

DATE: August 28, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-07359

## **DECISION OF ADMINISTRATIVE JUDGE**

**PHILIP S. HOWE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is 47 years old, the father of five children by three wives, and another child, plus a 28-year history over the past 34 years of illicit drug use. Applicant owes currently \$71,000 in delinquent child support, and \$20,000 for two student loans dating to 1986. He deliberately failed to disclose any unfavorable information on these subjects on his 2002 security clearance application. Applicant has not mitigated the drug involvement, personal conduct, and financial considerations security concerns. Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On July 13, 2005, DOHA issued a Statement of Reasons <sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on September 5, 2005 and elected to have a hearing before an administrative judge. The case was assigned to me on January 30, 2006. On March 27, 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on April 7, 2006.

The Government moved to amend the SOR in subparagraphs 1.1 and 2.e to substitute the name of one of Applicant's employers for another to reflect the evidence. Applicant had no objection, and I granted the motion. (Tr. 9)

### **FINDINGS OF FACT**

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 47 years old, married, and has six children. He works as a structural mechanic for a defense contractor. For the past four years Applicant has participated actively in his local church, including studying to be a deacon and being a trustee. He has custody of his 18-year-old son from his second marriage which ended in 1996. He is married to this third wife and they are expecting a child. (Tr. 28-39, 56-58; Exhibits 1, 2)

Applicant served in the Army from 1979 to 1985. He received one non-judicial punishment under Article 15 of the Uniform Code of Military Justice for wrongful use of marijuana in January 1985. His punishment was reduction in grade from E-5 to E-4, forfeiture of \$250 per month for two months, and performing extra duty for 45 days. Applicant was then administratively separated from the Army for his marijuana use in April 1985 and received a general discharge under honorable conditions. (Tr. 45-50; Exhibits 2, 4, 11, 12)

Applicant started using marijuana in the early 1970s. He last used it in 1996. He purchased marijuana on numerous occasions from 1972 to February 1988. He used hashish once a month during the four years he was stationed overseas with the Army from 1980 to 1984. He used PCP approximately four times during a few months between 1986 and 1987. He found it too harsh for him, and he stopped using it. In 1985, after being discharged from the Army, he started using cocaine. At his peak use, he was ingesting it daily, but not by injections. He last used it in 2000, but he did have a period of non-use from 1996 to 2000. Since the one incident with friends in 2000 he has not used any illegal drugs or controlled substances. (Tr. 45-51; Exhibits 2-4)

Applicant self-admitted himself to several drug treatment programs between 1987 and 1996. He also disenrolled himself from each program. Specifically, Applicant admitted in his Answer to the SOR that the programs in which he participated were: (Tr. 40, 51)

From February 11, 1987 until February 28, 1987, he was in a St. Louis, Missouri, hospital program for a condition diagnosed, in part, as polysubstance abuse (marijuana, PCP, and cocaine); (Exhibits 2-4)

From January 1988 to February 1988 at a program in Minneapolis, Minnesota, he received treatment for drug abuse; (Exhibits 2, 3)

From January 1989 to February 1989 he was in a Veterans Administration drug treatment program in St. Louis; (Exhibits 2, 3)

From December 30, 1992, to January 26, 1993, he was in an other Veterans Administration program in Wichita, Kansas, where he was diagnosed, in part, with chronic severe cocaine dependence and polysubstance abuse; (Exhibits 2, 4, 5)

From March 13, 1994, until March 25, 1994, back in St. Louis, he was in another Veterans Administration program for a cocaine dependence condition; (Exhibits 2, 6)

From April 1, 1994 to April 28, 1994, again in St. Louis, he was in treatment at the Veterans Administration for cocaine use. He failed to complete that program; (Exhibits 2, 7)

From October 26, 1995, to November 13, 1995, still in St. Louis, he received more treatment from the Veterans Administration for a condition diagnosed as cocaine dependence; (Exhibits 2, 8)

He was admitted to the Chemical Dependency Outpatient Aftercare Program with the Veterans Administration in St. Louis on November 22, 1995, for treatment of cocaine dependence. He failed to complete the program; (Exhibits 2, 9)

He received treatment from July 31, 1996, to August 6, 1996, at the Veterans Administration in St. Louis for a condition diagnosed in part as cocaine dependence; (Exhibits 2, 10)

He received outpatient drug treatment on or about December 1996 at a Veterans Administration facility in Decatur, Georgia. He participated in Alcoholics, Narcotics, and Cocaine Anonymous programs on a daily and weekly basis for about two years. He stopped participating because he did not want to do what the counselors and program leaders told him to do about his drug problem. Applicant claims he is free of drug dependency at the present time because of his own will power. (Tr. 85-86; Exhibit 2)

Applicant was employed in the aircraft repair and construction industry from 1986 to 1991, and again from 1996 onward. While working for one employer in 2000, he tested positive for cocaine during urinalysis training. He was discharged by that employer for that reason in July 2000. (Tr. 47, 57, 61-63; Exhibits 1, 2)

Applicant did not list his five children in his answer to Question 9 (relatives and associates) on the September 3, 2002, security clearance application (SCA). Applicant could not explain how he could have listed every other family member and forgotten to list his five children. (Tr. 64; Exhibits 1, 2)

Applicant did not list any financial delinquencies he had in the past seven years in answer to SCA Question 38, nor delinquent debts that were then more than 90 days past due in answering Question 39. He had over \$90,000 in unpaid child support due to his two former wives for four of his five children. He answered "no" because he was making payments on the child support and did not understand the question he claims. Those payments included the current child support obligations. Those payments are made pursuant to divorce court orders and are garnished from his wages. He did not list any garnishments on his SCA in answer to Question 34 that asked if he had been garnished for any reason in the past seven years. He claims he did know he was garnished, only that he had a court order to pay the child support. His current child support obligation is about \$71,000. He also had a \$20,000 debt for a commercial driving school course he took in 1990, and a drafting course he took in 1986. He has not arranged to repay those loans. (Tr. 52-54, 63, 64, 69-78; Exhibits 1, 2, 13, 16)

Question 20 on the SCA asked about Applicant's employment history, if he had ever been fired, quit before being fired, departed a job because of allegations of misconduct or unsatisfactory job performance, or departed a job for any other reasons under unfavorable circumstances. Applicant did not disclose on his SCA in answer to that question that he was fired for testing positive for cocaine in July 2000. Applicant did answer the question "yes" and list a prior employment termination in October 2001, but not the 2002 discharge. (Tr. 57, 61-63; Exhibits 1, 2)

Applicant admitted he deliberately did not list his drug use history for the past seven years on his SCA in answering Question 27. He answered "no" because he did not want to lose his job, so he did not list the July 2000 cocaine use. (Tr. 60, 65-67; Exhibit 1)

Applicant did not list on his SCA the denial of his security clearance on or about July 12, 1989, in his answer to Question 32 which sought to know if his security clearance had ever been denied, suspended or revoked. Applicant claims he did not know he was denied while he worked for an aircraft manufacturer. (Tr. 58, 59, 65, 66; Exhibits 1, 14, 15)

Applicant claims he did not directly complete the SCA, but that his company had another employee take down information from him and other employees. That employee then prepared the SCA Applicant signed. Each SCA contains certification language that the statements on the SCA are true, complete, and correct to the best of Applicant's knowledge and belief, and that they are made in good faith. The SCA certification also warned Applicant that knowing and wilful false statements on the SCA can be punished under 18 U.S.C § 1001. Applicant signed the SCA and made the certification on September 3, 2002. (Tr. 60; Exhibit 1)

Applicant owes \$20,000 on two student loans that he took out for the 1986 drafting course and the 1990 commercial driver's license course. The original loans were about \$7,800 but interest and penalties increased the amount owed to \$20,000. Applicant contacted the lender to arrange repayment after he made his February 2004 statement to the Government investigator. Applicant wants to have the loans "discharged" because the schools are no longer in existence, but the lender wants payment of \$250 monthly for about 18 months. Then it will discuss a loan reduction if Applicant makes regular payments on that schedule, but he has not made any payments yet. (Tr. 52-54, 67-69; Exhibits 2, 13, 16)

Applicant currently owes about \$71,000 on his child support payments to his two former wives. His first marriage ended in divorce in 1988, and the second in 1996. He has paid child support off and on since 1998, but regularly by garnishment since 2002 at the rate of \$800 monthly. That amount is applied by the court to current obligations and arrearage amounts. The two oldest children are now over 21 years of age. He has a 24-year-old daughter from a relationship with a woman while he was stationed overseas with the Army and for whom he has never paid child support. Therefore, most of the \$800 he pays monthly goes toward the arrearage debts. (Tr. 54-57, 63; Exhibits 2, 13, 16,

A)

Applicant submitted several certificates of training and appreciation, letters of recommendation from his supervisors, and co-workers extolling Applicant's character and "superb performance" at work. They write of his professional demeanor and excellent work in structural engineering. (Exhibits B-L)

### 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 the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information with Industry*

§ 2 (Feb. 20, 1960). 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 adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (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 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 (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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 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 establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at \*\*6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "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* Exec. Or. 12968 § 3.1(b).

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

Guideline H: Drug Involvement: *The Concern. Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.* E2.A8.1.1

Guideline E: Personal Conduct: *The Concern: 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.* E2.A5.1.1

Guideline F: Financial Considerations: *The Concern: An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.* E2.A6.1.1

In 2000, a federal statute was enacted that prohibited the Department of Defense from granting or continuing a security clearance for any applicant who is an unlawful user of, or is addicted to, a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802). 10 U.S.C. § 986(c)(2) (2004).

### CONCLUSIONS

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Those allegations were numerous incidents in Applicant's life showing a pattern of behavior that gave rise to the Government's concern on drug involvement, personal conduct for false answers to his SCA, and financial delinquencies for unpaid child support.

Considering the drug involvement security concern, Applicant has a 28 year history of illicit drug use over the past 34 years, and 10 enrollments in drug treatment programs between 1987 and 1996. He used cocaine, marijuana, hashish, and PCP at various times in his drug use history. He was diagnosed in several treatment programs as having polysubstance abuse dependence, or cocaine dependence conditions. He never completed a treatment program. His last program in 1996 he admitted he quit because he did not want to do what the program counselors told him he needed to do. Now he asserts he stopped his drug problem through sheer will power.

Disqualifying Conditions (DC) 1 (Any drug use. E2.A8.1.2.1) and DC 2 (Illegal drug purchase. E2.A8.1.2.2) apply. Applicant has evaluations of drug dependence from five drug treatment programs he attended, so DC 4 (Evaluation of drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program E2.A8.1.2.4) applies.

The Mitigating Conditions (MC) that might be applicable are MC 1 (The drug involvement is not recent. E2.A8.1.3.1) and MC 3 (A demonstrated intent not to abuse any drugs in the future. E2.A8.1.3.3). However, Applicant did not present a current evaluation to counter the five evaluations, and therefore, there is no written favorable prognosis or current information on Applicant's use or dependence on controlled substances. The burden is on Applicant to present persuasive evidence on his current drug involvement, if any, after these five diagnoses. He has not done so, and I am not persuaded in considering his history that any MC should apply, particularly that someone with a 28 year history of drug use and treatment program non-compliance could stop his drug use by his own will power alone. I am not persuaded that Applicant has mitigated these security concerns. 10 U.S.C. § 986(c)(2) would then apply also. Therefore, I conclude this security concern against Applicant.

The personal conduct security concern under Guideline E is based on Applicant's failure to disclose any unfavorable information on his September 2002 SCA. I conclude his failures to disclose his children, drug use, financial delinquencies, wage garnishments, termination by an employer in July 2000 for drug use, and his 1989 security clearance denial were deliberate, and DC 2 (The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, or similar form used to determine security clearance eligibility or trustworthiness E2.A5.1.2.2) applies. Applicant had a duty to make full disclosures on his SCA, to read the form fully and carefully before signing it, and in signing it he certified that the information on it was true, complete, and correct,

and the answers were made in good faith. I am not persuaded by Applicant's attempts to shift the obligation to provide a truthful SCA to someone his employer may have hired to take down information and put it on the SCA, and make himself a mere naive signatory. He had a clear duty in signing the SCA, and he violated that duty.

Applicant never disclosed anything unfavorable about himself on his SCA. Being persuaded by the evidence and his admissions the falsifications were deliberate, no MC can apply. Consequently, I conclude this security concern against Applicant.

The final security concern is Applicant's delinquent child support and education loan debts. All total about \$92,000 at the present time. He is paying by garnishment the \$71,000 owed on the past due child support, and nothing on the student loan. Disqualifying Conditions (DC) 1 (A history of not meeting financial obligations E2.A6.1.2.1) and DC 3 (Inability or unwillingness to satisfy debts E2.A6.1.2.3) apply.

Applicant is not making a good-faith effort to repay these debts. He has done nothing for 20 years on one student loan. He is only paying his delinquent child support because of a court-ordered garnishment. Therefore, no MC apply. I conclude this security concern against Applicant.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: Against Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: Against Applicant

Subparagraph 1.q: Against Applicant

Subparagraph 1.r: Against Applicant

Subparagraph 1.s: 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

Subparagraph 2.g: Against Applicant

Paragraph 3. Guideline F: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant

Subparagraph 3.b: Against Applicant

Subparagraph 3.c: Against Applicant

Subparagraph 3.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 interest to grant or continue a security clearance for Applicant. Clearance is denied.

Philip S. Howe

Administrative Judge

1. Pursuant to Exec. Or. 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).