

DATE: July 8, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-06888

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Juan Rivera, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a civilian employee of a company that does work for defense contractors has numerous convictions for alcohol related driving offenses one of which resulted in a sentence of confinement for more than a year. The sentence was suspended but it is covered by the provisions of 10 U.S.C. 986. He did not list several of the convictions on his application for a security clearance. Clearance is denied.

STATEMENT OF CASE

On February 5, 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 March 10, 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 another administrative judge who could not hold the hearing. A notice of hearing was issued on April 23, 2003 and it was re-assigned to me on April 25, 2003. A hearing was held on May 15, 2003. The Government introduced 11 exhibits and the Applicant introduced two exhibits. All of the exhibits were admitted into evidence. The Applicant was the only witness. The transcript was received on May 23, 2003. Applicant requested that the record be held open for submission of additional information from the report of investigation. This material was submitted on July 3, 2003.

FINDINGS OF FACT

Applicant admitted to all of the specific allegations in the SOR relating to alcohol violations and security He denied all

of the allegations of falsification of material facts on his national security questionnaire.(SF 86) 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 nine alcohol related driving offenses resulting in convictions in 1978, 1979, 1980 (three convictions), 1981, 1983, 1986 and 1992.

Applicant received an administrative discharge from the U.S. Air Force in 1978 with a General Discharge Certificate after repeated alcohol related offenses while on active duty.

Applicant's 1983 offense resulted in a sentence of four and one half years confinement under the Habitual Violator statute which resulted in probation. That probation was revoked after the 1986 offense.

Applicant's 1992 offense resulted in a sentence of confinement that was suspended.

Applicant failed to list one felony conviction and several alcohol related offenses on his SF 86.

Applicant has attended several alcohol rehabilitation courses, the latest one in 2001. These have not had the desired effect of causing him to cease drinking. However, his drinking has been reduced from consuming a 24 pack of beer in a weekend but he continues to consume one to eight beers on weekends when barbequing a pig or engaged in other lengthy social activities.

While Applicant's drinking habits have improved, he still consumes beer in greater quantities than he agrees that he should. His rehabilitation efforts have been unsuccessful.

Applicant is a single parent of a step-son whom he has educated through the college undergraduate level. He owns his own home and leases several surrounding acres that he offers for use by various public service organizations in his community.

Applicant's colleagues at his company regard him as a professional who does good work and is trustworthy in the handling of sensitive information. (Exhibits A and B)

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

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 establish the DC has been met. Mitigating Conditions are not applicable.

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 over many years. Mitigating Conditions are not applicable

Applicant's failure to list certain prior felony and alcohol related offenses on his SF 86 raises a question of untrustworthiness under Personal Conduct (DC)2 under Guideline E. Applicant stated at the hearing that his failure to list these offenses was not deliberate as required by the Guideline. Department Counsel agreed that they were not deliberate and I so find.

The provisions of 10 U.S.C. 986 and the implementing regulations are unequivocal that a person is disqualified from holding a security clearance if convicted of a crime and sentenced to more than one year of imprisonment.

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 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

Subparagraph 1.i.: Against Applicant

Subparagraph 1.k.: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: 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