

DATE: June 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-03829

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant admitted criminal conduct from 1984 until 2003. His admissions of criminal activity show a pattern of criminal conduct. He also gave false answers on his security clearance application about alcohol or drug related charges and delinquent debts. He has a history of unpaid debt. He failed to mitigate the security concerns about criminal conduct, personal conduct, and financial considerations. Because he served 14 months imprisonment, the provisions of 10 U.S.C. § 986 apply and he is ineligible for a security clearance. Clearance is denied.

STATEMENT OF THE CASE

On November 2, 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. The SOR alleged facts under Guideline J (criminal conduct), Guideline E (personal conduct), and Guideline F (financial considerations) which precluded DOHA from making a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted or denied.

On November 25, 2005, and December 14, 2005, Applicant responded to the allegations in the SOR, and requested a decision without a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's case, a copy of which was received by Applicant on March 21, 2006. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by April 22, 2006. Applicant filed no response to the FORM. The case was assigned to me on May 16, 2006.

FINDINGS OF FACT

Applicant has admitted to the SOR allegations in subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.h., 1.i., 1.j., and 1.k.

pertaining to Guideline J (criminal conduct), and denied all allegations pertaining to Guideline E (personal conduct), and denied all 34 allegations under Guideline F (financial considerations). His admissions are incorporated herein as findings of fact. I make the following additional findings of fact.

Applicant is a divorced, 50-year-old employee of a federal contractor seeking to obtain a security clearance.⁽¹⁾ He was employed by this contractor in December 2001.⁽²⁾

Criminal Conduct. He has a history of criminal conduct as shown in the following table.

SOR §	DATE	CRIME	PLEA/CONVICTION	JAIL/FINE/PROBATION
1.a.	1/1984	Poss/controlled substance	Diversion program	Type of probation; no charges
1.b.	8/1984	DUI	Guilty	12 days/\$1,000/3 yr prob; DL susp 1 yr
1.c.	12/1987	Poss/controlled substance	Guilty	2 years
1.d.	10/1988	Trafficking/control subs	Guilty	2 years; \$100 restitution
1.e.	5/1989	Sale of non-narcotic controlled substance	Guilty	2 years conc w/ 1987 plea; \$100; served 14 months
1.f.	8/1993	DUI	Dismissed	
1.g.	8/1994	Insuf Funds Check	warrant active as of 5/2004	
1.h.	7/1996	Drv while suspended		
1.i.	4/2002	DUI	Dismissed	
1.j., 1.k.	1/2003	Drv while suspended; seat belt violation	Found guilty	\$500 unpaid
1.l.	3/2004	False answers on SF 86	Not charges under 18 U.S.C. §1001	
1.m.		Served greater than 1 year incarceration	10 U.S.C. § 986	Ineligible for security clearance

He admitted all except the insufficient funds check. Because he served a term of incarceration greater than one year, the provisions of 10 U.S.C. § 986⁽³⁾ apply. In meritorious cases, this section authorizes the Secretary of Defense to issue a waiver. Applicant requested a waiver in his response to the SOR.⁽⁴⁾

Personal Conduct. He caused to be submitted an electronic security clearance application on March 8, 2004.⁽⁵⁾ The SOR paragraph 2 alleges three false answers on his security clearance application. He admitted to these in his answer to the SOR. Question 24 on the form asked:

Have you been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 212 U.S.C. 844 or 18 U.S.C. 3607.⁽⁶⁾

He answered "No." in response to Question 38. *"In the last 7 years, have you ever been over 180 days delinquent on any debt(s),"* Applicant answered "No". In response to Question 39. *"Are you currently over 90 days delinquent on any debt,"* he answered "No."⁽⁷⁾ He gave the same answers to substantially the same questions on an earlier security clearance application.⁽⁸⁾

Financial Considerations. SOR paragraph 3 enumerates 34 delinquent debts attributed to Applicant totaling \$17,804.46, as of June 2, 2005. He claimed he knew nothing about the debts until his DSS interview on May 8, 2003.⁽⁹⁾

I was living in Montana at the time. I do not recall the cable TV account. In any event, if the collection accounts are legitimate they are being paid through credit management. I acknowledge the remainder of the collection accounts. Most were from my time up in Montana. I was living with a woman with 7 kids and was trying to help her out financially. I had to take a lower paying job when I moved to Montana. I do recall there being late or delinquent bills when I lived in Montana. Since I left Montana in November '01, I have not incurred any other delinquent debt to the best of my knowledge. I have no credit cards or loans. I am trying to clean up my credit report by working with credit management and intend to continue to make my payments to them until the accounts are paid in full. [\(10\)](#)

His assumed she paid the bills. After he left Montana he continued to send her money. Although Applicant denied the debts in his answer to the SOR, in his statements he admitted he owed the debts. [\(11\)](#) In comparing the credit report of May 13, 2004, with the report of January 25, 2006, all but two debts on the 2004 report appear on the 2006 report. [\(12\)](#) The record is unclear whether these two debts were paid or merely dropped off the report due to their age. Three new debts appear on the 2006 report. He provided no documentary evidence to prove he paid any debts.

Applicant has had some periods of unemployment but does not list the dates. Between August 2002 and September 2004, he underwent seven financially debilitating heart surgery procedures, during which times of hospitalization and recovery he was unemployed. This only increased his inability to resolve debt. [\(13\)](#) However, there is no evidence of the financial impact of these periods of unemployment.

POLICIES

"[No] one has a 'right' to a security clearance." [\(14\)](#) 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." [\(15\)](#) The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential coercion, and willingness and ability to abide by regulations governing use, handling, and protection of classified information." [\(16\)](#) Eligibility for a security clearance may be adjudicated using the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future.

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. [\(17\)](#) 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. [\(18\)](#)

Once the government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. [\(19\)](#) An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." [\(20\)](#) A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his 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. [\(21\)](#) Decisions under this Directive include, by necessity, consideration of the possible risk an applicant

may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism.

Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under:

Guideline J (criminal conduct) E2.A10.1.1. (*A history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness*).

Guideline E (personal conduct) E2.A5.1.1. (*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*).

Guideline F (financial considerations) E2.A6.1.1. (*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 acts*).

CONCLUSIONS

Criminal Conduct

The government established its case under Guideline J. Applicant admitted 10 of 11 charges against him. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations or admissions of criminal conduct, regardless whether the person was formally charged*) applies. Because he served 14 months incarceration, he is ineligible for a security clearance under 10 U.S.C. § 986. False answers on a security clearance application constitute a violation of 18 U.S.C. § 1001, also a crime. This allegation is proved as noted below.

Criminal Conduct Mitigating Conditions E2.A10.1.3.1. (*The criminal behavior was not recent*) and CC DC E2.A10.1.3.2. (*The crime was an isolated incident*) fail because there is a pattern or history of criminal activity running from 1984 through 2003. The common denominators in most of these crimes are drugs and alcohol. There is no evidence of rehabilitation. I find against Applicant on Guideline J.

Personal Conduct

The government has established its case under Guideline E. Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*the deliberate omission, concealment, or falsification of relevant 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. He omitted his charges and/or convictions for DUI in 1984, possession of a controlled substance in 1987, sale of non-narcotic controlled substance in 1989, charges of a DUI in 1993 (dismissed), and a DUI charged in 2002 (dismissed).

Applicant claims he omitted the debts because he did not know about them until his DSS interview on May 8, 2003. The problem for Applicant is that he prepared a security clearance application in 2001, his interview was in 2003, and he answered these three questions on his 2004 security clearance application the same as he did on his 2001 application. Based upon the evidence in the record, the answers are false and it evidences Applicant's lack of honesty and untruthfulness. No mitigating conditions apply. I conclude Guideline E against Applicant.

Financial Considerations

The government established its case under Guideline F. Financial Considerations Disqualifying Condition (FC DC) E2.A6.1.2.1. arises where there is *(A history of not meeting financial obligations)*. Similarly, FC DC E2.A6.1.2.3. applies where the information shows an *(Inability or unwillingness to satisfy debts)*. The available information demonstrates Applicant has a history of not meeting his financial obligations. He has been delinquent in payments on numerous accounts.

Various conditions can mitigate the security concerns arising from financial difficulties. The Directive sets out Financial Considerations Mitigating Condition (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))*. Applicant has had some periods of unemployment. He had financially debilitating expenses incurred with several heart surgeries.

Given the wording of this mitigating condition, it is not unreasonable to construe it as covering a situation where the record evidence shows that events beyond an applicant's control resulted in, or significantly contributed to the applicant's debts becoming delinquent, the applicant becoming unable to deal with or otherwise address debts that had become delinquent previously, and the applicant incurring new, unforeseen debts that aggravate or exacerbate the applicant's financial situation. [\(22\)](#)

FC MC E2.A6.1.3.3. applies.

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)* might be applicable. Applicant says he has sought financial counseling but provided no documentary evidence to show how the plan resolves his indebtedness. FC MC E2.A6.1.3.4. does not apply.

FC MC E2.A6.1.3.6. *(The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve bad debts)* may apply. Notwithstanding his medical problems and his periods of unemployment, he has not provided satisfactory proof that his financial delinquencies are being resolved. The 2006 credit report indicates a lack of serious efforts at debt reduction. FC MC E2.A6.1.3.6. does not apply. I conclude Guideline F against Applicant.

I carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guideline. I also considered the whole person concept as contemplated by the Directive in ¶ 6.3. A fair and commonsense assessment of the positive and negative information about Applicant's history, his truthfulness with the security clearance process, his pattern of criminal conduct, the application of 10 U.S.C. 986, and his financial delinquencies, raise sufficient doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline J: 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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a. Against Applicant

Subparagraph 2.b. Against Applicant

Subparagraph 2.c. Against Applicant

Paragraph 3. Guideline F: 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
Subparagraph 1.t. Against Applicant
Subparagraph 1.u. Against Applicant
Subparagraph 1.v. Against Applicant
Subparagraph 1.w. Against Applicant
Subparagraph 1.x. Against Applicant
Subparagraph 1.y. Against Applicant
Subparagraph 1.z. Against Applicant
Subparagraph 1.aa. Against Applicant
Subparagraph 1.bb. Against Applicant
Subparagraph 1.cc. Against Applicant
Subparagraph 1.dd. Against Applicant
Subparagraph 1.ee. Against Applicant
Subparagraph 1.ff. Against Applicant
Subparagraph 1.gg. Against Applicant
Subparagraph 1.hh. Against 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 Applicant's security clearance. Clearance is denied.

Christopher Graham

Administrative Judge

1. Item 8 (*Applicant's Application for National Security Clearance SF86*, December 22, 2001) at 1-3.

2. *Id.* at 2.

3. 10 U.S.C. § 986 reads: "(1) has been convicted in any court of the United States of a crime, was sentenced to imprisonment for a term exceeding one year and was incarcerated as a result of that sentence for not less than one year."

4. Items 3 and 5 (Applicant's Answers, dated November 25, 2005, and December 14, 2005) at 3.

5. Item 13 (*Applicant's Security Clearance Application*, dated March 8, 2004) at 1.

6. Item 8, *supra*, note 1, at 8.

7. Item 8, *supra*, at 9.
8. Item 8, *supra*, note 1, at 1.
9. Item 12 (Applicant's Statement, dated May 8, 2003) at 2.
10. Item 12, *supra*, note 9, at 2.
11. Item 3, *supra*, at 2; Item 5, *supra*, at 3; Item 9 (Credit Report, dated December 31, 2001) at 3-6; Item 12 (Applicant's Statement, dated May 8, 2003) at 12; Item 14 (Credit Report, dated May 13, 2004) at 2-5; Item 16 (Personal Financial Statement, dated September 1, 2004) at 2; Item 17 (Applicant's Affidavit, dated September 2, 2004) at 1-3; Item 18 (Credit Report, dated June 2, 2005) at 1-2; and Item 19 (Credit Report, dated January 25, 2006) at 1-2.
12. Item 14, *supra*, note 8, at 2-5; Item 19, *supra*, note 8, at 1-2.
13. Item 17 (Affidavit of Applicant, dated September 2, 2004, at 9-12.
14. See *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1998).
15. *Id.*, at 527.
16. Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995).
17. *Egan, supra*, at 531.
18. See *ISCR Case No. 95-0611* at 2 (App. Bd. May 2, 1996).
19. See *ISCR Case No. 01-20700* at 3 (App. Bd. Dec. 19, 2002).
20. *Id.*, at 3.
21. See *Egan*; Directive ¶ E2.2.2.
22. *ISCR Case No. 02-25499* at 2 (App. Bd. June 5, 2006).