

DATE: November 30, 2006

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In re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 05-15652

**DECISION OF ADMINISTRATIVE JUDGE**

**CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

Sabrina E. Redd, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 47-year-old systems integration engineer employed by a defense contractor. Prior to the age of 33, he had several criminal convictions, including two for DUI. In the last 15 years, he had one DUI, four years ago. He has evidenced a new maturity in understanding his role as a husband and father, which is supportive of sobriety. His omissions to two questions on a security clearance application were not deliberate, but in accord with the oral instructions he was given. He successfully mitigated the security concerns about criminal conduct, alcohol consumption, and personal conduct. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1960), as amended, DOHA issued a Statement of Reasons (SOR) on March 6, 2006, detailing the basis for its decision - security concerns raised under Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in an undated writing 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 June 30, 2006. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by July 30, 2006. His response, dated July 28, 2006, was received on July 31, 2006. The case was assigned to me on August 22, 2006.

**FINDINGS OF FACT**

Applicant admitted the allegations contained in SOR subparagraphs 1.a. through 1.e. and 2.a., and denied the allegations in subparagraphs 3.a. and 3.b. The 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 additional findings of fact:

Applicant is a 47-year-old systems integration engineer employed by a defense contractor.<sup>(1)</sup> He is married and has three children.<sup>(2)</sup> He served nearly four years in an enlisted status in the U.S. Marine Corps.<sup>(3)</sup> He attended a vocational/technical trade school.<sup>(4)</sup>

## Criminal Conduct

On January 14, 1985, Applicant was arrested and charged as an out-of-state fugitive for felony larceny. The police released him from custody two weeks later after determining that he had paid restitution for two bad checks written in another state.<sup>(5)</sup> On August 9, 1985, Applicant was arrested and charged as an out-of-state fugitive on two counts of felony theft, violation of probation, a felony, and possession of narcotics equipment. The arrest for theft was the same warrant as the January 1985 arrest. No further action was taken on that warrant. However, he was released to another jurisdiction for the narcotics equipment charge.<sup>(6)</sup> Although he denies remembering any such charge, his FBI identification records list a misdemeanor conviction on September 5, 1985, for possession of narcotics equipment.<sup>(7)</sup>

On August 15, 1987, he was charged with driving under the influence (DUI). He was convicted of DUI and sentenced to 12 months probation, fined \$330, and ordered to attend traffic school.<sup>(8)</sup> On June 8, 1991, he was charged with DUI. He was convicted of DUI, sentenced to 10 days confinement, 11 months and 20 days probation, and fined \$750.<sup>(9)</sup> On June 28, 2002, he was charged for DUI and failure to maintain lane. He refused the breathalyzer test. Upon a plea bargain for DUI, he was given the lowest possible fine, sentenced to 24 hours in jail (suspended due to time served), and placed on 12 months unsupervised probation.<sup>(10)</sup>

## Alcohol Consumption

Applicant was convicted of DUI in August 1987, June 1991, and June 2002.<sup>(11)</sup>

## Personal Conduct

Applicant falsified material facts on a security clearance application, dated March 24, 2004, on which he was required to respond to the following:

**24. Your Police Record - Alcohol/Drug Offenses** Have you ever been charged with or convicted of any offenses 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 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 21 U.S.C. 844 or 18 U.S.C. 3607.

Applicant answered "Yes" and indicated an arrest for DUI in June 2001, whereas in fact he had been arrested for DUI in June 2002, June 1991, August 1987, and for a drug-related offense in August 1985. He wrote 2001 by mistake.<sup>(12)</sup>

Applicant falsified material facts on a security clearance application, dated March 24, 2004, on which he was required to respond to the following:

**Question 21. Your police record - felony offenses** Have you ever been charged with or convicted of any felony offense? (Include those under the uniform code of military Justice.) For this item, report information regardless of whether the record in your case has been sealed or otherwise stricken from the 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 21 U.S.C. 844 or 18 U.S.C. 3607.

He answered "No," whereas in fact, he was charged with three felonies in 1985.<sup>(13)</sup>

In filling out his SF 86, he was given verbal instructions by the person administering his processing to only cover a ten (10) year period when answering the questions about past criminal activity or financial questions.<sup>(14)</sup>

Applicant's wife has stood by him for 19 years, throughout his periods of irresponsible conduct. He has resolved do nothing to jeopardize her faith and confidence in him. His children are now school-age and he is raising them to be good, confident individuals with strength of character. <sup>(15)</sup>

## POLICIES

"No one has a 'right' to a security clearance." <sup>(16)</sup> 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." <sup>(17)</sup> The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." <sup>(18)</sup> Each security 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." <sup>(19)</sup>

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." <sup>(20)</sup>

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 process 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. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. <sup>(21)</sup> It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

## CONCLUSIONS

### **Criminal Conduct**

The government established its case under Guideline J. Criminal Conduct Disqualifying Condition (CC DC) E2.A10.1.2.1. (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*) applies. Applicant admitted his DUI convictions. He admitted the two arrests in 1985, both for the same offense for which he had made restitution. He does not remember the 1985 misdemeanor conviction. Notwithstanding, it appears on his FBI record.

Criminal Conduct Mitigating Conditions (CC MC) E2.A6.1.3.1. (*The criminal behavior was not recent*) applies. All of these arrests/convictions are over 15 years old, except the DUI conviction in 2002, which is problematic. He refused the breathalyzer test. Upon a plea bargain, he was given the lowest possible fine, sentenced to 24 hours in jail (suspended due to time served), and placed on 12 months unsupervised probation. While there is a pattern of DUI conduct, there was four years between the first and second offense, and 11 years between the second and third. Four years has elapsed since his third and last criminal activity. I, therefore, conclude Guideline J against Applicant.

### **Alcohol Consumption**

The government established its case under Guideline G. The following Guideline G Alcohol Consumption Disqualifying Condition (AC DC) applies: 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 their criminal incidents related to alcohol use*). Applicant admitted his DUI convictions in 1987, 1991, and 2002.

Additionally, AC MC E2.A7.1.3.2. (*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*) are applicable. Two of the

three convictions occurred over 15 years ago. Applicant has matured. There is no evidence regarding his current use of alcohol, but now that his children are school-age, he recognizes that his improper conduct does not set a good example for them. He also recognizes that he has been blessed with a wife who has stood by him through his periods of irresponsible behavior. I believe this indicates positive changes in Applicant's behavior supportive of sobriety. I conclude Guideline G for Applicant.

### **Personal Conduct**

The government did not establish its case under Guideline E. Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2. (*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*) does not apply. I do not find a "deliberate" omission on his SF 86 to questions 21 and 24. He made a mistake when he listed 2001 as the date of a DUI conviction instead of 2002. The person supervising his filling out the SF 86 instructed him to only go back ten years when answering the questions about crimes, arrests, financial matters, etc. Following this advice, he did not list any other concerns (except the 2002 DUI), as it had been 13 years since his last law enforcement contact. I find this explanation to be reasonable. I conclude Guideline E for Applicant.

### **Whole Person Analysis**

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."<sup>(22)</sup>

"Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination."<sup>(23)</sup>

In evaluating Applicant's case, in addition to the disqualifying and mitigating conditions, I also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests.<sup>(24)</sup> I considered his age (47), his education, his employment, and what might motivate him to abuse alcohol or commit crimes. I believe he has matured and better understands his role as a husband and father, and the **responsible and sober conduct that it requires**. [*Emphasis added.*] He has only had the one DUI in the last 15 years. That is the only bad mark on his record during this time. He wants to set a good example for his children, and he wants to demonstrate to his wife that he can conduct himself in a responsible manner. Applicant believed he correctly answered the questions on his SF 86 because he was told to only go back ten years when listing incidents. I believe he disclosed the adverse information about himself that he thought he was required to list. He attempted to hide nothing. I also believe that his Marine training has given him the necessary understanding of the need to protect classified information. The totality of the record raises no continuing or reasonable 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. I conclude it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline J: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Paragraph 2. Guideline G: FOR APPLICANT

Subparagraph 2.a: For Applicant

Paragraph 1. Guideline J: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

### **DECISION**

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Christopher Graham

Administrative Judge

1. Item 4 (Security Clearance Application (SF 86), dated March 24, 2004) at 1-2.

2. *Id.* at 3-4.

3. *Id.* at 4.

4. *Id.* at 1.

5. Item 3 (Applicant's Answer, undated) at 1.

6. *Id.* at 2.

7. Item 5 (Applicant's FBI Identification Records, dated July 14, 2004) at 3.

8. *Id.* at 2.

9. *Id.*

10. *Id.*

11. *Id.*

12. Item 4, *supra*, note 1, at 6.

13. Item 4, *supra*, note 1, at 5.

14. Response to the FORM, dated July 28, 2006, at 3.

15. *Id.* at 1.

16. <sup>0</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

17. <sup>0</sup> *Id.* at 527.

18. <sup>0</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960).

19. <sup>0</sup>Directive ¶6.2.

20. <sup>0</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

21. <sup>0</sup>See Exec. Or. 10865 § 7.

22. Directive ¶ E.2.2.1.

23. *Id.*

24. *Id.*