

DATE: February 27, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-20576

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 48-year-old employee of a defense contractor who has had three arrests and convictions for alcohol related offenses over the past seven years the most recent one in 2000. He failed to list the first two of them on his Security Clearance Application (SF 86). Clearance is denied.

STATEMENT OF CASE

On June 12, 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 July 1, 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 September 17, 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 January 8, 2004.

FINDINGS OF FACT

Applicant is a 48-year-old employee of a defense contractor who has had three arrests and convictions for alcohol related offenses and failed to list two of them on his Security Clearance Application. (SF 86)

Applicant admitted to all of the specific allegations in the SOR relating to criminal conduct and personal conduct and denied all of the allegations relating to alcohol. The admitted facts are hereby incorporated 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.

The first two alcohol related criminal offenses. occurred in 1996 during a three week period. The first was driving related and the second was for public drunkenness. He was ordered into an alcohol awareness program. Applicant attended Alcoholics Anonymous meetings in 1996. The third offense occurred in 2000 for driving under the influence. His driver's license was suspended for three years and he was ordered into the alcohol safety action program.

Applicant stated in his answer that he has changed his behavior in recognition of the fact that his condition is of concern and requires modification.

Applicant listed his 2000 conviction on his SF 86 in response to Question 24 concerning his arrest record for alcohol and drug offenses but did not list the two convictions in 1996.

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)

The allegations concern a number of Disqualifying Conditions (DC). The first concern criminal offenses (E2.A10.1.1.) under Guideline J relating to multiple lesser offenses for which there were allegations or admissions of criminal conduct. (E2.A10.1.2.2.)

The second concerns alcohol abuse (E2.A7.1.1.) under Guideline G relating to alcohol incidents away from work (E2.A7.1.2.1.), and consumption of alcohol to the point of impaired judgment. (E2.A7.1.2.5.)

The third relates to personal conduct (E2.A5.1.1.) under Guideline E for the deliberate omission of relevant information from any personnel security questionnaire. (E2.A5.1.2.2.)

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.

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 several years. Mitigating Conditions are not applicable in that the behavior is recent (MC 1) and there is no evidence of successful rehabilitation. (MC 5)

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 the first two offenses are stale the most recent one is only a little over three years old and occurred after extensive counseling and treatment for alcohol abuse. Mitigating Condition (MC) 2 relating to the age of the offense is not applicable.

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. There may have been changes in behavior supportive of sobriety but it has not been established in the record. (MC 3)

Applicant's failure to list the 1996 offenses on his SF 86 raises questions of Personal Conduct for failure to answer relevant questions on a security clearance application. Applicant contends in his response that he did not regard them as important. The question is very clear as to what is required and his excuse does not mitigate the offense. No other mitigating factors are applicable.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

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

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Paragraph 3. Guideline E: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: 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