

DATE: October 16, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05846

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 63 year old employee of a defense contractor who has been arrested several times since 1985 for alcohol related traffic offenses most recently twice in 2001. He indicates an intention to continue drinking 3-4 beers in an evening twice or three times a week. He has been ordered into and attended alcohol awareness classes as a result of the arrests. Clearance is denied.

STATEMENT OF CASE

On January 8, 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 February 2, 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 July 2, 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 September 2, 2003.

FINDINGS OF FACT

Applicant admitted to all of the specific allegations in the SOR relating to alcohol violations except one and it was amended in the FORM. The admitted facts are hereby incorporated as findings of convictions while denying that the

violations and convictions increased the likelihood of security violations.

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 had five alcohol related driving offenses two of which resulted in convictions, two resulted in fines and dismissal and the most recent, driving with a license suspended after the immediate prior charge resulted in a conviction. They occurred in 1985 (two), 1997, and 2001 (two).

One each in 1985 and 2001 also resulted in an order from the court that Applicant attend alcohol safety programs.

Applicant stated in his answer that he continues to drink sometimes to the point of the legal definition of intoxication and intends to continue to do so with his friends at local taverns in his community. Applicant has offered no evidence of concern for his behavior or recognition that his condition is of concern and requires modification.

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.), and consumption of alcohol to the point of impaired judgment (E2.A7.1.2.5.) under Guideline G.

The second allegation concerns criminal offenses (E2.A10.1.2.2.) under Guideline J relating to multiple lesser offenses for which there were allegations or admissions of criminal conduct, regardless of whether the person was formally charged.

CONCLUSIONS

Alcohol Consumption Disqualifying Condition (DC) 1 under Guideline G of the Directive 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. 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 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 factors are applicable under the cited guidelines. Although some offenses are stale the most recent two are only within the last three years and one is for operating vehicle without a license that was suspended for alcohol abuse. Mitigating Condition (MC) 2 is not applicable since there have been recent problems in 2001 in addition to those that occurred a number of years ago.

Applicant failed to establish that he has been rehabilitated from his alcohol abuse despite having been in two programs for alcohol abuse. His history of alcohol abuse and pattern of conduct over 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. There have been no positive changes in behavior supportive of sobriety.(MC 3)

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness under Criminal Conduct (DC)1 under Guideline J. The evidence again shows such a pattern of multiple lesser offenses over many years. Again, Mitigating Conditions are not applicable in that the behavior is recent (MC 1) and there is no clear evidence of successful rehabilitation. (MC 5)

FORMAL FINDINGS

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

Paragraph 1. Guideline J: 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

Paragraph 2. Guideline G AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 3.c.: 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