

DATE: January 14, 2005

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-30932

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn MacKinnon, Esq. , Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a 54-year-old security guard supervisor who works for a defense contractor. He has had four traffic arrests relating to alcohol between 1971 and 2003. He had no incidents from 1998 until 1993. Applicant failed to report any of the offenses on his 2002 application for a security clearance (SF 86). However, he did report the 1998 incident in response to Question 24 on an SF 86 he filed in 2000. His failure to do so was not deliberate but his pattern of conduct regarding alcohol and driving over a 30 year period warrants denial. Clearance is denied.

**STATEMENT OF CASE**

On April 27, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified 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 May 11, 2004, 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 August 18, 2004. A notice of hearing was issued on October 14, 2004, and a hearing was held on November 4, 2004. The Government introduced six exhibits and the Applicant introduced six exhibits. All were admitted into evidence. The Applicant testified. The transcript was received on November 22, 2004.

**FINDINGS OF FACT**

Applicant admitted all of the specific allegations in the SOR relating to alcohol but denied those relating to personal conduct. 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 a 54-year-old security guard supervisor who works for a defense contractor. He was on active duty in the army until April 2002, when he retired after 20 years of service. He has had four driving offenses relating to alcohol beginning in 1971 when he was charged with DUI, pled guilty, and his license was suspended for one year. A second arrest for DUI in 1984 or 1985 resulted in a plea of guilty with a fine and suspension of license for another year. . His next arrest was in 1994 and the charge was dismissed. In 1998 he was charged under Article 15 with drunken driving and going the wrong way on a one way street. He was reprimanded and his collateral access was suspended. He had no further arrests until the most recent one in 2003 when he was charged with impaired driving, found guilty, and his driver's license restricted for one year.

Applicant failed to report any of the offenses on his application for a security clearance (SF 86) in response to Question 24 concerning alcohol offenses, and Question 25 concerning military court proceedings filed in 2002 (Exh. 1). However, he did report the 1998 incident in response to Question 24 on an SF 86 he filed in 2000 and introduced in evidence (Exh. F).

Applicant's 2003 arrest occurred when he drove 50 miles at 11 p.m. after getting off an evening shift to celebrate a new job for a friend who had been hired by Applicant's employer. He returned home several hours later and was arrested while driving through the military base where he works about three miles from his home. His test for blood alcohol was .16 and .08 is considered intoxicated. He was charged with impaired driving and his driver's license was restricted for one year.

Applicant is well regarded by his employer and is under consideration for a promotion to supervisor.

### **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 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:

The Government has cited a Disqualifying Condition (DC) pursuant to the Directive concerning alcohol under Guideline G. This relates to excessive alcohol consumption (E2.A7.1.1) and alcohol-related incidents away from work, such as driving while under the influence. (E2.A7.1.2.2.) Possible mitigating factors include the fact that the problem

occurred a number of years ago and there is no current problem (E2.A7.1.3.2.), or that there have been positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)

The record of Applicant's offenses, convictions, and sentences establish the DC has been met. Mitigating Conditions might be applicable in that most of the arrests occurred over seven years ago. However, the most recent one occurred less than two years ago. Applicant stated at the hearing that he learned his lesson in 1971 and reduced his drinking. The record since then belies his contention and shows a disqualifying pattern of conduct. The DOHA Appeal Board has found that six alcohol related offenses over 23 years was sufficient to establish a pattern. ISCR Case No. 01-22403 (App. Bd. September 5, 2002). While it might be argued that five arrests over a 33 year period are insufficient to establish a pattern, the recency of the last arrest and the facts surrounding it leads me to conclude that a pattern exists. No mitigating conditions are applicable to the facts in this matter.

Under Guideline E, Personal Conduct, of the Directive involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. (E2.A5.1.1.) The Government has established by evidence that he has been involved in a pattern of rule violations (E2.A5.1.2.5.) and failure to give complete and accurate information on his SF 86. (E2.A5.1.2.2.)

Applicant testified he believed his 2002 SF 86 needed only to be updated from his last one and that one in 2000 had reported the 1998 incident and arrest. The 2003 arrest occurred after both had been submitted. He also testified that his prior SF 86s had been done under the supervision of a security officer and that he lacked that help when filing his 2002 application. I find that he did not deliberately withhold information on his 2002 application as the guideline requires.

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 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 Applicant is not a trustworthy and reliable person whose record of conduct justifies a finding that it is clearly consistent with the national interest to grant a security clearance to him. While his lack of criminal conduct and alcohol related offenses for five years between 1998 and 2003 may be commendable, he has shown in 2003 a reversion to a pattern of alcoholic problems that have persisted for over 30 years. It is premature to grant a clearance.

### **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

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: 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