



## STATEMENT OF THE CASE

On August 25, 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 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on September 8, 2006, and elected to have his case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's written case (FORM) on or about September 29, 2007. Applicant did not file a response to the FORM. The case was assigned to me on April 16, 2007.

## FINDINGS OF FACT

Applicant is a 34 year old employee of a defense contractor.

In March 2000, applicant was involved in a traffic accident that resulted in a death. In 2001, he pleaded guilty to the charge of Reckless Homicide, and was sentenced to ten years in prison, all but three of which were suspended. He was incarcerated for 18 months. He was also placed on probation for two years.

## CONCLUSIONS

In March 2000, applicant was involved in a traffic accident that resulted in a death. In 2001, he was convicted of Reckless Homicide and sentenced to 10 years in prison. He actually served about 18 months in prison. Disqualifying Conditions b. (*a single serious crime or multiple lesser offenses*), and c. (*conviction in a Federal or State court, including a court-martial of a crime and sentenced to imprisonment for a term exceeding one year*) are applicable.

Although applicant's criminal conduct was clearly serious, this isolated incident occurred over six years ago. In addition, this criminal conduct is of the type that is unlikely to recur. Based on these facts, applicant qualifies for Mitigating Conditions a. (*the criminal behavior was not recent*), b. (*the crime was an isolated incident*) and d. (*the person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*).

Given the passage of time since applicant engaged in this isolated act of criminal conduct, the unintentional nature of the crime, and the absence of any evidence of subsequent misconduct or criminal conduct on the part of applicant, I conclude that he is unlikely to engage in criminal conduct in the future. If it were not for 10 U.S.C. 986, I would conclude that it is now clearly consistent with the national interest to grant him access to classified information. In light of this statute, however, I must conclude that it is not clearly consistent with the national interest to grant applicant a security clearance.<sup>1</sup> I recommend further consideration of this case for a waiver of 10 U.S.C. 986.

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<sup>1</sup> See, Footnote 1 under Disqualifying Condition c of the Criminal Conduct guideline.

**FORMAL FINDINGS**

PARAGRAPH 1: 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 applicant.

Joseph Testan  
Administrative Judge