

DATE: November 21, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-00240

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 28-year-old employee of a government contractor used marijuana for seven years from 1993 until 2000. He has asserted an intention to resume using depending on how he feels and how much alcohol he may have consumed. He also used other drugs and alcohol to excess. He also falsified material facts on his Security Clearance Application (SF 86) regarding drug activity. Clearance is denied.

STATEMENT OF CASE

On December 13, 2002, 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.

In a sworn written statement, dated February 10, 2003, 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 August 6, 2003. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not do so. The case was assigned to, and received by, me on October 3, 2003.

FINDINGS OF FACT

Applicant admitted to all of the specific allegations in the SOR and stated no qualifications or mitigating facts. The admitted facts are hereby incorporated as findings of fact.

After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact.

Applicant, a 28-year-old employee of a government contractor, used marijuana for six years from 1993 until 2000. He also has used hallucinogenic drugs and alcohol to the point of intoxication. In 2000 he was charged, convicted and given a suspended sentence with a \$300.00 fine for driving while intoxicated. He failed to disclose his drug use on his SF 86.

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) These concern drug involvement including drug abuse (E2.A8.1.2.1.) and illegal possession ((E2.A8.1.2.2.) under Guideline H, alcohol related incidents away from work (E2.A7.1.2.1.), 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 disclose drug use (E2.A5.1.2.2) under Guideline E.

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.

The government has cited Disqualifying Condition (DC) 1 under Guideline H in the SOR concerning drug involvement as relevant to the proposed denial of a security clearance for the Applicant. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a condition that may be disqualifying. E2.A8.1.1.3 provides the following definition: "Drug abuse is the illegal use of a drug"

Mitigating Condition (MC) 2 might apply if there is "[a] demonstrated intent not to abuse any drugs in the future." However, the Applicant has stated he would likely continue to use marijuana in the future depending on how he felt or how much alcohol he had consumed. Such intention raises serious questions concerning his judgment and trustworthiness to hold a security clearance.

With regard to Guideline G, Applicant has admitted alcohol related offenses, consuming alcohol to the point of intoxication and an intent to continue to do so. Thus, no mitigating Conditions are applicable.

With regard to Guideline E Applicant has shown an unwillingness to comply with legal requirements for disclosure of past conduct on the SF 86. No Mitigating Conditions were advanced by Applicant and none are applicable.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Paragraph 2 Guideline G: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a.: 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. Clearance is denied.

Charles D. Ablard

Administrative Judge