

DATE: May 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-03992

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is an employee of a defense contractor who had two alcohol-related driving arrests in 1992 and 1996. The second arrest resulted in a conviction and sentence to two days in jail and a fine of \$1,000.00 with his driver's license suspended for 180 days. He was ordered to attend and did attend an alcohol treatment program for 18 months in 1998 and 1999 where he was diagnosed as alcohol dependent. He has continued to consume alcohol to excess as recently as February 2003. He also has debts exceeding \$3,000.00 that are unexplained. Clearance is denied.

STATEMENT OF CASE

On August 11, 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.

In a sworn written statement, dated September 9, 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 November 24, 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, this Administrative Judge on February 20, 2004.

FINDINGS OF FACT

Applicant admitted to all of the specific allegations in the SOR relating to alcohol but denied three of the four

allegations relating to financial issues. The admitted facts are hereby incorporated 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 is an employee of a defense contractor who had two alcohol-related driving arrests in 1992 and 1996. The second arrest resulted in a conviction and he was sentenced to two days in jail and fined \$1,000.00 with his driver's license suspended for 180 days. He was ordered to attend an alcohol treatment program for 18 months in 1998 and 1999. The results of the treatment were not satisfactory and he was diagnosed as alcohol dependent. He has continued to consume alcohol to excess as recently as February 2003.

Applicant offered no evidence to show any change in the behavior that has led to the allegations in this matter.

Applicant is alleged to have four outstanding delinquent debts totaling over \$3,000.00. He has denied three of them but offered no evidence in support of his denial. He admitted one debt of \$1,138.00 to a credit union.

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.

Alcohol Consumption Disqualifying Condition (DC) 1 under Guideline G of the Directive (E2.A7.1.2.1.) raises the issue of alcohol-related incidents away from work such as driving while under the influence or other criminal incidents related to alcohol use and consumption of alcohol to the point of impaired judgment (E2.A7.1.2.5.). The record of Applicant's offenses, convictions and sentences clearly show that the Government has established reasons to deny him a security clearance because of alcohol abuse under Guideline G.

Applicant failed to establish that he has been rehabilitated from his alcohol abuse despite having been in a program for alcohol abuse. His history of alcohol abuse and pattern of conduct over a long period of time indicates a failure of rehabilitation.

Applicant has not demonstrated that it is clearly consistent with national security to grant him a security clearance. There have been no positive changes in behavior supportive of sobriety.(MC 3)

With regard to Financial Disqualifying Condition (DC) 1 under Guideline F of the Directive (E2.A6.1.2.1.) raises the issue of a history of not meeting financial obligations and inability or unwillingness to satisfy debts (E2.A6.1.2.3.). Applicant's denials without any proof are insufficient to justify the applicability of any mitigating conditions.

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 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

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: 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