

DATE: September 30, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-07486

## **DECISION OF ADMINISTRATIVE JUDGE**

**THOMAS M. CREAN**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Julie R. Edmunds, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant is a mechanic for a defense contractor. He was arrested and convicted four times for driving under the influence. He attended and completed two alcohol treatment programs, but continues to drink alcohol. He has delinquent debts that he has not satisfied or attempted to pay. He deliberately omitted three of his convictions for driving under the influence, and did not list all of his delinquent debts on his security clearance application. Clearance is denied.

### **STATEMENT OF THE CASE**

On March 23, 2005, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for 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 March 30, 2005. The SOR alleges security concerns under Guideline G (Alcohol Consumption), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) of the Directive.

Applicant answered the SOR in writing on April 14, 2005, admitting all of the allegations in the SOR. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the government's written case on June 15, 2005. As part of the government's case, Department Counsel moved to amend allegation 3.a. of the SOR to conform to the evidence in the file. Applicant received a complete file of relevant material (FORM) on June 28, 2005, and was provided the opportunity to file objections, to include the amendment of allegation 3.a. of the SOR, and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due on July 28, 2005. As of August 23, 2005, he had not responded, nor raise any objection to the amendment of the SOR. The motion to amend allegation 3.a. of the SOR is granted. The case was assigned to me on August 24, 2005.

## FINDINGS OF FACT

Applicant is 49 years old and has been a mechanic for a defense contractor for over 19 years.

He is divorced with two children, and has two years of college. He has held a security clearance since 1993. [\(1\)](#)

Applicant admitted he has been arrested and convicted for driving under the influence four times. In October 1991, he was arrested for and pled guilty to driving under the influence and was sentenced to community service, to pay a fine and court costs, to attend a driving under the influence class, and his driver's license was suspended for six months. In December 1994, Applicant was arrested for and pled guilty to driving under the influence, and was sentenced to attend a driving under the influence class, to pay a fine and court costs, and his driver's license was suspended for one year. [\(2\)](#) In December 1996, Applicant was arrested for and convicted of driving under the influence and driving with a suspended or revoked driver's license, and sentenced to pay a fine and court costs. [\(3\)](#) In November 2000, Applicant was arrested for and convicted of driving under the influence and driving on a revoked or suspended driver's license, and sentenced to a jail term, probation, community service, to pay a fine and court costs, attend a driving under the influence school, and his driver's license was permanently revoked. [\(4\)](#)

In August 1995 after his second conviction for driving under the influence, Applicant was treated at a behavioral health medical facility. He was diagnosed by a medical treatment professional as alcohol dependent. [\(5\)](#) Applicant successfully completed the program and was discharged. [\(6\)](#)

In August 2001 after his fourth driving under the influence offense, Applicant was again treated at the same behavioral health medical facility. He was diagnosed as alcohol dependent. [\(7\)](#)

He successfully completed the program, and was directed to continue to attend Alcoholics Anonymous. [\(8\)](#) Since completion of the program, Applicant admits he still drinks about two beers a day, but does not abuse alcohol or drink before or at work. [\(9\)](#)

Applicant admitted in his answer to the SOR that he has a number of delinquent debts that have not been satisfied. From October 2001 to March 2002, he failed to pay his monthly mortgage payments of \$998.00. Foreclosure action was started, but Applicant did bring his mortgage current by using funds from his 401k retirement account. Applicant again admitted he did not pay his monthly mortgage of \$998.00 from March 2003 to December 2003. Foreclosure action was again started, and he contacted a financial company to assist him in paying his mortgage. [\(10\)](#) Applicant presented no information concerning payments on this delinquent mortgage account, or the status of his mortgage. He admitted in his answer to the SOR to the other delinquent debt allegations in the SOR, and provided no information on attempts to pay the debts.

Applicant completed a security clearance application on Oct. 30, 2002, and re-executed the same application on June 22, 2004. In response to question 24 asking if he had ever been charged with or convicted of any offense related to drugs or alcohol, Applicant only listed his driving under the influence arrest in 1991 and not the arrests for driving under the influence in 1994, 1996, and 2000. [\(11\)](#) Applicant admitted that he omitted these offenses from the application hoping they would not be discovered, and because he realized the admission of the offenses would jeopardize his job. [\(12\)](#) On the same security clearance application, Applicant admitted he failed to list his debts delinquent over 180 days in the last seven years in response to question 38, and his current debts delinquent over 90 days in response to question 39.

Applicant admitted to continuing to drive his car while his driver's license was suspended and revoked. He admitted to driving on a suspended license and drinking alcohol before driving. He admitted to driving with a revoked license with his children in the vehicle, but not after drinking. He states he no longer drives, but has his son, who is old enough for a driver's license, run errands for him. [\(13\)](#)

## 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>(14)</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>(15)</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>(16)</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>(17)</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>(18)</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>(19)</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>(20)</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>(21)</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>(22)</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>(23)</sup>

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

**Guideline G - Alcohol Consumption:** A security concern exists because excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

**Guideline F - Financial Considerations:** A security concern exists for an individual who is financially irresponsible. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

**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 guidelines are 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 G. Applicant's four arrests for driving under the influence of alcohol; two referrals and treatment at a medical facility, and diagnosis of alcohol dependence by medical professionals; and his admission that he continues to drink alcohol after a diagnosis of alcohol dependence brings the matter under Alcohol Consumption Disqualifying Conditions E2.A7.1.2.1 (*alcohol-related incidents away from work, such as driving under the influence, . . .*); E2.A7.1.2.4 (*evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*); and E2.A7.1.2.6 (*consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*). Applicant admitted to the four driving while intoxicated offenses, and to continuing to drink alcohol after diagnosis of alcohol dependence. The government presented the diagnosis of alcohol dependence by a licensed clinical social worker for a recognized alcohol treatment program. The above disqualifying conditions have been established.

I have considered Alcohol Consumption Mitigating Conditions E2.A7.1.3.1 (*the alcohol-related incidents do not indicate a pattern*); E2.A7.1.3.2 (*the problem occurred a number of years ago and there is no indication of a recent problem*); E2.A7.1.3.3 (*positive changes in behavior supportive of sobriety*); and E2.A7.1.3.4 (*following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program*) and determine none of the mitigating conditions apply to Applicant. Four driving while intoxicated offenses and two treatments at a recognized alcohol medical treatment program indicates a pattern of alcohol abuse. Applicant's last driving while intoxicated offense and latest treatment for alcohol dependency were over four years ago, but he continues to drink alcohol indicating a potential recent problem and does not support sobriety. He has not abstained from the consumption of alcohol after the diagnosis of alcohol dependence, and has not received a favorable prognosis concerning his alcohol dependence from a medical professional.

The government has established its case under Guideline F. Applicant's admission of current delinquent debts, and the foreclosures of his mortgage brings the matter under Financial Considerations Disqualifying Conditions E2.A6.1.2.1 (*a history of not meeting financial obligation*); and E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*). Applicant admitted the delinquent debts and the government presented a credit bureau report listing the debts as delinquent, so the above disqualifying conditions have been established. Even though Applicant presented no evidence to mitigate the financial concerns, I have considered Financial Considerations Mitigating Conditions E2.A6.1.3.3 (*the behavior was not recent*); E2.A6.1.3.2 (*it was an isolated incident*); and E2.A6.1.3.6 (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant offered no information to explain the circumstances of the debts. He only presented evidence that he stopped the first attempt to foreclose on his mortgage by borrowing from his retirement account. He not only presented no evidence of good-faith efforts to pay the debts, but any efforts to pay the debts. I conclude Applicant has not mitigated the financial security concerns.

Applicant's false answers to questions on his security clearance application, his driving on a revoked or suspended driver's license, and his arrests and convictions for driving under the influence brings the matter under Personal Conduct Disqualifying Conditions E2.A5.1.2.1 (*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*); and 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 conduct investigations, . . . determine security clearance eligibility or trustworthiness*). Applicant's admissions that he drove a vehicle while his driver's license was revoked or suspended, and had four arrests and convictions for driving while intoxicated are reliable unfavorable information concerning Applicant. Applicant admitted to deliberately omitting relevant and material information from his security clearance application by listing only one of his four driving while intoxicated offenses. The above disqualifying conditions have been established. Applicant has not presented any information to mitigate the disqualifying conditions. However, I have considered Personal Conduct Mitigating

Conditions E2.A5.1.3.3 (*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*); and E2.A5.1.3.3 (*the individual made a prompt, good-faith efforts to correct the falsification before being confronted with the facts*). The information concerning the driving while intoxicated offenses, especially three of them, is relevant and pertinent to a determination of Applicant's judgment, trustworthiness, and reliability. Applicant did not disclose the correct information until confronted with the facts by security investigators. Applicant has not presented information to mitigate the security concerns.

I carefully considered all of the circumstances on 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 set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

#### Paragraph 1, Guideline G: 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

#### Paragraph 2, Guideline F: 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

#### Paragraph 3, Guideline E: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

Subparagraph 3.d.: Against Applicant

Subparagraph 3.e.: Against Applicant

Subparagraph 3.f.: Against Applicant

**DECISION**

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

Thomas M. Crean

Administrative Judge

1. Item 4 (Security Clearance Application, dated Oct 30, 2002).
2. Item 5 (Applicant's statement, dated Dec. 4, 2003) at 2-4.
3. Item 8 (Citation, dated Dec 23, 1996).
4. Item 9 (Citation and probation order, dated Jul 7, 2000).
5. Item 6 (Clinical report, dated Aug, 17, 1995).
6. Item 7 (Medical discharge directive, undated).
7. Item 10 (Clinical report, dated Aug. 28, 2001).
8. Item 11 (Discharge directions, dated Jan 23, 2002).
9. Item 5 (Applicant's statement, dated Dec. 4, 2003), at 5.
10. *Id.* at 1-2.
11. Item 4 (security clearance application ,dated Jun. 22, 2004).
12. Item 5 (Applicant's statement, dated Dec. 4, 2003) at 7.
13. *Id.* at 6.
14. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
15. Directive ¶ E2.2.1.
16. *Id.*
17. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
18. *See* Exec. Or. 10865 § 7.
19. Directive ¶ E3.1.14.
20. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
21. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
22. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
23. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.