

DATE: June 9, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21672

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 61-year-old employee of a government contractor, admitted to numerous alcohol-related criminal and work-related offenses, drinking to excess over an extended period of time, and omitting three convictions from his security clearance application. Omission of the three convictions was found not to be deliberate but the remaining allegations are sustained. Clearance is denied.

STATEMENT OF THE CASE

On October 22, 2002, the 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.

In a sworn written statement, dated November 20, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on February 27, 2003. A complete copy of the file of relevant material (FORM), consisting of ten documents, was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He chose not to do so. The case was assigned to, and received by, this Administrative Judge on May 8, 2003.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to alcohol incidents including driving while under the influence, and reporting for work in an intoxicated or impaired condition under Guideline G; questionable judgment and

untrustworthiness pertaining to deliberate omission of material facts from a personnel security questionnaire under Guideline E; and criminal conduct under Guideline J. Those admissions are incorporated herein as findings of fact.

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

Applicant has had a long history of alcohol use and abuse with beer dating from 1964. He has had five charges of driving while intoxicated in 1985, 1988, 1995, 1997 and 2000. He was convicted of all and sentenced to serve time in jail and/or perform community service for all convictions. He was put on probation in all five cases. His last offense was in 2000 the day after the submission of his SF 86. Since that time he has modified his drinking habits and now only drinks on weekends and only a couple of beers.

Three blood alcohol level tests were made for the two most recent arrests and convictions that indicated .158, .168 and .172.

Two incidents occurred in 1996 at Applicant's workplace involving smell of alcohol on his breath resulting required counseling for alcohol violations.

Applicant admitted the 1997 conviction on his SF 86 dated January 21, 2000 but omitted the three oldest convictions.

Applicant participated in alcohol abuse programs in 1998 and 2000 following arrests and convictions but continues to consume alcohol. He recognizes the difficulties in his life that have occurred because of his drinking habits.

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)

Under the Directive the Government has alleged a number of Disqualifying Conditions (DC) all of which relate directly or stem from alcohol abuse. These concern alcohol related incidents away from work (E2.A7.1.2.1.), alcohol related incidents at work (E2.A7.1.2.2.), and consumption of alcohol to the point of impaired judgment (E2.A7.1.2.5.) under Guideline G. Also alleged is falsification of his SF 86 by failing to list three of the alcohol related offenses (E2.A5.1.2.2) under Guideline E. The third allegation concerns criminal offenses (E2.A10.1.2.2.) under Guideline J.

CONCLUSIONS

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny him

a security clearance because of alcohol abuse under Guideline G and criminal conduct under Guideline J. The Applicant has admitted the convictions and the sentences imposed by the courts. The facts admitted to by Applicant and found herein clearly meet the tests of the Disqualifying Conditions alleged. No mitigating concerns are applicable under the cited guidelines.

The allegations under Guideline E regarding falsification of information on his SF 86 require that such falsification be deliberate. The SF 86 clearly asks "Have you ever been charged with or convicted of any offense(s) relating to alcohol or drugs". The question clearly called for a full answer as to all convictions and Applicant withheld three of the then four prior convictions. I find that action to have been deliberate and that the Government has established the falsification.

Applicant failed to establish that he has been rehabilitated from his alcohol abuse despite having been in two programs for alcohol abuse and stating an intent not to abuse alcohol in the future. His history of alcohol abuse and pattern of conduct over such a long period of time indicates a failure of rehabilitation. I cannot conclude that Applicant has demonstrated that it is clearly consistent with national security to grant him a security clearance.

FORMAL FINDINGS

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

Paragraph 1. Guideline G: 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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

DECISION

After full consideration of all the facts and documents 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.

Charles D. Ablard

Administrative Judge

