

DATE: November 6, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-13942

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Kathryn D. McKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to reveal past criminal conduct and information about prior investigation for a security clearance on his security clearance application. Applicant contended that he misunderstood the questions and believed that the only information requested was for the past seven years. The questionnaire clearly stated the information was not time limited. Applicant offered no rebuttal information to counter the allegations. Clearance is denied.

STATEMENT OF CASE

On April 15, 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 April 30, 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 7, 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 submitted no additional material. The case was assigned to, and received by, this Administrative Judge on September 25, 2003.

FINDINGS OF FACT

Applicant admitted the specific allegations as to past criminal conduct ending in 1994 but denying an intent to deceive. Those admissions are incorporated herein 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 withheld several pieces of relevant information on his security clearance application (SF 86) relating to his investigations record. The first was that he had held a security clearance from 1979 to 1983 while on active duty with the Army. The second was that his access to classified information was suspended in 1982 while an investigation was pursued regarding revocation of clearance for three instances of wrongful possession of marijuana in 1975, 1978, and 1993. The third was that in 1986 his access to Sensitive Compartmentalized Information (SCI) was suspended after he tested positive for a marijuana derivative.

Applicant also withheld information concerning his arrest record on the SF 86 relating to the fact that in 1994 Applicant was arrested for driving under the influence. He was charged, fined and ordered to perform 24 hours of community service.

Applicant states that the reason he did not list the prior conduct on his Questionnaire for a National Security Position was that he thought he only had to list matters occurring the past seven years. The Questionnaire asks if he was "ever" charged or convicted and investigated for a security clearance.

Applicant has changed his lifestyle and now works for a government contractor. Applicant's supervisor in his company wrote a strong letter of endorsement commenting on his trustworthiness and how he had changed his life since his encounters with the law several years ago.

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. 10,865 § 2. *See* Executive Order No. 12,968 § 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. 12,968 § 3.1(b).

Personal Conduct under Guideline E raises an issue involving questionable judgment, unreliability and unwillingness to comply with rules and regulations including a deliberate omission from a personnel security application. (DC 2) The Guideline also provides for Mitigating Conditions (MC) including the fact that the information was not pertinent to a determination of trustworthiness (MC 1), or that the falsification was an isolated incident and that correct information was voluntarily provided (MC 2).

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.

Based on the evidence of record, including Applicant's admissions, the Government has established reasons to deny him a security clearance because of personal conduct. Having established such reasons, the Applicant has the burden to establish security suitability through evidence which refutes, mitigates, or extenuates the disqualification and demonstrates that it is clearly consistent with the national interest to grant a security clearance. ISCR Case No. 99-0424 (App. Bd. Feb. 8, 2001).

I cannot find the mitigating conditions under Guideline E have been met. While the Applicant may have changed his lifestyle in the past nine years, the fact that he omitted pertinent information on his SF 86 when the questions clearly stated the requirement for full disclosure justifies the denial of a clearance.

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 he is not eligible for access to classified information.

FORMAL FINDINGS

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

Paragraph 1 Guideline E AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: 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