

DATE: April 26, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-00678

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer Campbell, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's history of criminal conduct, involving eleven arrests and eight convictions for various criminal offenses, a history of financial irresponsibility and personal conduct involving falsifications and dishonesty on his security clearance application concerning his arrest and financial history, have not been mitigated by sufficient evidence of rehabilitation. Clearance is denied.

**STATEMENT OF THE CASE**

On August 18, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on September 30, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on December 1, 2005. A notice of hearing was issued on February 7, 2006, and the hearing was scheduled for February 28, 2006. At the hearing the Government presented twelve exhibits. The Applicant presented four exhibits and testified on his own behalf. The official transcript (Tr.) was received on March 13, 2006.

**FINDINGS OF FACT**

The following Findings of Facts are based on the Applicant's Answer to the SOR, the documents and the testimony. The Applicant is 39 years old and married. He is employed as a Aviation Ordnanceman for a defense contractor. He seeks to obtain a security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the

Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant admits to each of the allegations set forth under this guideline. He served in the United States Navy from 1989 until 1991. He was arrested on eleven separate occasions between arch 1989 and September 2001. (*See Applicant's Exhibits 9, 10 and 11*). He explained that he was a victim of a shooting and he had a lot of resentment for a lot of people. He was depressed and did not have a care in the world until one day he woke up and decided to do something. (Tr. pp. 63-64)

The Applicant was first arrested in March 1989 and charged with (1) Possession of Base/Rock Cocaine for Sale and (2) Carry Loaded Firearm in Public Place. The charges were dismissed. Several days later, he was arrested a second time in March 1989 and charged with Burglary. This charge was also dismissed. The Applicant believes he was a victim of racial profiling.

In February 1992, the Applicant was arrested and charged with (1) Carry Concealed Weapon on Person and (2) Carry Loaded Firearm in a Public Place. He was found guilty of count (1) and received a Suspended Imposition of Sentence. He was placed on two years probation and sentenced to 115 days in jail. Count (2) was dismissed.

In January 1993, the Applicant was arrested and charged with Battery. He pled nolo contendere and was sentenced to ten days in jail.

A month later, in February 1993, he was arrested and charged with Drinking on Public Property. He pled nolo contendere and was sentenced to fifteen days in jail.

Two months later, in April 1993, the Applicant was arrested and charged with (1) Possession/Manufacturing/Sell Dangerous Weapon and (2) Divided Highways. He pled nolo contendere to count (1) and was sentenced to fifteen days in jail. Count 2 was dismissed.

A year later, the Applicant was arrested again in April 1994, and charged with Registration Required and two counts of Driving With Suspended License. He pled nolo contendere to one count of Driving with Suspended License and was fined a total of \$811.00. He failed to appear for his fine payment and a bench warrant was issued for failing to appear. In May 1996, his probation was terminated and he was sentenced to twenty days in jail. Counts (1) and (2) were dismissed.

The Applicant was arrested in July 1997 and charged with (1) Assault With Deadly Weapon /Instrument and (2) Reckless Driving/No Injury. He pled nolo contendere to count (2) and received a Suspended Imposition of Sentence. He was placed on three years probation, sentenced to fifteen days in jail and ordered to pay restitution. Count (1) was dismissed.

In April 1999, he was arrested and charged with Failure to Prove Financial Responsibility. He was found guilty and fined. In May 1999, he was arrested and charged with Obstruct Public Officer. In September 2001, he was charged with Public Intoxication: Drugs/Alcohol. He pled nolo contendere and was fined \$50.00.

Paragraph 2 (Guideline F -Financial Conduct). The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and is at risk of having to engage in illegal acts to generate funds.

The Applicant denies each of the allegations set forth under this guideline. Following his military service from 1989 until 1991, the Applicant had periods of unemployment and underemployment and he could not afford to pay all of his bills. He became indebted to a tow company in the amount of \$654.00, the government for a student loan in the amount of \$2,553.00, and a bank in the amount of \$13,463.00 for the deficiency judgment on a car that was repossessed. (*See Government Exhibits 3 and 4*). The Applicant has paid the student loan debt to the government. (*See Applicant's Exhibit A*). The other two debts remain outstanding. (*See Applicant's Exhibit D and Government Exhibits 3 and 4*). The Applicant contends that he contacted an attorney regarding his debt to the tow company and was told not to honor it. He is disputing the debt with the credit reporting agencies. (Tr. p. 36). He further testified that he is now paid once a week

and is able to save three paychecks a month to spend on his family and to pay his bills. (Tr. p. 40).

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant denies each of the allegations set forth under this guideline. The Applicant completed an electronic Security Clearance Application (Standard Form 86) dated July 8, 2003. Question 22 of the application asked the Applicant if he has ever been charged with or convicted of any offenses related to alcohol and drugs. The Applicant answered, "NO". This was a false answer. The Applicant failed to disclose that he had been charged with two firearm offenses, one in 1989 and the other in 1992. (See Government Exhibits 9, 10 and 11 and Applicant's Answer to SOR).

The same questionnaire, question 24, asked the Applicant if he has ever been charged with or convicted of any offenses related to alcohol or drugs. The Applicant answered, "NO". This was a false answer. The Applicant failed to list his three arrests, a drug related arrest in 1989, a drug related arrest in 1993, and a drug and alcohol related arrest in 2001. (See Government Exhibits, 9, 10 and 11 and Applicant's Answer to the SOR). The Applicant explained that he did not think he had to list the information because the matters were dismissed. (Tr. P. 50). He also stated that he did not read the questions fully and the application became confusing. (Tr. p. 51).

Question 26, asked the Applicant if in the last seven years he had been arrested for, charged with, or convicted of any offenses(s) not listed in modules 21, 22, 23, 24, or 25? The Applicant answered, "NO". This was a false answer. The Applicant failed to disclose that he had been arrested and charged in 1997, and twice in 1999. (See Government Exhibits 9, 10 and 11 and Applicant's Answer to SOR). The Applicant explained that he did not really think it mattered and so he did not list the information. (Tr. p. 57).

Question 38 asked in the Applicant if in the last seven years he had been over 180 days delinquent on any debts. He answered, "NO". This was a false answer. The Applicant was in fact delinquent on the debts set forth in the SOR. (See Government Exhibits 3 and 4). The Applicant stated that he forgot about his student loan and was not aware of his other delinquent debts. (Tr. p. 60).

Question 39 asked the Applicant if he was currently over 90 days delinquent on any debts. The Applicant answered, "NO". This was a false answer. The Applicant was in fact delinquent on the debts set forth in the SOR. (See Government Exhibits 3 and 4). The Applicant explained that he forgot about his student loan and was not aware of his other delinquent debts. (Tr. .60).

The Applicant explained that when he filled out the security clearance application, it was not his intention to deceive the government. Based upon the evidence, I find that the Applicant knew or should have known to reveal his criminal record to the government in response to questions 22, 24 and 26 and that he should also have known to be honest about his financial situation in response to questions 38 and 39. I do not find the Applicant's excuses credible. Accordingly, I find that the Applicant deliberately attempted to conceal this information from the Government on his security clearance application.

### **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

#### **Guideline J (Criminal Conduct)**

##### **Conditions that could raise a security concern:**

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

Condition that could mitigate security concerns:

None.

Guideline F (Financial Considerations)

Conditions that could raise a security concern:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts.

Condition that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

Condition that could raise a security concern:

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.

Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information

is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

## CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in criminal conduct, financial irresponsibility and dishonesty that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in criminal conduct (Guideline J); financial indebtedness (Guideline F) and dishonesty (Guideline E). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines J, F and E of the SOR.

The Applicant's criminal history involving eleven arrests and charges, resulting in eight convictions, some of which are serious offenses, span over a ten year period from 1992 until 2002. The first conviction occurred when the Applicant was 25 years old, the most recent occurred when the Applicant was 35 years old. Taken together, Applicant history and pattern of criminal conduct establishes that the exercise of poor judgment by him is not an aberration, but has been a basic part of Applicant's character for almost all of his adult life.

Under Guideline J (Criminal Conduct), Disqualifying Conditions (1) *any criminal conduct, regardless of whether the person has been formally charged* and (2) *a single serious crime or multiple lesser offenses* are clearly applicable. None of the mitigating conditions apply. The Applicant's behavior indicates a pattern of intentional illegal or irresponsible conduct that raises serious doubt about his judgment, reliability and trustworthiness. The Applicant's last arrest for criminal conduct occurred in 2001, five years ago. However, in the context of so many criminal acts over so long a period, there is no substantive indication of a fundamental change in the Applicant's thinking process or character. On this basis, I conclude that the criminal conduct remains current and is clearly not an isolated incident (Mitigating Condition 1 and 2). There is also no clear indication of the Applicant's rehabilitation. Accordingly Guideline J is found against the Applicant.

The Applicant's financial situation has only slightly improved. He has paid one of the three creditors listed in the SOR. Two debts that total in excess of \$14,000.00 remain owing and delinquent. He has failed to set forth any plan as to how or when his debts will be paid. Disqualifying Conditions (1) A history of not meeting financial obligations, and (3) Inability or unwillingness to satisfy debts apply. None of the mitigating conditions are applicable. Accordingly, Guideline F is found against the Applicant.

With respect to Guideline E, it is unclear from the record why the Applicant did not reveal his complete criminal history in response to questions 22, 24 and 26 or his financial record in response to questions 38 and 39 on his security clearance application. He was not candid, honest or forthcoming. With the particular evidence that I have been provided,

however, there is no reasonable excuse for his failure to answer the questions truthfully. Consequently, the evidence shows that the Applicant has not been completely honest with the Government regarding his criminal history and he sought to conceal the truth. Disqualifying Condition (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 mitigating conditions are applicable. I find that the Applicant deliberately failed to reveal this information to the Government.

The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of his personal background. This Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1, 2, and 3 of the SOR.

### **FORMAL FINDINGS**

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g.: Against the Applicant.

Subpara. 1.h.: Against the Applicant.

Subpara. 1.i.: Against the Applicant.

Subpara. 1.j.: Against the Applicant.

Subpara. 1.k.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: For the Applicant.

Subpara. 2. c.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant.

Subpara. 3.b.: Against the Applicant.

Subpara. 3.c.: Against the Applicant.

Subpara. 3.d.: Against the Applicant.

Subpara. 3.e.: Against the Applicant.

**DECISION**

In light of all 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 the Applicant.

Darlene Lokey Anderson

Administrative Judge