

DATE: October 30, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-00702

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

John B. Glendon, Esquire, Department Counsel

Peregrine D. Russell-Hunter, Esquire, Chief Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's March 2002 arrest for cocaine possession and his adverse employment history disqualify him for a security clearance. Clearance denied.

**STATEMENT OF THE CASE**

Applicant challenges the 1 August 2005 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of criminal conduct and personal conduct.<sup>(1)</sup> Applicant answered the SOR on 6 August 2005 and requested a hearing. DOHA assigned the case to me 8 February 2006 and I convened a hearing 30 March 2006. DOHA received the transcript 10 April 2006.

**FINDINGS OF FACT**

Applicant admitted the allegations of the SOR, except for allegations he falsified information during a subject interview in January 2004 (SOR 1.d. and 1.e).<sup>(2)</sup> Accordingly, I incorporate his admissions as findings of fact. He is a 36-year-old security guard, seeking to retain the clearance he has held since approximately January 2001.

In June 2000, Applicant was fired from his job as a security officer for an unexcused absence from work. Applicant explained that he was working two security guard positions at the time, was held overtime at his first job, and thus unable to go to his second job. However, part of the reason he was fired from the second job was that he did not inform his employer that he was not going to appear for work as scheduled. In June 2002, he was counseled at his other job for failing to answer his radio and report for inspection. In October 2002, this employer again counseled him for refusing an order and failing to follow post duties.

In March 2002, Applicant was arrested and charged with possession of crack cocaine. He eventually pleaded guilty on advice of counsel, was fined, and given probation before judgment. Ultimately, he had his criminal record expunged.

The precipitating event for the March 2002 arrest was Applicant's single vehicle accident, in which he skidded off the roadway and crossed two grass median strips before crashing into a parked car and security gate at the entrance to an automobile dealership. The investigating officer observed Applicant standing next to his vehicle appearing lost and confused. However, Applicant declined offers of medical attention. Applicant's vehicle was not operable, and the investigating officer summoned a tow truck. He then began a pre-impoundment inventory of the vehicle's contents, during which he observed a soda can with several holes punched on the sides, and signs of fresh soot near the holes. Near the can the officer discovered a plastic baggie with a crystal substance he believed to be crack cocaine. Applicant was taken into custody and searched. Two similar baggies were discovered in the upper right pocket of Applicant's leather jacket. The crystal substances subsequently field tested positive for cocaine (G.E. 2). Applicant has never explained how he came to be involved in the accident in the first place. It does not appear that he was arrested for being under the influence of alcohol or drugs at the time of the accident.

Applicant vehemently insists that the cocaine found in his car was not his, and offers that it must have come from four teenagers who stopped at the scene of the accident before the police arrived. He offers no explanation why four teenagers who were not involved in the accident in any way, or required in any way to remain on the scene of the accident, would want to abandon their cocaine simply to implicate Applicant. Nor does he explain how cocaine was found in the breast pocket of his leather jacket, except to make the non-sequitur claim that he was not wearing the jacket at the time--a claim factually inconsistent with the investigating officer's report of his search. Further, the officer's statement of probable cause makes no mention of any other vehicles or persons at the scene of the accident.

### **POLICIES AND BURDENS**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline J (Criminal Conduct) and Guideline E (Personal Conduct) .

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>(3)</sup>

### **CONCLUSIONS**

The government established a case for disqualification under Guidelines J and E, and Applicant did not mitigate the conduct. Applicant's arrest for cocaine possession casts considerable doubt on his judgment and reliability.<sup>(4)</sup> Although the crime was an isolated incident and not recent,<sup>(5)</sup> any claim he has to rehabilitation<sup>(6)</sup> is severely undercut by his insistence that the cocaine was not his and offering an explanation that is both implausible and improbable.

Against this background, Applicant's disciplinary incidents with his two employers take additional security significance. He was fired from one security guard position for failing to report to work without notice. He was disciplined by his current employer for failing to comply with instructions and orders. (7) Although this conduct was not particularly recent, Applicant has produced no evidence--other than the absence of recurrence--to overcome the adverse security significance of his conduct. I resolve Guideline J and E against Applicant.

### **FORMAL FINDINGS**

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph a: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant

Subparagraph b: Against Applicant

Subparagraph c: Against Applicant

Subparagraph d: For Applicant

Subparagraph e: For 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 Applicant. Clearance denied.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. The government failed to produce any evidence of Applicant's alleged statements to a government investigator in January 2004. Accordingly, I find SOR 1.d. and 1.e. for Applicant.
3. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
4. E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged; E2.A10.1.2.2. A single serious crime or multiple lesser offenses.
5. E2.A10.1.3.1. The criminal behavior was not recent; E2.A10.1.3.2. The crime was an isolated incident;
6. E2.A10.1.3.6. There is clear evidence of successful rehabilitation.
7. E2.A5.1.2.1. Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances; E2.A5.1.2.5. A pattern of . . . rule violations. . .