion during his sentencing hearing about his actual age. [\(17\)](#) He obtained a copy of his birth certificate in late May 1981, and learned he was born in 1960. [\(18\)](#) He took no action at that time to correct the records.

Applicant was married in June 1983, but has been separated from his spouse for more than seven years. They had one child, born on June 23, 1986. [\(19\)](#)

While he was on parole, Applicant was arrested for visual trespassing, a "peeping tom" offense, in August 1984. [\(20\)](#) According to Applicant, the incident occurred when he walked past a window in his apartment complex and noticed the blinds were open and a partially clothed woman was visible. He stopped and looked, standing about six feet from the window. As he started to walk away, he was stopped by "detectives" and asked what he was doing. He admitted in court that he stopped and looked into the window. [\(21\)](#) He received a suspended 30-day jail sentence, paid a \$50 fine, and was placed on probation for 12 months. His parole was not revoked. [\(22\)](#)

Applicant suffered a grand mal seizure in December 1990 and was diagnosed as suffering from a frontal glioma, a form of brain cancer. He experienced astigmatism, a speech impediment, dizziness, and memory loss. He was treated with radiation therapy and medication. He was unable to work full-time until 1995. [\(23\)](#)

When Applicant and his spouse separated, he was required to pay child support. He does not know the current address of his spouse or child. [\(24\)](#) His spouse moved to another state, and she obtained a child support order in her new home state; but her previous home state, where Applicant continued to live, continued to pursue him for child support payments. On August 28, 1991, his spouse's new home state ordered him to pay child support of \$274 per month, [\(25\)](#) and his pay was garnished for the amount of \$105.63 for each two-week pay period. [\(26\)](#) This garnishment was terminated in July 2004. [\(27\)](#) However, his home state continues to garnish his pay in the amount of \$59.99 per two-week pay period. [\(28\)](#) As of May 6, 2003, his child support arrearage was determined by his home state to be \$15,332.78. [\(29\)](#) Because the child is now 19 years old, any payments are applied entirely to the arrearage. Applicant admits he owes an arrearage, but he disputes the amount, because he believes he has been charged twice by two jurisdictions for one obligation.

In about 1995 or 1996, Applicant applied for a Social Security card, using his driver's license as identification. The Social Security Administration continued to list his year of birth as 1958 instead of 1957. He has now corrected his Social Security records to reflect his correct birth date. [\(30\)](#)

In 1996, Applicant became acquainted with a woman in his car pool. They became friends, began dating, and eventually decided to live together in a committed relationship. His "significant other" testified on his behalf at the hearing. She has a bachelor's degree in rehabilitation education and has about five years working in that field. She currently works for a major law firm. She is familiar with Applicant's criminal record, medical condition, and financial history. She has assisted him "in setting goals such as educational direction, retirement investment options, and spiritual development." She believes he has "taken some serious measures in reconstructing his life." She considers him a reliable, trustworthy individual, and a financially responsible person. [\(31\)](#)

At some time in 1998, Applicant's automobile, worth only about \$500, was towed without his knowledge, even though

it was lawfully parked and properly registered. He reported it stolen. When he learned many months later it had been towed and he was being billed \$200 per day in storage fees, he refused to pay and told the towing company to keep the car in satisfaction of the debt. He disputes this debt (SOR ¶ 2.f.), has consulted with a lawyer about it, and has not paid it. [\(32\)](#)

While recovering from the effects of brain cancer and its treatments, Applicant lived with his father, who was suffering from Alzheimer's disease as well as diabetes. He assisted his father financially while they lived together and tried to save his father's failing limousine business. His father spent his final days in hospice care and died of cardiac arrest in December 1999. [\(33\)](#)

Around 2000, Applicant was diagnosed with hepatitis C and diabetes, which he treats with medication. [\(34\)](#) He continues to work full time.

Applicant incurred several medical bills not covered by his insurance. Two judgments were entered against him in April 1995 (SOR ¶¶ 2.a. and 2.b.), and three delinquent accounts were placed for collection in 1999 (SOR ¶¶ 2.c., 2.d., and 2.e.). Four of the five debts have been paid in full. [\(35\)](#) Applicant testified he has been willing but unable to pay the fifth debt of \$123, alleged in SOR ¶ 2.d., because the creditor has been unable to retrieve the records, which were retired and sent to a storage facility in 2001. [\(36\)](#)

When Applicant applied for a State Department building pass in 2000, he listed his birth date as October 28, 1958. [\(37\)](#) He listed the same birth date on his SF 86 in December 2001. [\(38\)](#) His security officer believes he did not notice the incorrect date on his SF 86 until it was called to his attention, at which time he immediately corrected it. [\(39\)](#) In August 2003, Applicant told a security investigator he learned of his actual age in May 1981, but he continued to list 1958 as his birth year to make his security application forms consistent with the date reflected in other government records. He denied any intent to defraud or deceive. [\(40\)](#) He corrected the birth date on his building pass in December 2003. [\(41\)](#) He has corrected his birth date on his Social Security records, and his SF 86 dated February 24, 2004 reflects his correct birth date. [\(42\)](#)

When Applicant executed his SF 86 in December 2001 and again in February 2004, he answered "no" to question 17, which asks, "Have you ever received other than an honorable discharge from the military?" At the hearing, he testified he misunderstood the question, and he answered "no" because his discharge was "under honorable conditions." He denied intentionally falsifying his answer to question 17. [\(43\)](#) His DD Form 214, Report of Separation from Active Duty, shows he was separated "under honorable conditions." [\(44\)](#)

Some time in 2003, Applicant sold a car and neglected to notify his city of residence of the sale, causing him to be billed for personal property taxes. After learning of the debt as a result of receiving the SOR, he paid it. The city records show no outstanding taxes due. [\(45\)](#)

Except for the child support arrearage, Applicant has no large financial obligations. He uses a debit card instead of a credit card. His car is paid for. He has no mortgage payments, but he shares the costs of their residence with his significant other.

Applicant is highly regarded among the State Department officials whom he supports, his colleagues and supervisors. A State Department official regards him as "unusually hard working, practical and efficient," and "especially diligent on all issues regarding security." [\(46\)](#) Two other State Department officials submitted testimonials to his expertise, dedication, and generosity; one of them characterized him as "an upright and honorable man worthy of trust and respect." [\(47\)](#)

A written testimonial from one of Applicant's colleagues describes him as "responsive, patient, and considerate," and a person who is relied-upon and trusted by the persons he supports. [\(48\)](#) Another colleague testified at the hearing and stated he was familiar with his criminal background, but considers him trustworthy based on their personal and professional interaction over a 4-year period. [\(49\)](#)

Applicant's supervisor regards him as a "model employee" and states he is "loyal, discrete, and worthy of a national security clearance." [\(50\)](#) His most recent performance evaluation was outstanding, and he was awarded a monetary bonus based on his performance. [\(51\)](#)

Applicant is active in community affairs. He recently was commended by the local chief of police for his crime-fighting activities as part of a Neighborhood Watch Program. [\(52\)](#)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has 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." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3.

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and 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.

In evaluating an applicant's conduct, 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 or recurrence. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. 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.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[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." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline E: Personal Conduct

Under this guideline, conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1. A disqualifying condition (DC 2) applies where there has been a deliberate omission or falsification of relevant and material facts from any personnel security questionnaire. Directive ¶ E2.A5.1.2.2..

The SOR alleges seven instances where Applicant misstated his year of birth. Only one, SOR ¶ 1.f., involved a personnel security questionnaire. However, the other six involve the same core security concern involving dishonesty, thus requiring the same analysis.

Applicant has denied intentional falsification. When a falsification allegation is controverted, the government has the burden of proving it. Proof of a misstatement, standing alone, does not prove an applicant's state of mind when the misstatement occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the misstatement occurred. *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

The first three instances, his enlistment in the Army and obtaining driver's licenses in two jurisdictions (SOR ¶¶ 1.a., 1.b., and 1.c.), occurred because he was unsure of his birth date and relied on an Army recruiter's representation that his baptismal certificate showed he was born in 1957. Accordingly to the uncontroverted evidence, he did not learn his true birth date until he saw his birth certificate for the first time after his release from prison in 1981. I conclude he has refuted the allegations of intentional falsification alleged in SOR ¶¶ 1.a., 1.b., and 1.c.

When Applicant applied for a Social Security card in about 1995 or 1996, he used his driver's license as identification. Even though the driver's license reflected his birth year as 1957, the Social Security Administration continued to list his birth year as 1958. I conclude he has refuted the allegation of intentional falsification alleged in SOR ¶ 1.d., because the evidence shows he used his driver's license solely as proof of his identity, not to establish his date of birth.

Applicant told a security investigator he entered 1958 as his birth year on building pass application and his SF 86 to be consistent with other government records reflecting his birth year as 1958. I conclude these two instances involve mistaken rather than falsified entries. He knew 1958 was not his correct birth date, but he entered that date under the

naive and mistaken belief his answers should be consistent with his Social Security file and other government records.

Applicant was not familiar with the security clearance process. He had just begun working for his current employer, and he clearly did not understand the significance of his birth date in determining the temporal scope of a security investigation. As the record shows, he had nothing to gain by representing himself to be two years younger. He revealed his felony conviction and several delinquent debts on the SF 86, thereby showing lack of intent to falsify. In a follow-up interview with a security investigator, he revealed other derogatory information, such as his "peeping tom" conviction, even though he was not required to reveal it on the SF 86. His security officer believed the entries were mistaken. Applicant promptly corrected the entries when questioned about them. He enjoys a reputation among colleagues, supervisors, and friends as an honorable and trustworthy person. Based on his testimony and demeanor at the hearing, as well as all the evidence of record, I am satisfied he did not intend to misrepresent a material fact on his building pass application and SF 86. Accordingly, I conclude DC 2 is not established, and I resolve the allegations in SOR ¶¶ 1.a. through 1.f. in his favor.

SOR ¶ 1.g. was added at the hearing, with no objection from Applicant. It alleges he falsely answered "no" to question 17 on his SF 86, asking if he had ever received "other than an honorable discharge from the military." He denied falsification, testifying he found the question confusing. I found his testimony plausible and credible, and I am satisfied he did not intentionally falsify this answer. The question is poorly phrased and confusing. It requires careful parsing of the differences among "other than an honorable discharge" (the term used in the SF 86), an "other than honorable discharge," and a discharge "under honorable conditions." Applicant received a general discharge "under honorable conditions" and should have answered the question in the negative. However, He reasonably concluded his discharge was not "other than an honorable discharge" because it was not "under other than honorable conditions." I conclude he has refuted the allegation in SOR ¶ 1.g., and I resolve it in his favor.

Guideline F: Financial Considerations

Under this guideline, "[a]n individual who is financially overextended is at risk of having to engage in illegal acts to generate funds." Directive ¶ E2.A6.1.1. A person who fails or refuses to pay long-standing debts or is financially irresponsible may also be irresponsible or careless in his or her duty to protect classified information.

Two disqualifying conditions (DC) under this guideline could raise a security concern and may be disqualifying in this case. DC 1 applies where an applicant has a history of not meeting his or her financial obligations. Directive ¶ E2.A6.1.2.1. DC 3 applies where an applicant has exhibited inability or unwillingness to satisfy debts. Directive ¶ E2.A6.1.2.3.

Applicant's financial history establishes DC 1. He is now able and willing to satisfy his debts, but for several years during and following his illness he was unable to satisfy all his financial obligations. Accordingly, I conclude DC 3 is

established.

A security concern based on financial problems can be mitigated by showing the delinquent debts were not recent (MC 1) or constituted "an isolated incident" (MC 2). Directive ¶ E2.A6.1.3.1., E2.A6.1.3.2. Applicant had multiple delinquent debts that he only recently resolved. He is still paying off his child support arrearage. I conclude MC 1 and MC 2 are not established.

Security concerns arising from financial problems also can be mitigated by showing they are the result of conditions beyond the person's control (MC 3). Directive ¶ E2.A6.1.3.3. Even if financial difficulties initially arose due to circumstances beyond a person's control, an administrative judge should determine whether the person acted in a reasonable manner when dealing with the financial difficulties. ISCR Case No. 02-02116 at 4 (App. Bd. Sep. 25, 2003). Applicant was unable to work for several years due to his serious illness. He incurred numerous medical bills partially covered by insurance. While he was still recovering from his illness, he tried to assist his dying father. When he returned to work, he began resolving his financial problems. When he learned some medical bills had not been fully covered by insurance, he promptly resolved them. I conclude MC 3 is established.

A security concern arising from financial problems can be mitigated by showing a good-faith effort to resolve debts (MC 6). Directive ¶ E2.A6.1.3.6. The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Applicant has resolved all the debts alleged in the SOR, except for two. He has rightfully disputed the towing and storage bill, and he has attempted to resolve the small (\$123) medical bill but has been unable, because the creditor cannot find the records. I conclude MC 6 is established.

After weighing the disqualifying and mitigating conditions and evaluating all the evidence, I conclude Applicant has mitigated the security concern based on financial considerations.

Guideline J: Criminal Conduct

A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1. Disqualifying conditions may be based on allegations or an applicant's admission of criminal conduct, whether or not charged (DC 1). Directive, ¶ E2.A10.1.2.1. A single serious crime or multiple lesser offenses may also be disqualifying (DC 2). Directive, ¶ E2.A10.1.2.2. Evidence of Applicant's felony conviction in 1979 establishes DC 1.

A security concern based on criminal conduct may be mitigated by showing the criminal behavior was not recent (MC 1) or was an isolated incident (MC 2). Directive, ¶ E2.A10.1.3.1., E2.A10.1.3.2. *See also* Directive, ¶ E2.2.1.3. (frequency and recency of conduct). Applicant's felony conviction was more than 26 years ago. It is his only conviction except for the minor visual trespass incident five years later and 21 years ago. I conclude MC 1 and MC 2 are established.

Criminal conduct can be mitigated by "clear evidence of successful rehabilitation" (MC 6). Directive ¶ E2.A10.1.3.6. "Only with the passage of time will there be a track record that shows whether a person, through actions and conduct, is willing and able to adhere to a stated intention to refrain from acting in a way that the person has acted in the past." ISCR Case No. 97-0727, 1998 DOHA LEXIS 302 at *7 (App. Bd. Aug. 3, 1998).

The Directive is silent on what constitutes a sufficient period of reform and rehabilitation. The sufficiency of an applicant's period of conduct without recurrence of past misconduct does not turn on any bright-line rules concerning the length of time needed to demonstrate reform and rehabilitation, but rather on a reasoned analysis of the facts and circumstances of an applicant's case based on a careful evaluation of the totality of the record within the parameters set by the Directive. If the record evidence shows a significant period of time has passed without evidence of misconduct by an applicant, then the administrative judge must articulate a rational basis for concluding why that significant period of time does not demonstrate changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

More than 21 years have passed since Applicant's last brush with the law. The confluence of his serious illness, the death of his father, and a committed relationship with a supportive, responsible partner appear to have changed his attitude and conduct. He has worked steadily for more than five years with his current employer and established an outstanding reputation. I conclude MC 6 is established.

The SOR ¶ 3.b. alleges Applicant is disqualified from having a clearance under 10 U.S.C. § 986. By its terms, this statute applies only to an officer or employee of the Department of Defense, a member of the Army, Navy, Air Force, or Marine Corps who is on active duty or is in an active status, or "an officer or employee of a contractor of the Department of Defense." Applicant is working for a contractor of the U.S. Department of State. His employer has not requested a Department of Defense clearance and does not anticipate assigning him to work on any Department of Defense contracts. Department Counsel conceded 10 U.S.C. § 986 does not apply to Applicant. ⁽⁵³⁾ I conclude he is not disqualified by 10 U.S.C. § 986.

FORMAL FINDINGS

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

Paragraph 1. Guideline E(Personal Conduct): 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 (Financial Considerations): 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

Subparagraph 2.h.: For Applicant

Paragraph 3. Guideline J (Criminal Conduct): FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman

Administrative Judge

1. Applicant submitted AX A, B, C, D, F and G at the hearing. There is no AX E. *See* Tr. 48, 52..
2. Tr. 23.
3. Tr. 19-21.
4. Tr. 22-23.
5. Tr. 122.
6. GX 1 at 1; HX I; HX II at 3.
7. Tr. 127.
8. Tr. 144.
9. Tr. 100-102.
10. Tr. 93-94.

11. GX 5 at 1-2.
12. *Id.*
13. GX 8 at 2; AX G.
14. GX 5 at 2; GX 6.
15. AX D at 1, 11, 12.
16. *Id.* at 2-3, 8.
17. Tr. 94-95.
18. Tr. 63-64; GX 4 at 5.
19. AX A at 8.
20. GX 9.
21. Tr. 119-121.
22. AX D at 5.
23. GX 5 at 3; AX G at 3-6.
24. GX 1 at 4.
25. AX A at 9-10.
26. AX K at 12.
27. *Id.* at 3.
28. *Id.* at 21-24..
29. *Id.* at 2-3.
30. AX J.
31. Tr. 136-139.
32. Tr. 79, 123.
33. Tr. 61, 136; AX F at 12.
34. AX G at 16-21.
35. AX F at 1, 3, 5, 6.
36. Tr. 74-75.
37. GX 7.
38. GX 2 at 1.
39. Answer to SOR, Exhibit A.

40. GX 5 at 1-3.
41. AX B at 2.
42. AX J; GX 1 at 1.
43. Tr. 105-06.
44. AX-H.
45. Answer to SOR, Exhibit E.
46. AX B at 14-15.
47. AX C at 2-4.
48. *Id.* at 6.
49. Tr. 126-132.
50. AX C at 5.
51. *Id.* at 8-16-, 17-18.
52. *Id.* at 1.
53. HX II at 1.