

DATE: April 28, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-19396

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Ronald Bentley, Personal Representative

SYNOPSIS

Applicant is a 47-year-old employee of a shipyard working on U.S. Navy ships for the past nine years. He is a 22 year veteran of the Navy. He retired as a Chief Petty Officer. Applicant admitted 12 driving offenses relating to speeding, failure to yield, and attempting to elude police from June 1981 until December 2001. A pattern of rule violations was established. Although he has not had any driving offenses for over two years and has shown a change of attitude, it is premature to grant a clearance. Clearance is denied.

STATEMENT OF CASE

On October 3, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On November 12, 2003, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The case was assigned to me on January 22, 2004. A notice of hearing was issued on February 12, 2004. A hearing was held on March 9, 2004. The Government introduced 12 exhibits and Applicant introduced one. All exhibits were admitted into evidence. The Applicant testified as did his personal representative. The transcript was received March 16, 2004.

FINDINGS OF FACT

After a complete review of the evidence in the record and upon due consideration of the record the following findings of fact are made.

Applicant is a 47-year-old employee of a shipyard working on U.S. Navy ships for the past nine years. He is a 22 year veteran of the Navy. He retired as a Chief Petty Officer. He is held in high regard by his employer.

Applicant admitted 12 driving offenses relating to speeding, failure to yield, and attempting to elude police from June 1981 until November 2001. One offense involved alcohol and resulted in a DUI in 1994 and his license was suspended for one year. One offense in 1997 for reckless driving resulted in a jail sentence of 30 days suspended. Another of the 12 in 1998 related to possession of marijuana and resulted in an order to attend an Alcohol Safety Action Program and a Controlled Substance Program. Fines were imposed in all of the cases.

In addition to the offenses alleged in the SOR, Applicant introduced into evidence (Exh A) a report of the Department of Motor Vehicles showing an additional speeding offense and possession of a radar device on December 31, 2001, for which he was found guilty.

Applicant attributes a large part of his difficulties to the ownership of a high performance sports car. He admits that he has been a bad driver. He has not consumed alcohol since 1994 since his DUI offense that year. He has not had any alcohol offenses since he attended the alcohol and drug program six years ago

Applicant denied allegations relating to three charges in 1994, 1997, and 1981 all of which were either dismissed or not prosed.

Applicant has two children, was divorced in 2000, but is now in a stable relationship with a fiancé.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527.

An evaluation of whether the applicant meets the security guidelines includes consideration of the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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, ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Executive Order No. 10865 § 2. *See* Executive Order No. 12968 § 3.1(b).

Initially, the Government must establish, by something less than a preponderance of the evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information *See Egan*, 484 U.S. at 531. The applicant then bears the burden of demonstrating that it is clearly consistent with the national interest to grant or continue the applicant's clearance. "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Executive Order No. 12968 § 3.1(b)

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors and conditions above, I conclude the following with respect to all allegations set forth in the SOR.

Under Guideline E, 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. Directive ¶ E2.A5.1.1. The Government has established by evidence and Applicant's admissions that he has been involved in a pattern of rule violations Directive ¶ E2.A5.1.2.5.

While many of the rules violations may not be too serious when taken individually and the age of others, taken as a whole they show a disregard for public safety and an inability to follow requirements of the law. Applicant believes he has undergone a change of attitude and is a more responsible member of society than he has been in the past. His one offense for an alcohol related traffic offense in 1994 caused him to discontinue drinking. He made a convincing case at the hearing that such conduct will not be repeated. His driving record has been clear for only a little over two years. While in some cases that might be considered sufficient time to conclude that the rule violations were not recent, in light of the repeated violations and the fact that Applicant was a mature person during the period concerned, I believe it is premature to grant a clearance. No mitigating conditions are applicable.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that he is not eligible for access to classified information. Thus, I find against the Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline E: Against APPLICANT

Subparagraph 1.a.: Against 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

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: For Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1 o.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national

interest to grant or renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge