

DATE: November 3, 2006

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In Re:

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SSN: -----

Applicant for Security Clearance

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CR Case No. 05-10542

## **DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Candace Le'i, Esquire, Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

The Applicant has addressed all of his admitted past due debts. There was no wilful falsification when the Applicant executed his November 2003 Security Clearance Application (SCA), and no recent Drug Involvement, as alleged. However, the Applicant's past and continuing Criminal Conduct is another matter. He has a plethora of arrests and citations dating from 1988 until his last arrest in 2004. As a result of a 1994 conviction, the Applicant's driver's license was suspended. He has since been arrested or cited on eight occasions for driving without a license. He continues to drive without a license, and is contemplating changing his name in order to fraudulently obtain a new driver's license. Mitigation is not shown. Clearance is denied.

### **STATEMENT OF THE CASE**

On March 13, 2006, 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 the 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 a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on April 17, 2006.

The case was originally assigned to another Judge, but because of a last minute medical emergency, it was reassigned to the undersigned on September 19, 2006. A notice of hearing had already been issued on August 29, 2006, and the case was heard on September 20, 2006. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also submitted documentary evidence. The transcript (TR) was received on October 4, 2006. The issues raised here are whether the Applicant's past Financial Considerations, alleged Personal Conduct, past Drug Involvement, and continuing Criminal Conduct militate against the granting of a security clearance. [The Applicant admits the underlying factual basis for the Criminal Conduct; and except for one debt, subparagraph 2.d., the underlying factual basis for the Financial Considerations. He denies the Personal Conduct, and the alleged past Drug Involvement.]

## FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 47 years of age and is employed by a defense contractor, who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

### Guideline J - Criminal Conduct

1.a.~1.t. In April of 1988, the Applicant was convicted of .08% or More Weight Alcohol While Driving a Vehicle (DUI) (TR at page 62 lines 10~17). As a result, his driver's license was suspended (*Id*). In July of 1988, the Applicant was convicted of Driving With a Suspended License. In March of 1989, the Applicant was arrested, in part, for a DUI, and for Driving With a Suspended License (TR at page 64 line 11 to page 65 line 16, and Government Exhibit (GX) 19). He subsequently pled guilty to an added charge of Reckless Driving (*Id*). In October of 1990, the Applicant was again arrested, in part, for a DUI, and for Driving With a Suspended License (TR at page 63 line 8 to page 64 line 10, and Government Exhibit (GX) 18). He subsequently pled no contest to an added charge of Reckless Driving (*Id*).

In January of 1991, the Applicant was arrested for, and subsequently charged with, Driving With a Suspended License (TR at page 41 lines 8~20, and GX 17). He pled nolo contendere, was found guilty, but the imposition of a sentence was suspended (*Id*). The Applicant was placed on probation for 24 months (*Ibid*). In December of 1991, the Applicant was cited for being Drunk in Public (GX 16). In August of 1992, the Applicant was again arrested for Driving With a Suspended License (TR at page 61 line 23 to page 62 line 9, and GX 15). The outcome of this arrest is unclear (*Id*).

In May of 1994, the Applicant was arrested for, and subsequently convicted of, DUI (TR at page 60 line 18 to page 61 line 11, and GX 13). As part of his sentence, the Applicant's driver's license was suspended for 18 months (GX 13). As a result of this conviction, the Applicant was required to complete an 18 month course in order to have his driver's license reinstated, which he did not do (*see* Applicant's Exhibit (AppX) G). In September of 1994, the Applicant was arrested for, and subsequently charged with, a Battery (TR at page 57 line 22 to page 60 line 17, and GX 12). This charge was dropped due to a lack of evidence (*Id*). In November of 1994, the Applicant was arrested for, and subsequently charged with, Driving With a Suspended License (TR at page 61 lines 12~2, at page 67 lines 3~22, at page 70 lines 12~20, and GXs 10 and 11). The outcome of this arrest is also unclear (*Id*). In June, August and December of 1996, the Applicant was cited each time for Public Intoxication (TR at page 53 line 1 to page 55 line 12, and GXs 7~9). From 1988 to 1996, the Applicant, by his own admission, consumed too much alcohol, and has not consumed the intoxicant since 1996 (TR at page 55 lines 2~12).

In January of 2001, the Applicant was arrested, and subsequently charged, in part, with Driving With a Suspended License, and with Possession of Marijuana (TR at page 39 line 22 to page 41 line 5, at page 41 line 23 to page 42 line 9, and GX 5). The Applicant avers, credibly, that the marijuana found was not his, but he did pled guilty to Driving With a Suspended License (*Id*). On May 3, 2001, the Applicant was arrested for, and subsequently pled guilty to, being an Unlicensed Driver (TR at page 39 lines 22~8, and at page 47 line 5 to page 48 line 17). As part of his sentence, the Applicant was placed on probation for 36 months (*Id*). Less than three weeks later, on May 23, 2001, the Applicant was arrested, and subsequently charged, with Driving With a Suspended License, and with Possession of Marijuana (TR at page 35 line 12 to page 38 line 1, and at page 42 line 13 to page 43 line 3). The Applicant again avers, credibly, that the marijuana found was not his, but the outcome of this arrest is unclear (*Id*). In October of 2001, the Applicant was arrested for Willful Infliction of Corporal Injury on Spouse/Cohabitant, a felony, for Driving Without a License, and for a Violation of Probation (TR at page 30 line 24 to page 35 line 11, at page 68 lines 3~18, and GX 4). Subsequently, he was not charged with the felony, but only with the Driving Without a License and with the Violation of Probation (*Id*). Again, the outcome of this arrest is unclear (*ibid*).

In March of 2002, the Applicant was arrested for and charged, in part, with Driving a Motor Vehicle When Driving Privilege Suspended or Revoked for DUI (TR at page 23 line 18 to page 25 line 2, and at page 68 line 20 to page 69 line 8). He was convicted and sentenced, in part, to probation for 36 months (*Id*). Most recently, in August of 2004, the Applicant was cited, in part, for Driving With a Suspended License (TR at page 22 line 18 to page 23 line 10, and at page 69 line 10 to page 70 line 4). He was fined (*Id*).

The Applicant continues to drive without a license (TR at page 26 lines 11~14, at page 27 lines 5~14, and at page 99 lines 3~16). Furthermore, he is contemplating changing his name in order to fraudulently obtain a new driver's license (TR at page 28 line 3 to page 30 line 16).

#### Guideline F - Financial Considerations

2.a. The Applicant's past due debt, a judgment in favor of "EDD," has been paid (TR at page 74 line 17 to page 76 line 12, and Applicant's Exhibit (AppX) A).

2.b. The Applicant's tax lien in favor of the Internal Revenue Service has been paid (TR at page 76 line 13 to page 77 line 7, and AppX I at page 6).

2.c. The Applicant's tax lien in favor of a state's taxing authority has also been paid (TR at page 77 line 13 to page 78 line 12, and AppX I at page 7).

2.d. The Applicant disputes a wireless phone bill in the amount of about \$267 (wireless phone bill This debt does not appear on the Applicant's most recent May 2006 credit report (TR at page 70 line 21 to page 74 line 16, and GX 25).

2.e. The Applicant is making monthly payments of \$200 towards his child support arrearages totaling about \$35,000 (TR at page 17 line 11 to page 21 line 6). These arrearages once totaled about \$64,000, but the Applicant has paid them down to his current past due balance (*Id*).

#### Guideline E - Personal Conduct

3.a. In answer to question 21 on his November 2003 Security Clearance Application (SCA), the Applicant correctly answered "no," as he was not charged with a felony, as a result of his October 2001 arrest (TR at page 81 line 16 to page 83 line 8, and GX 1 at page 7).

3.b. In answer to question 24 on his November 2003 SCA, the Applicant disclosed his last alcohol related conviction in 1994 (GX 1 at page 7). The Applicant incorrectly thought the posited question asked him to only go back 10 years; and as such, he did not list his other alcohol related charges in 1988, in 1989 and again in 2000 (TR at page 83 line 9 to page 89 line 10). Furthermore, he, mistakenly, did not list the 2001 marijuana charges, as the marijuana was not his (*Id*). I find this not to be a wilful falsification.

3.c. In answer to question 26 on his November 2003 SCA, the Applicant mistakenly failed to list his five arrests from January 2001 to his last arrest in March of 2002 (TR at page 89 line 11 to page 91 line 4, and GX 1 at page 7). I find this not to be a wilful falsification.

3.d. In answer to question 27 on his November 2003 SCA, the Applicant correctly answered "no," as the last time he used marijuana was in 1994 (GX 1 at page 7). The posited question requires disclosure if the usage was "in the last 7 years," which is not the case here (TR at page 39 lines 11~21, and at page 91 lines 5~24).

3.e. In answer to question 36 on his November 2003 SCA, the Applicant failed to disclose his federal and state tax liens (GX 1 at page 9). He testified, credibly, that he was unaware of their existence until 2004, after he executed the SCA (TR at page 91 line 25 to page 93 line 7). I find this not to be a wilful falsification.

3.f. In answer to question 37 on his November 2003 SCA, the Applicant failed to disclose his past judgment in favor of "EDD" (GX 1 at page 9). He testified, credibly, that he was unaware of their existence until 2004, after he executed the SCA (TR at page 93 line 8 to page 98 line 6). I find this not to be a wilful falsification.

3.g. Finally, in answer to question 38 on his November 2003 SCA, the Applicant correctly answered "no," as the wireless phone bill noted in subparagraph 2.d., above, was not his debt; and as such, he has no debts in "the last 7 years . . . over 180 days delinquent (GX 1 at page 9, *see also* TR at page 70 line 21 to page 74 line 16).

#### Guideline H - Drug Involvement

4.a. The Applicant last used marijuana 12 years ago, in 1994 (TR at page 39 lines 11~21). He has not used any illegal substances since then, and intends no future Drug Involvement (*Id*).

## POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that are speculative or conjectural in nature.

The Government must make out a case under Guideline F (Financial Considerations), Guideline E (Personal Conduct), Guideline H (Drug Involvement), and Guideline J (Criminal Conduct); which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

## CONCLUSIONS

Considering first the Applicant's Financial Considerations, the Applicant has a "history of not meeting [his] financial obligations," and an "[i]nability . . . to satisfy debts." These are the first and third disqualifying conditions under Financial Considerations. This is countered, however, by the last mitigating condition, as the Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve [his] debts." He has either paid, or is paying down, all of his admitted past due debts. Mitigation is shown; and as such, Guideline F is found for the Applicant.

Considering next the Applicant's alleged Personal Conduct, I can find no intent to keep information from the Government. He made honest mistakes in answering questions 24 and 26 on his November 2003 SCA. The other posited questions, 21, 27 and 36~38, were answered truthfully or to the best of Applicant's ability. Guideline E is found for the Applicant.

As to the Applicant's past Drug Involvement, he was last involved with marijuana in 1994. The first Disqualifying

Condition is therefore applicable, as there was clearly "drug abuse." However, the first and third Mitigating Conditions are also applicable. Under the circumstances of this case, his past Drug Involvement is "not recent," having occurred about 12 years ago. Furthermore, the Applicant has shown a "demonstrated intent," through his testimony, "not to abuse drugs in the future." The Applicant's Drug Involvement is therefore not of present security significance; and as such, Guideline H is found for the Applicant.

The same can not be said of the Applicant's Criminal Conduct, however, as it is lengthy, and by the Applicant's own admission, continuous. Despite his lengthy criminal record, he still drives without a license. Furthermore, he is considering getting a new driver's license by using a different name; i.e., by fraud. The first disqualifying condition is clearly applicable, as there are recent "admissions of criminal conduct, regardless of whether the person was formally charged." There are no countervailing mitigating conditions. Guideline J is found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his criminal conduct. The Applicant has thus not met the mitigating conditions of Guideline J, and of Section F.3. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline J.

### **FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

#### **Paragraph 1: AGAINST THE APPLICANT**

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- I. Against the Applicant.
- j. Against the Applicant.
- k. Against the Applicant.
- l. Against the Applicant.
- m. Against the Applicant.
- n. Against the Applicant.
- o. Against the Applicant.
- p. Against the Applicant.
- q. Against the Applicant.

r. Against the Applicant.

s. Against the Applicant.

t. Against the Applicant.

Paragraph : 2 FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

e. For the Applicant.

Paragraph : 3 FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

e. For the Applicant.

f. For the Applicant.

g. For the Applicant.

Paragraph : 4 FOR THE APPLICANT

a. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

### **DECISION**

In light of 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.

Richard A. Cefola

Administrative Judge