

DATE: June 18, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11221

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 39-year-old employee of a defense contractor who was charged with seven specific allegations relating to criminal and alcohol-related activity and two allegations related to falsification on his application for a security clearance (SF 86). He disagreed with all of the conclusions reached in the SOR based on the allegations. His arrests and convictions were all nearly eight years old occurring between 1986 and 1996 and are mitigated by the passage of time. His explanation for failure to list three arrests on his SF 86 was insufficient to mitigate the personal conduct allegation. Clearance is denied.

STATEMENT OF CASE

On July 31, 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 August 28, 2003, Applicant, in a sworn written statement, responded to the allegations set forth in the SOR, and requested a hearing. The matter was assigned to me on January 5, 2004. An amended answer was filed on February 17, 2004. A notice of hearing was issued on March 2, 2004, and a hearing was held on March 18, 2004. The Government introduced 11 exhibits and the Applicant introduced one exhibit. All exhibits were admitted into evidence. The Applicant and one other person testified. The transcript was received on March 29, 2004.

FINDINGS OF FACT

Applicant is a 39-year-old employee of a defense contractor who admitted three of the seven specific allegations in the

SOR relating to criminal activity and neither of the allegations related to falsification on his application for a security clearance (SF 86). He disagreed with all of the conclusions reached in the SOR based on the allegations.

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 was arrested and charged with various driving offenses seven times between 1986 and 1996. The most recent arrest was for driving while intoxicated but resulted in a conviction for reckless driving with a fine of \$500.00, sentence to 90 days in jail, suspended, and license suspension for six months. (1a) Two other charges in 1995 and 1996 were dismissed. (1 b and c) Another arrest in 1995 for drunk in public resulted in a \$15.00 fine. (1d) Two other driving offenses in 1992 and 1993 resulted in fines of \$125.00 and \$200.00 respectively. (1e and f) He has had no arrests since 1996.

He listed on his SF 86 at question 24 only the single 1986 arrest for driving while intoxicated when he was found guilty as charged, fined \$500.00 suspended to \$400.00, sentenced to 30 days in jail suspended, and suspension of his drivers license for six months. (1g) That question requires that all alcohol-related charges or convictions be listed. Applicant should have listed 1a and c in response to that question since both arrests were alcohol related even though the conviction for the first was not and the second was dismissed.

Applicant also failed to report at question 26 the arrest (1f) that resulted in a \$200 fine when the question states that all fines over \$150.00 must be reported. That arrest had been reported on his 1998 SF 86. (Exh. 12)

He admits to having had a drinking problem during the period of the offenses. He decided not to drink in 1988 but resumed shortly thereafter. Since 1999 he drinks beer in moderation and is in a stable relationship with a woman who testified in his behalf regarding his lifestyle and the changes she has observed in him. He and the witness confirmed that he has dropped friends with whom he once drank to excess. He is well regarded by his supervisor as a good worker and a person of integrity. (Exh. A)

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

The first allegation concerns criminal offenses (E2.A10.1.2.2.) under Guideline J relating to a history or pattern of criminal activities. Mitigating conditions (MC) are that the offense was not recent (E2.A10.1.3.1.), and that there is clear

evidence of successful rehabilitation. (E2.A10.1.3.6)

A history or pattern of criminal activity or any criminal conduct creates doubt about a person's judgment, reliability, and trustworthiness under Criminal Conduct DC 1 under Guideline J. Mitigating Conditions (MC) are applicable in that the behavior was not recent and there is clear evidence of successful rehabilitation and change in conduct of the Applicant. It has now been almost eight years since his last offense and Applicant has shown a change of lifestyle and dropped associates with whom he was misbehaving.

Also alleged is Applicant's failure to report certain of the offenses under Guideline E that might indicate questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.) Applicant offered a variety of explanations for his failure to list the three arrests charged in the SOR including that he thought only the offenses that had occurred in the past five years should be included so as to update his 1998 SF 86. He also attributed a part of the problem to filing electronically and relying on his 1998 application. Applicant appeared as intelligent, but confused in his explanations for the omissions. No mitigating conditions are applicable.

Significantly, he did not report on the 1998 SF 86 the 1996 arrest and conviction that was also omitted on the 2003 application. In 1998 this was a recent arrest and conviction that he should have remembered. The 1998 omission was then compounded when it was not reported in 2003 as he stated that he was using his 1998 application form. That form did include one of the other arrests (1e) omitted in the 2003 SF 86 so it would appear that he did some editing of the earlier application.

In all adjudications the protection of our national security is of paramount concern. Persons who have access to classified information have an overriding responsibility for the security concerns of the nation. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information.

The "whole person" concept recognizes that we should view a person by the totality of their acts and omissions. Each case must be judged on its own merits taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that the Applicant has changed his habits sufficiently that the criminal allegations under Guideline J should be mitigated but he has not exhibited the care required for granting a security clearance showing an inability to adequately fulfill the responsibilities required for preparing materials necessary to justify the granting of a clearance. It is thus premature to grant him a clearance at this time.

FORMAL FINDINGS

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

Paragraph 1. Guideline J: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against 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