

DATE: September 14, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 04-11445

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 45 years old and has been employed since 2002 as an outside machinist for a defense contractor. He has excessively consumed alcohol at times, and convicted for driving under the influence. He has numerous delinquent and unpaid debts totaling more than \$4,600, even though his financial statement shows a positive net remainder of \$281 every month. He deliberately falsified questions on his security clearance application. Applicant has not mitigated security concerns. Clearance is denied.

STATEMENT OF THE CASE

On November 18, 2002, Applicant applied for a security clearance and completed a Security Clearance Application (SF 86).⁽¹⁾ On August 8, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), Guideline F (Financial Considerations), and Guideline E (Personal Conduct) 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, and recommended referral to an Administrative Judge to determine whether a clearance should be granted or revoked.

In a sworn, written statement, dated August 22, 2005, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.⁽²⁾ Department Counsel submitted the Government's written case on June 8, 2006. A complete copy of the file of relevant material (FORM)⁽³⁾ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded and submitted two documents which were received without an objection by Department Counsel. The case was assigned to me on July 18, 2006.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to criminal conduct under Guideline J (subparagraphs 1.a through 1.h), and financial considerations under Guideline F (subparagraphs 3.a through 3.h). He denied the factual allegations pertaining to alcohol consumption under Guideline G (subparagraphs 2.a and 2.b), and personal conduct under Guideline E (subparagraphs 4.a through 4.c). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is 45 years old and is employed as an outside machinist by a defense contractor. He was a petty officer second class (E-5) in the U.S. Navy from 1978 until his honorable discharge in 1998, having previously held a security clearance during that time without an adverse incident or problem. He divorced his first wife in 2000 and has since remarried.

Applicant's problems fall into four areas: (1) excessive alcohol consumption, (2) criminal incidents of assault, (3) financial difficulties, and (4) falsification of his SF 86. Applicant's alcohol-related offenses began with a June 1982 arrest and conviction for driving under the influence (DUI). He received a sentence of two weeks in jail. Later, in November 1992, he was again arrested and convicted of DUI. That incident occurred shortly after he had participated in an inpatient substance abuse treatment program with the U.S. Navy. In May 2003, he was once again arrested for DUI, as well as for carrying a concealed weapon. On August 6, 2003, he was found guilty of both charges, assessed fines and court costs totaling \$439, sentenced to six months in jail (suspended), placed on unsupervised probation for 12 months, had his driver's license restricted, directed to attend an alcohol program, and his weapon was confiscated. Applicant has undergone both court-ordered and military service-directed alcohol education and treatment programs on three occasions (1991, 1992, and 2003), including an inpatient treatment program at an alcohol rehabilitation center while serving on active duty in the U.S. Navy. He denies any current alcohol abuse and maintains that he has been sober and alcohol-free since October 2004.

Moreover, Applicant was arrested in 1983, 1984, and 1988 for simple assault. All these disputes involved his former wife. He contends that these incidents were not alcohol-related.

A third problem facing Applicant involves his finances. He owes approximately \$4,600 to eight different creditors. This debt includes \$968 for 20 returned checks with one retail store. He fell behind in paying his financial obligations, which included child support.⁽⁴⁾ The bankruptcy was precipitated because he had just retired from the U.S. Navy and could not find a job that paid a comparable salary. He reported assets of approximately \$121,351 and liabilities of approximately \$129,722.⁽⁵⁾ On September 9, 1998, Applicant filed for Chapter 7 Bankruptcy. Consequently, on December 12, 1998, his debts were discharged. He was late paying his rent approximately 34 times between November 1999 and August 2004. He indicated that he paid his rent late because his wages were being garnished due to state taxes owed, but even late, he always paid his rent. Applicant's personal financial statement, dated July 2004, shows a positive net remainder of \$281 each month.⁽⁶⁾

In his SF 86 dated November 18, 2002, Applicant falsified material facts in response to Question 24, which requested disclosure for charges or convictions related to alcohol or drugs. He failed to disclose his alcohol-related arrests for DUI in 1985 and 1986. Moreover, he failed to disclose the true extent of his financial problems on his SF 86. In response to Question 40 regarding disclosure of civil court actions, he failed to disclose the following: (1) approximately four judgments entered against him between approximately July 2001 and January 2003 in favor of Northampton Village, and (2) approximately two judgments entered against him in 2001 in favor of Weinstein Mortgage.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and

surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁷⁾ The government has the burden of proving controverted facts.⁽⁸⁾ The burden of proof is something less than a preponderance of evidence.⁽⁹⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽¹⁰⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹¹⁾

No one has a right to a security clearance⁽¹²⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹³⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽¹⁴⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽¹⁵⁾ 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.

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

Guideline J (Criminal Conduct): *The Concern:* A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

Guideline G (Alcohol Consumption): *The Concern:* 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): *The Concern:* An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal.

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.

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 below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards, and I reach the following conclusions.

Criminal Conduct

Under Guideline J, a history or pattern of criminal activities creates doubt about a person's judgment, reliability, and trustworthiness. From 1982 to 2003, Applicant was arrested eight times, including three convictions for DUI and three domestic assaults. Applicant admitted all the criminal conduct allegations in the SOR. Therefore, Criminal Conduct Disqualifying Conditions (CC DC) E2.A1.1.2.1 (*allegations or admission of criminal conduct, regardless of whether*

the person was formally charged) and CC DC E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*) apply.

Various conditions can mitigate security concerns arising from criminal conduct. Applicant's criminal behavior of abusing alcohol started in 1982. Although the assault arrests are nearly two decades old, he was most recently arrested in May 2003 for DUI and carrying a concealed weapon, which occurred just five months after completing his SF 86. The 2003 incident is recent. Moreover, Applicant's claim that he has been alcohol-free for one year is too recent to see if he is rehabilitated. Thus, neither a finding under Criminal Conduct Mitigating Condition (CC MC) E2.A10.1.3.1 (*the criminal behavior was not recent*) nor CC MC E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*) applies. Applicant has not mitigated the Government's case under criminal conduct. Accordingly, allegations 1.a through 1.h of the SOR are concluded against Applicant.

Alcohol Consumption

Under Guideline G, a security concern exists for an individual who excessively consumes alcohol because it 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. Applicant has a history of alcohol abuse, including five arrests that were alcohol-related and three convictions for DUI. Accordingly, Alcohol Consumption Disqualifying Conditions (AC DC) E2.A7.1.2.1 (*alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*) and AC DC E2.A7.1.2.5 (*habitual or binge consumption of alcohol to the point of impaired judgment*) apply here.

Applicant maintains that he has been sober and alcohol-free since October 2004. His recent period of claimed sobriety is less than two years and an insufficient amount of time has passed to see if he is rehabilitated and will maintain sobriety for any significant period of time. He has undergone both court-ordered and military service directed alcohol education and treatment programs on three occasions, including an inpatient treatment program at an alcohol rehabilitation center while serving on active duty in the U.S. Navy; yet, he continued to drink. Applicant has failed to demonstrate an appropriate level of self-discipline when consuming alcohol that would now reasonably lead to a conclusion that he is somehow rehabilitated. Thus, Alcohol Consumption Mitigating Conditions (AC C) E2.A7.1.3.1 (*the alcohol-related incidents do not indicate a pattern*), AC MC 2 (*the problem occurred a number of years ago and there is no indication of a recent problem*), and AC MC E2.A7.1.3.3 (*positive changes in behavior supportive of sobriety*) do not apply. Applicant has not mitigated the Government's concerns. Accordingly, allegations 1.a and 2.b of the SOR are concluded against Applicant.

Financial Considerations

Under Guideline F, a security concern exists for an individual who is financially overextended. This person is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information.

In September 1998, Applicant filed Chapter 7 bankruptcy and his debts totaling approximately \$129,722 were discharged in December 1998. Applicants are not denied security clearances because they file for bankruptcy. It is the underlying financial situation that is the basis for denials. The bankruptcy is merely evidence of how an applicant's financial situation has changed, or not, as a result of his exercise of this option. ⁽¹⁶⁾ Here, Applicant admits that he has had financial problems since the bankruptcy because he cannot manage his money well. He owes approximately \$4,600 to eight different creditors, and that amount included more than 20 bad checks written to the same creditor. Thus, Financial Considerations Disqualifying Conditions (FC DC) E2.A6.1.2.1 (*a history of not meeting financial obligations*) and FC DC E2.A6.1.2.3 (*inability or unwillingness to satisfy debts*) apply.

Various conditions can mitigate security concerns arising from financial difficulties. After one bankruptcy discharged his debts, Applicant continued to have debts that went unpaid. After his expenses, he has a monthly net remainder of approximately \$281, which is not being used to pay off his delinquent debts. Applicant acknowledged these debts as valid, the record is devoid of evidence of his plan to pay his creditors in the near future. Moreover, the evidence demonstrates that Applicant is an example of an individual who could benefit from financial counseling. He needs to

fully understand how money should be handled properly within the context of the dynamics of earning, budgeting, and spending responsibly. Thus, I cannot find that Financial Considerations Mitigating Conditions (FC MC) E2.A6.1.3.3 (*the conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation)*), FC MC E2.A6.1.3.4 (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*), or FC MC E2.A6.1.3.6 (*the individual initiated a good faith effort to repay overdue creditor*) apply. Applicant has not mitigated the Government's case. Accordingly, allegations 3.a. through 3.h. of the SOR are concluded against Applicant.

Personal Conduct

Personal conduct is always a security concern because it asks the central question whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. Applicant's criminal record, eight arrests and five convictions, raises considerable concern about his judgment and reliability. In completing and submitting his most recent SF 86, and having certified that the information he was providing was complete and accurate, Applicant failed to disclose the true extent of his financial problems as well as his alcohol-related arrests in 1985 and 1986. This conduct creates the impression that he failed to fully disclose this information in order to enhance his chances of a favorable security clearance. Therefore, Personal Conduct Disqualifying Condition E2.A5.1.2. (*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 employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. None of the Personal Conduct Mitigating Conditions apply in this case. Under these circumstances, Applicant has failed to mitigate or overcome the Government's case. The evidence leaves me with doubts as to Applicant's security eligibility and suitability. Accordingly, allegations 4.a. and 4.b of the SOR are concluded against Applicant.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I conclude that Applicant has not mitigated security concerns because of his criminal activity, which included incarceration, his excessive consumption of alcohol at times, his delinquent and unpaid debts totaling more than \$4,600, and his deliberate falsification of questions on his SF 86. It is clearly not consistent with the national interest to grant Applicant a security clearance. For the reasons stated, I conclude Applicant is not suitable 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 J (Criminal Conduct): 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

Paragraph 2. Guideline G (Alcohol Consumption): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Paragraph 3. Guideline F (Financial Considerations): 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

Subparagraph 3.g: Against Applicant

Subparagraph 3.h: Against Applicant

Paragraph 4. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 4.a: Against Applicant

Subparagraph 4.b: Against Applicant

Subparagraph 4.c: Against Applicant

DECISION

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

Jacqueline T. Williams

Administrative Judge

1. Item 5 (Security Clearance Application, dated November 18, 2002).
2. Item 4 (Applicant's Answer, dated August 22, 2005).
3. The Government submitted 13 items in support of the allegations.
4. Item 6 (Applicant's sworn statement, dated July 28, 2004).
5. Item 13 (Chapter 7 Discharge of Debtor, dated December 18, 1998), one page.
6. Item 6, *supra*, at 5.
7. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
8. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, ¶ E3.1.14.

9. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
10. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, ¶ E3.1.15.
11. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, ¶ E3.1.15.
12. *Egan*, 484 U.S. at 531.
13. *Id.*
14. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
15. Executive Order 10865 § 7.
16. *See* ISCR Case No. 97-0016, 1997 DOHA LEXIS 885 at **10-11 (App. Bd. Dec. 31, 1997).