

DATE: January 6, 1998

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 97-0282

**DECISION OF ADMINISTRATIVE JUDGE**

**KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Michael H. Leonard, Department Counsel

**FOR APPLICANT**

*Pro Se*

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on May 13, 1997. The SOR detailed reasons why the Government could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. (U) The SOR consists of allegations based on Criterion E (personal conduct) in paragraph 1 and Criterion J (pattern of criminal activity) in paragraph 2.

Applicant responded to the allegations set forth in the SOR in a written Answer dated May 23, 1997. He admitted all allegations, and indicated that he did not wish to have a hearing.

On June 10, 1997, Department Counsel prepared a File of Relevant Material (FORM). It was mailed on June 16, 1997, and remailed to Applicant on September 24, 1997. Applicant received it on September 29, 1997; he had 30 days after receipt of the FORM to object to any exhibits or to submit information on his own behalf. He did not respond.

Subsequently, this matter was assigned to me on November 21, 1997, and I received the case on that day. It is my role as administrative judge to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**FINDINGS OF FACT**

Applicant admitted in his Answer all of the factual allegations contained in the SOR. 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 that evidence, I make the following additional Findings of Fact:

Applicant is a 39-year-old employee of a defense contractor. He went to work for the corporation in June 1995 after two months in the federal civil service, two months at an oil change center, two months of unemployment, and eight years

with an aviation services company. He previously served ten years in the military and was honorably discharged as an E5. Misconduct - Drug Abuse (Use) was the reason for his discharge after a positive urinalysis in April 1986. (Items 1, 10)

In June 1995, Applicant completed a Department of Defense National Agency Questionnaire (NAQ) as he needed a security clearance which he had never previously held. He certified that his entries on the form were "true, complete, and accurate. . .and made in good faith." He failed to list two alcohol-related arrests in 1987 and in 1993 in answer to Question 22 on criminal conduct. Also, Applicant understated his past drug use in answer to Question 23 and denied any drug purchase and abuse of prescription drugs when he had in fact purchased cocaine in 1991 and used unprescribed Valium in 1977. With respect to question 26 on alcohol use and treatment, he answered "no" when in fact he had been treated for thirty days in 1991 for alcohol dependence. Applicant also authorized release of information and records so that the Defense Investigative Service (DIS) could obtain records on his background as part of the security clearance investigation. (Item 1)

In February 1996 Applicant was interviewed by Agent #1 of the DIS. He discussed a 1987 arrest for having beer and drinking on the beach where he received a \$25 ticket and explained he had not listed this incident on his NAQ as he did not consider it an arrest. He voluntarily revealed his November 1995 arrest for Assault (2nd), Risk of Injury to a Minor, and Disorderly Conduct where he had become "extremely upset" with his son after receiving a message from his son's teacher about behavior problems and discovering his son had erased earlier messages from the teacher requesting a school conference. Applicant had used a belt to discipline his 11-year-old son; he hit him several times in the face. He was subsequently charged and in December 1995 referred to the family services division of the state court system. The court required him as well as his wife and son to attend counseling with Doctor #1, and he was to appear in court in May 1996. While no court records from that appearance are in the file, police department, school, and other records confirm this November 1995 incident reported by the son's teacher when his son got off the school bus and reported his father hit him with a belt two days earlier. (Items 5 & 8) Also, Applicant admitted another alcohol related arrest in October 1993 for Driving Under the Influence (DUI) where he was convicted and fined but which he had not listed on his NAQ or revealed in his initial interview with Agent #1. (Item 5)

While he disclosed these arrests at this initial DIS interview, Applicant was not similarly forthcoming about the full extent of his past drug use. Instead he insisted he had only used marijuana once in June 1986 while in the military where he had gone to a hearing. Applicant admitted this use which he claimed to have forgotten to list on his NAQ.

After the Applicant provided releases, DIS Agent #1 interviewed Doctor #1. From this doctor Agent #1 learned that Applicant had received prior counseling for drug and alcohol abuse because of past abuse of cocaine. Investigation revealed this self-referred 30-day treatment from April to May 1991 at a chemical dependency program was for both alcohol abuse (from age 13 to age 33) and drug abuse: cocaine from age 19 with regular use by age 28 every two weeks with recent daily use of \$200-\$300 a day; marijuana use from age 15 until April 1991; acid from age 19 to 21; Valium at age 19 and previous use of Black Beauties. The diagnosis was cocaine dependence, continuous; alcohol dependence; marijuana dependence, continuous; as well as a history of Acid, Valium, and Black Beauty abuse. (Item 9)

In November 1996 Applicant was reinterviewed by Agent #1, but Applicant conceded only his 30-day inpatient treatment program for substance abuse which he had not listed on his NAQ nor disclosed in his initial interview. Indeed Applicant at that time insisted that his treatment was only for his alcohol abuse and that he had never used cocaine, marijuana, LSD, unprescribed Valium, and amphetamines (black beauties). Applicant felt so strongly that he had been "wronged by these allegations" that he was willing to undergo a polygraph examination to show that he was not lying. (Item 6).

DIS Agent #2 interviewed Applicant in January 1997. Subsequently, Applicant made a voluntary statement that revealed his extensive drug use until 1991: marijuana from age 19 until 1991 once or twice weekly with purchases of \$200 per year as well as cocaine use beginning when he was 25 years old until 1991 when he was 33 years old once or twice weekly with purchases of \$1,000 of cocaine per year. Since his treatment in 1991, he has not used any illegal drugs and does not intend to do so in the future. He has never sold any illegal drugs. He plans to avoid drugs in the future. (Item 7)

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

### **Criterion E - Personal Conduct**

**Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:**

- (1) refusal to undergo or cooperate with required security processing, including medical and psychological testing; or
- (2) refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination.

**Conditions that could raise a security concern and may be disqualifying also include:**

- (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;
- (3) deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;
- (4) personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or pressure.

**Conditions that could mitigate security concerns include:**

- (3) the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

### **Criterion J: Criminal Conduct**

**A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.**

**Conditions that could raise a security concern and may be disqualifying include:**

- (1) any criminal conduct, regardless of whether the person was formally charged;
- (2) a single serious crime or multiple lesser offenses.

**Conditions that could mitigate security concerns include:**

None

## **CONCLUSIONS**

## **Criterion E - Personal Conduct**

Personal Conduct raises security concerns when that conduct involves questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. Such conduct could indicate that the person may not properly safeguard classified information. Conditions that could raise a security concern and may be disqualifying also include: (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; or (3) deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination; or (4) personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or pressure.

Applicant completed his NAQ but made deliberate omissions about relevant and material information even while attesting that his answers were "true, complete, and accurate." Later when initially questioned by DIS investigator #1 in February 1996, he did admit his arrests in 1987 and 1993 and his past alcohol abuse treatment, but concealed the full extent of his past drug use and treatment. To meet mitigation conditions an individual needs to make prompt, good-faith efforts to correct falsification(s) before being confronted with the facts. In this case Applicant meets this condition only with his conduct regarding his past arrests: he voluntarily disclosed his arrests to the first investigator in his February 1996 Statement.

On the other hand in response to questions regarding his drug use and alcohol abuse on the 1995 security questionnaire Applicant provided untruthful self-serving answers and continued to conceal the truth about his past drug involvement in two DIS interviews in February. For example, Applicant in that initial DIS interview only revealed one time use of marijuana while in the military in 1986. Again in November 1996 he denied drug involvement even after he was confronted with his medical treatment records documenting cocaine use from 1977 to 1991, marijuana use from 1972 to 1991, LSD use from 1977 to 1979, unprescribed Valium use in 1977, and amphetamines (black beauties) use in 1977. It was not until January 1997 that he ultimately revealed the full extent of his past use. He finally cooperated with the second DIS investigator and admitted marijuana use and purchases of \$200 per year from when he was age 19 to 1991 and cocaine use and purchases of \$1,000 per year from age 25 until 1991 when he was 33. Under the national security program it is the responsibility of Applicants to self-report adverse information in response to questions on security forms and to investigators. Applicant failed to do so until eighteen months after he first completed his NAQ.

This failure raises the issue of his security worthiness under personal conduct as his conduct demonstrates questionable judgment, untrustworthiness, unreliability, or unwillingness to cooperate fully in the process and also increases his vulnerability to coercion, exploitation or pressure. His defense that he was "uncomfortable" talking about his past involvement with illegal drugs as he was "afraid people would get the wrong impression" that he had a drug problem is not one that falls within the mitigating guidelines; and it is a self-serving defense.

Consequently, after considering the Adjudicative Policy factors and the F.3 factors, I find for the Applicant under subparagraph 1.a. but against the Applicant under Criterion E in paragraph 1 and subparagraphs 1.b. through subparagraph 1.g.

## **Criterion J - Criminal Conduct**

Criterion J, Criminal Conduct, applies where there is a history or pattern of criminal and wrongful activity to create doubts about a person's judgment, reliability and trustworthiness. Conditions that could raise a security concern and may be disqualifying include: (1) any criminal conduct, regardless of whether the person was formally charged; (2) a single serious crime or multiple lesser offenses. The basis of the SOR criminal conduct allegation is both his violation of federal law by his willful false answers on a 1995 government security form and to investigators in violation of Title 18, United States Code, Section 1001, a felony, and also his 1995 arrest for risk of injury to a minor, assault (2nd degree), and disorderly conduct when he used a belt to discipline his 11-year-old so for which Applicant was subsequently charged. The court in December 1995 referred him to the family services division of the state court system. and required him as well as his wife and son to attend counseling with Doctor #1. No records in the file report on his status after he

appeared in court in May 1996. Applicant has submitted no independent evidence of his rehabilitation or of his current good character. Consequently, after considering the Adjudicative Policy factors and the F.3 factors, I find against the Applicant under Criterion J in paragraph 2 and subparagraphs 2.a. and subparagraph 2.b.

**FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Policy section, I make the following formal findings:

Paragraph 1. Criterion E: AGAINST APPLICANT

Subparagraph 1.a.: For 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

Paragraph 2. Criterion J: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: 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 a security clearance for the Applicant.

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Kathryn Moen Braeman

Administrative Judge

1. This procedure is authorized by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), and as amended by Change 3 dated February 16, 1996.