

DATE: August 22, 2007

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In Re:)	
)	
-----)	ISCR Case No. 06-24736
SSN: -----)	
)	
Applicant for Security Clearance)	
_____)	

**DECISION OF ADMINISTRATIVE JUDGE
DARLENE LOKEY ANDERSON**

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of criminal conduct has been mitigated by the passage of time, no recurrence of criminal activity, remorse, restitution and a good employment record that shows evidence of successful rehabilitation. His failure to reveal his complete criminal record on his security clearance application in response to question 23(f) has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On a date uncertain, 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 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing on March 16, 2007, and requested a hearing before a DOHA Administrative Judge. The case was originally assigned to another Administrative Judge on May 22, 2007. The case was transferred to the undersigned on June 14, 2007. A notice of hearing was issued on June 6, 2007, scheduling the hearing for June 20, 2007. At the hearing the Government called one witness and presented five exhibits. The Applicant presented three exhibits and testified on his own behalf. The official transcript (Tr.) was received on June 27, 2007.

FINDINGS OF FACT

The Applicant is 30 years old. He has not completed high school nor does he have a GED. He is employed by a defense contractor as a Senior Financial Analyst, and is seeking to retain his security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in criminal conduct.

The Applicant admitted all of the allegations set forth in the SOR under this guideline. The evidence demonstrates that the Applicant has an extensive past history of criminal conduct beginning in 1997 and continuing until at least 2005.

In June 1997, the Applicant was charged with (1) Corporal Injury to Spouse and/or Roommate, and (2) Battery. On October 1, 1997, a warrant was issued for his arrest for failure to appear. He pled guilty and was ordered to pay fines and fees of \$235.00 and was required to enroll and complete a one year Domestic violence program and perform ten days volunteer work. (See Government Exhibits 2 and 5).

On June 10, 1998, a bench warrant was issued against the Applicant for failing to appear and failing to provide proof of progress in the Domestic Violence program.

On January 11, 1999, a bench warrant was issued for failing to appear and/or pay fine or provide proof of volunteer work.

On May 24, 1999, a bench warrant was issued for failing to provide proof of progress in the Domestic Violence program and/or proof of ten days volunteer work. He was sentenced to 180 days in custody with one day suspended.

On or about January 19, 2000, a bench warrant was issued for failing to provide proof of his progress in the Domestic Violence program and proof of volunteer work, and the court ordered his probation revoked. The Applicant admitted to the probation violation, his probation was terminated and he was ordered to serve 90 days in custody. He served eight days in jail and the bench warrant was recalled.

In September 1997, the Applicant was arrested and charged with Driving Under the Influence of Alcohol. He was found guilty and ordered to complete public work service and Driving Under the Influence classes, and his driver's license was suspended.

In February 2001, the Applicant was charged with (1) Inflict Corporal Injury to Spouse and/or Roommate. (See Government Exhibits 2 and 5).

In June 2001, the Applicant was charged with (1) Obscene and Threatening Phone Call, (2) Harassing by Telephone, and (3) Criminal Threats. A restraining Order was issued against him in November 2001, effective for 180 days. In December 2001, he pled guilty to Count 1 and imposition of sentence was suspended for three years on the condition that he pay \$325.00 fine/fees, complete 10 days of public service and participate in a Domestic Violence Rehabilitation program for 52 weeks. In January 2002, his probation was revoked and a bench warrant was issued. He appeared in court and his probation was reinstated with the same terms and conditions. In April 2002, he appeared in court due to his termination from the Domestic Violence program. His probation was continued with the same terms and conditions. In May 2003, the court ordered his probation revoked and a bench warrant was issued with bail set at \$20,000.00. In October 2003, he had not complied with the Domestic Violence program, and he was ordered to serve 90 days in the custody of the Sheriff. He also failed to provide proof of the remaining six days of public service. In December 2004, the Applicant satisfied the courts requirements by providing proof that he attended 52 sessions of the Domestic Violence Program. At that time his 90 days in custody was dismissed and his probation was terminated. (See Government Exhibit 5).

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because his conduct involves questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations.

The Applicant admitted all of the allegations set forth in the SOR under this guideline, except 2(h). From 1998 through 2005, the Applicant was also charged with a number of minor criminal offenses. In September 1998, he was charged with (1) Driving with a Suspended License, and (2) Involved in an Accident/License Suspension based on alcohol conviction. In February 2001, he was charged with (1) Driving at a Speed with Disregard to Weather and Others, and (2) No Drivers License. In August 2001, he was charged with (1) No Front Plates, and (2) Crack in the Windshield, and (3) No insurance. The court imposed a civil assessment of \$250.00 against the Applicant. In January 2002, he was charged with (1) Stop Sign Violation, and (2) No Insurance. The court imposed a civil assessment of \$678.00 against the Applicant. In March 2004, he was charged with (1) Driving With a Suspended License, and (2) No Insurance. In August 2005, he was charged with

(1) No Registration. The court imposed a civil assessment of \$501.00 against the Applicant. (Government Exhibit 5).

On January 5, 2006, the Applicant completed a security clearance application (SF-86). Question 23 (f) of the application asked him if in the last 7 years, had he been arrested for, charged with, or convicted of any offenses not listed in response to a, b, c, d, or e, above. (Leave out traffic fines of less than \$150.00 unless the violation was alcohol or drug related.); to which the Applicant answered, “NO”. (See Government Exhibit 1). This was a false answer. The Applicant failed to list that he had been arrested, charged and/or convicted as set forth above. He also failed to list his traffic violations where the fine was more than \$150.00. He explained that at the time he answered the question, he did not recall the dates and times of the offenses. He did list his DUI in 1997 on the following page but did not list the 2001 charge for Obscene and Threatening Phone Calls because he was never arrested for it. Anything else he thought occurred beyond seven years and that he was not required to list. Furthermore, he stated that he did not list his civil assessments because he did not acquaint them as fines. He states that he misinterpreted the question. He now understands that “full disclosure is better than none”. (Tr. p. 50). By failing to list his arrests, charges and convictions, the Applicant violated Federal law, Title 18, United States Code Section 1001, a felony.

The Applicant contends that as a result of his tough upbringing he tended to jump the gun and had somewhat of a bad temper. He did things in his past that he regrets and now realizes his many mistakes. During the periods where he simply did not pay the fines associated with his offenses, he had financial hardships and difficulty finding work. Between 2001 and 2004, he believes that he made a transformation and really came to terms with who he was and what he wanted his life to become. He is a much different person now than he was even two years ago. He has now grown up and matured. He contends that he is highly respected at work and now conducts himself in a responsible manner. (Tr. p. 39).

A letter of recommendation submitted on behalf of the Applicant by his direct supervisor, indicates that the Applicant is responsible and consistently “meets” or “exceeds” the customer’s and the Government client’s demanding expectations. He is highly regarded and trusted by his peers and possesses personal integrity of the highest order. (See Applicant’s Exhibit A).

A letter from “A Helping Hand” dated August 24, 2004, indicates that the Applicant has attended 37 classes and should complete the program in November 2004. (See Applicant’s Exhibit C).

Applicant’s Post-Hearing Exhibit contains several letters of recommendation submitted on behalf of the Applicant by his professional colleagues and associates that attest to the Applicant’s tenacious work ethic, good nature, intelligence, responsible and trustworthiness.

Applicant’s Post-Hearing Exhibit also contains performance appraisals of the Applicant dated October 19, 2006, and May 31, 2007 that reflect “excellent” scores in each category.

Applicant’s Post-Hearing Exhibit further contains copies of e-mails from the Vice President of Finance and a Senior Vice President complimenting the Applicant for his outstanding efforts in his field at work.

Applicant received the Employee of the Quarter Nomination in 2005. (See Applicant's Post-Hearing Exhibit).

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline J (Criminal Conduct)

30. *The Concern.* Criminal activity creates a doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Conditions that could raise a security concern:

30.(a) a single serious crime or multiple offenses;

30.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

30.(e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Condition that could mitigate security concerns:

30.(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Conditions that could raise a security concern:

16. (a) Deliberate omission, concealment or falsification of relevant 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.

Conditions that could mitigate security concerns:

None.

_____ In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in criminal conduct and dishonesty that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in criminal conduct (Guideline J), and violations of rules and regulations and dishonesty (Guideline E). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Under Guideline J, Criminal Conduct, Disqualifying Condition *30(a) a single serious crime or multiple offenses, 30(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted, and 30(e) violation of parole or probation, or failure to complete a court-mandated rehabilitation program* apply. However, Mitigating Condition *30(d), there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement* also applies.

The Applicant's extensive criminal history, outlined above, that began in 1997 and continued until 2004, has been mitigated. He has obviously matured, satisfied the court requirements concerning each of his past violations and realizes his past mistakes. His outstanding work record and favorable comments from superiors and other professional associates further demonstrates his efforts to improve himself and turn from his old ways. Given the fact that the Applicant's problems occurred a number of years ago, and there is no indication of recent problems, sufficient rehabilitation and mitigation has been shown. Accordingly Guideline J, is found for the Applicant.

Under Guideline E, Personal Conduct, Disqualifying Condition *16(a) Deliberate omission, concealment or falsification of relevant 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. None of the mitigating conditions apply.

There is no reasonable excuse for the Applicant's failure to answer the question 23(f) on his security clearance application of January 5, 2006, truthfully. Consequently, the evidence shows that the Applicant has not been completely honest with the Government and that he sought to conceal the truth. He was obviously embarrassed by his extensive criminal record and did not want to reveal

it. None of the mitigating factors set forth in the Directive under Guideline E apply. I find that the Applicant deliberately failed to reveal this information to the Government and that he violated Title 18, United States Code, Section 1001 by doing so.

The Government relies heavily upon the integrity and honesty of clearance holders. It is a negative factor for security clearance purposes when an Applicant has deliberately provided false information about material aspects of his personal background. The Applicant has not provided this Administrative Judge with sufficient evidence in mitigation that would negate the negative impact his falsifications have on his security worthiness. Although he has made some progress toward rehabilitation, he has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. At this time, I cannot find that it is clearly consistent with the national interests to grant the Applicant a security clearance.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline E, Personal Conduct, of the SOR. Accordingly, I find against the Applicant under Guideline E (Personal Conduct).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in subparagraph 2(h) and Paragraph 2 of the SOR. Paragraph 1 is found for the Applicant.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.

Subpara. 1.a.:	For the Applicant.
Subpara. 1.b.:	For the Applicant.
Subpara. 1.c.:	For the Applicant.
Subpara 1.d.:	For the Applicant.
Subpara 1.e.:	For the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.:	For the Applicant.
Subpara. 2.b.:	For the Applicant.
Subpara. 2.c.:	For the Applicant.
Subpara 2.d.:	For the Applicant.
Subpara 2.e.:	For the Applicant.
Subpara 2.f.:	For the Applicant.
Subpara. 2.g.:	For the Applicant.
Subpara. 2.h.:	Against the 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.

Darlene Lokey Anderson
Administrative Judge