

DATE: December 28, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 03-26922

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Candace L. Le'i, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant mitigated security concerns relating to criminal conduct since his five arrests were over 19 years with only three convictions the last being in 2001. He did not mitigate criminal conduct and personal conduct concerns for failing to report the arrests, two judgments, and two delinquent debts on his SF 86 filed in 2003. Clearance is denied.

**STATEMENT OF CASE**

On June 7, 2006, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In an undated answer Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on August 9, 2006. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within thirty days after receipt. No additional material was received and the case was assigned to me on September 25, 2006.

**FINDINGS OF FACT**

Applicant is a 44-year-old employee of a defense contractor who has worked as a laborer since 2002. He worked for his father's janitorial service from 1995 until 2000 and was unemployed from that date until his present employment. He admitted all of the allegations concerning criminal conduct between 1982 and 2001 and allegations of personal conduct in falsifying information on his security clearance application (SF 86). He offered explanations for some of the

allegations in his statement to an investigator (Exh. 5). After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant was arrested five times between 1982 and 2001. The second in 1988 and the most recent in 2001 were dismissed. The first of these concerned possession of drugs for sale and being under the influence of drugs. The second and most recent was an arrest for spousal abuse for which he spent four days in jail and was released.

The three arrests in 1982, 1998, and 1999 resulted in convictions. The first was for possession of a dangerous weapon and he was convicted and fined \$50. The second was for possession of a controlled substance (methamphetamine) and child abuse. He plead guilty to both charges and on the drug charge was sentenced to three years probation, ordered into a drug program, and to attend Narcotics Anonymous for 18 months three times a week. On the child abuse charge he was sentenced to 30 days in jail, and fined \$100. The last conviction occurred over a year later when he was charged with possession of the same drug and ordered to spend 60 days in jail. Since the probation had been violated, the court extended it for three years from the date of the second conviction.

Applicant failed to report any of his five arrests in response to Questions 25, 26, and 27 on his SF 86 dated April 21, 2003, requiring that all alcohol/drug arrests be reported and all arrests and drug involvement in the past seven years be reported if not otherwise reported in response to other questions. He also failed to report in response to Questions 37, 38, and 39 on his SF 86 five financial delinquencies. These included two unpaid judgments of over \$3,000 relating to an auto repossession and a rental dispute that he does not intend to pay, a lien for state taxes of \$1,000, and two other delinquent debts totaling less than \$300 for medical services and electric services.

Applicant was interviewed in connection with his application for a security clearance on October 27, 2003, and offered some explanatory information regarding the debts, the criminal activity, and failure to report any of the two areas on his SF 86. He explained his failure to report the requested information on his SF 86 by blaming it on advice he had received at the time he was completing his SF 86. He offered some explanation regarding the tax lien indicating that it had been paid by garnishment. He acknowledged the two small delinquent debts and indicated that he could now pay them since he had a good job. No evidence was offered to show payments of any of them.

### 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, and the disqualifying and mitigating conditions under each guideline. An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other 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. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist 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. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

### CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all the appropriate laws and policies, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's arrests and conviction for criminal conduct raises concerns under Guideline J (E2.A10.1.1) involving a history or pattern of criminal activity creating doubt about a person's judgment, reliability and trustworthiness. Conditions that could raise a security concern and may be disqualifying include allegations or admissions of criminal conduct regardless of whether the person was formally charged (E2.A10.1.2.1.), or a single serious crime or multiple lesser offenses (E2.A10.1.2.2.). In view of the 19 year period over which the five arrests occurred, the disposition of three of the arrests, and the lack of conviction of two, I do not find that a history or pattern of criminal conduct was established. The allegations concerning all of the incidents are mitigated by the fact that all occurred over five years ago or were dismissed. (E2.A10.1.3.1.)

Applicant's failure to acknowledge on his SF 86 his five arrests, two judgments, and two delinquent debts is alleged under Guideline E. These omissions indicate questionable judgment, unreliability, unwillingness to comply with rules and regulations, and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). His conduct falls under E2.A5.1.2.2. regarding the deliberate omission of relevant and material facts from any personnel security questionnaire. His stated excuses for the omissions that he was improperly advised when completing his SF 86 without any corroborative evidence is not sufficient to mitigate security concerns under Guideline E.

Also alleged is that such conduct is a violation of 18 U.S.C. 1001, a felony. In view of the fact that Applicant knew of the arrests and the delinquent debts as evidenced by his answer and his investigative statement, and the lack of any proof of his contention that he received bad advice, I find that he intentionally concealed the relevant information in his answers to the relevant questions.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. While Applicant expresses his regret for his conduct and omissions asserting his concern for the protection of the national security, the written record is insufficient to establish a basis for applying the mitigating conditions to all of the allegations under Guideline E.

Applicant agreed to submit this matter on the record without a hearing and did not offer any evidence to be used in the application of the whole person doctrine. The SF 86 and his statement indicates that he was married but has been separated for 14 years with no contact. He has two grown children by her. He also has four additional children ages for six to thirteen who do not live with him. He has a high school education.

While I conclude that the criminal conduct was not recent and find in his favor on that allegation, the record of it and his attitude and record concerning his delinquent debts precludes application of the whole person doctrine in his favor.

Thus, after considering all the evidence in the record in its totality, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

### **FORMAL FINDINGS**

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline J: AGAINST 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.: Against Applicant

Paragraph 2.Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

### **DECISION**

After full consideration of all the facts and documents presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge