

DATE: October 31, 2007

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In Re:	)	
	)	
-----	)	ISCR Case No. 04-10840
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
BARRY M SAX**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Goldstein, Esquire, Department Counsel

**FOR APPLICANT**

B. Daniel Lynch, esquire  
B. Daniel Lynch Law Offices

**SYNOPSIS**

This 63-year-old engineer has a history of failing to comply with rules and regulations for protecting classified material, but the violations ended in about April 2004. On his 2004 security clearance application, he failed to report a long period of part-time self employment that paralleled his full-time main position with a defense contractor. This activity continued for some 30 years and was known by friends and colleagues. He averred that he was not aware he was doing anything wrong, until informed by a Government investigator, at which time he ceased operations. It is not clear his outside activities were of a nature that violates Guidelines E and L restrictions. Mitigation has been established. Clearance is granted.

## FINDINGS OF FACT

Applicant is a 63-year-old systems engineer for a defense contractor. The SOR, as amended, contains nine (9) allegations under Guideline K (Deliberate or Negligent Failure to Comply with Rules and Regulations); five (5) allegations under Guideline E (Personal Conduct); and three (3) allegations under Guideline L (Outside Business Conflict of Interest). Applicant admits all allegations under Guideline K, all with explanations. He denies all Guideline E and L allegations. All specific admissions are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence, including testimony and all exhibits, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

### ***Guideline K (Deliberate or Intentional Failure to comply with Rules and Regulations for Protecting Classified or other Sensitive Information)***

Applicant's employer is a major defense contractor and provides periodic security training and material to all of its employees working with classified material, including Applicant, who has been with the company for about 40 years (GX 1 and Tr at 52-56). The company's Facility Security Officer, who had examined the comprehensive file on Applicant discussed his history of security violations in considerable detail (Tr at 64-73).

Applicant has a long history of failing to adequately protect classified material, in each case violating one or more provisions of the version of the National Industrial Security Program Operating Manual (NISPOM) applicable at the time.

1.a. On or about September 28, 1984, Applicant did not intentionally or negligently fail to properly secure a DoD security container, in violation of paragraph 14.a.(3) of the NISPOM, dated March 1984.

1.b. On or about June 18, 1985, Applicant did not intentionally or negligently fail to properly secure a DoD security container, in violation of paragraph 14.a.(3) of the NISPOM, dated March 1984. His container privileges were suspended for one year.

As to both allegations, it was subsequently discovered by the company locksmith that the lock in question was defective and could be opened by a hard "yank," even if properly closed and turned. As result culpability on Applicant's part could not be established.

1.c. In about February 1986, Applicant failed to obtain a receipt for a classified document he had loaned to a co-worker and could not account for its location, in violation of paragraphs 12.a., 12.b., and 12.c. of the NISPOM, dated March 1984.

1.d. Between April 1997 and October 1997, Applicant failed to comply with approved AIS (Automated Information Systems) audit requirements at his company, in violation of paragraphs 8-102.b.(9) and 8-303 of the NISPOM, dated January 1995.

1.e. Between November 1997 and December 1997, Applicant failed to comply with AIS approved audit requirements at his company, in violation of paragraphs 8-102.b.(9) and 8-303 of the NISPOM, dated January 1995.

1.f. On or about November 28, 2001, Applicant failed to properly secure the H-2 Protected Area at his company, in violation of paragraph 5-207 of the NISPOM, dated January 1995, and his company's written policy regarding "Closed Area Security Procedures." He was verbally counseled by his supervisor.

1.g. On or about December 5, 2001, Applicant failed to properly secure the H-2 Protected Area at his company, in violation of paragraph 5-207 of the NISPOM, dated January 1995, and his company's written policy regarding "Closed Area Security Procedures." He was verbally counseled by his supervisor.

1.h. On or about May 2, 2002, Applicant failed to properly secure the H-2 Protected Area at his company, in violation of paragraph 5-207 of the NISPOM, dated January 1995, and his company's written policy regarding "Closed Area Security Procedures." He was verbally counseled by his supervisor.

1.i. On or about September 17, 2002, Applicant failed to properly secure the H-2 Protected Area at his company, in violation of paragraph 5-207 of the NISPOM, dated January 1995, and his company's written policy regarding "Closed Area Security Procedures." He was verbally counseled by his supervisor.

1.j. On or about December 7, 2002, Applicant failed to secure a classified container at his company, in violation of paragraphs 5-100 and 5-303 of the NISPOM, dated January 1995.

1.k. On or about April 17, 2003, Applicant transferred a classified document onto an unclassified server, in violation of paragraphs 5-100 and 8.501.c.(3) of the NISPOM, dated January 1995, as amended May 1, 2000. He was verbally counseled by his supervisor and was given a five-day suspension from work without pay.

***Guideline E (Personal Conduct)***

2.a.(1) - Applicant omitted material facts on a Security Clearance Application (SF 86), electronically submitted on or about February 20, 2004. In response to Question "6. List your employment activities, beginning with the present and working back seven years," and

including period of self employment. Applicant cited his work for his present employer, but failed to mention his ownership and operation, from 1984 to 2004, as sole proprietor of a business that refurbishes vintage aircraft. He considered the activity to be a not-for-profit hobby and not the type of activity required to be reported. In context, I find his explanation to be credible.

2.b. - Applicant failed to report his ownership of the business cited in 2.a., above, and his business involvement with the two procurement companies cited in 3.a and 3.b., below, to his employer. However, Applicant's outside activity does not appear to have any connection to or with his full time employment and therefore does not come within the scope of Company policy, as stated in General Policies and Procedures, Conflicts of Interest and Standards of Ethical Conduct and therefor lacks security significance.

2.c. Alleges that Applicant failed to provide an amended security clearance application when advised by his present employers personnel that an SF 86 submitted or about February 20, 2004 contained errors. Applicant denies this allegation and states he does not have any specific recollection of this matter. A review of the Government's exhibits does not reveal any document (s) supporting the allegation. Applicant points out that his SF 86 (GX 1) is "substantially complete" and what he did receive was a "Return Notice" stating that no SF 86 was required since it had been less than 15 years since his clearance was issued.

He interpreted this letter to mean that he was not being asked to submit a new SF. The return letter relates only to the new Government policy that companies can no longer retain a copy of an employee's SF 86. The company was returning the SF 86 to Applicant with a recommendation that he retain it in his files for any future use. The memorandum declines a request from the Company Facility Security Officer to initiate a new investigation at the time because the clearance was not yet 15 years old. None of this suggests that Applicant had been asked to submit a new SF 86 because of errors in the previous one.

#### ***Guideline L (Outside Activities)***

3.a. Applicant has been employed by his present company since 1966. He is currently a "Principle Systems Engineer." In addition, since 1973, he has operated as a consulting engineer and, since 1984, he has operated a sole proprietorship, as cited in 2.a. (1), above.

3.b. From about the early 1990s to at least about 2000, Applicant had business contacts, through his company, cited in 2.a.(1), above, with Company A, which provides United States out of date manufactured spare parts, or parts made by him, to foreign governments, including aircraft parts to a foreign Air Force and Navy.

3.c. Applicant also has business contacts with another procurement company (Company B), to which he was introduced by Company A. Applicant has also made aircraft parts for Company B.

Applicant has long been considered capable and an asset to his employer. As long ago as 1981 he was given signature authority in the absence of his Director (AX A). In 2002 and 2005, he received Achievement Awards. He completed a DoD Annual Security Refresher in January 2007 (AX B). He has numerous letters of praise and recommendation from associates and supervisors in 2007 (AX C). Applicant called four witnesses from work. They all think highly of Applicant and his contribution to the Company and the national defense effort (Tr at 78, 79, 93-98, 100-116, and 122-129). One witness conformed the long hours sometimes worked by Applicant, and others, sometimes “80,120 hours per week” (Tr at 80-82, 98, 99), but apparently was not aware of the number and type of security violations committed by Applicant (Tr at 86, 79, 87).

Another witness has worked with Applicant for about 17 years and views Applicant as being careful about his handling of classified material (Tr at 118). On occasion, Applicant worked 80-90 hours a week (Tr at 119). He sometime helped Applicant in the latter’s outside activities involving aircraft parts (Tr at 123-126).

## POLICIES

In evaluating the relevance of an individual's conduct, the adjudicator should consider the following nine generic factors: (1). The nature, extent, and seriousness of the conduct; (2) The circumstances surrounding the conduct, to include knowledgeable participation; (3). The frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is “clearly consistent with the national interest” for an individual to hold a security clearance. An applicant’s admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.



















