

DATE: February 24, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-22486

## **DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Marc Curry, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant, a 61-year-old civilian engineer employed by a defense contractor, had three convictions for alcohol related driving offenses over the past 19 years the most recent one in 1997. The offenses are mitigated by the passage of time and the clear showing of rehabilitation and change in conduct. Clearance is granted.

### **STATEMENT OF CASE**

On September 22, 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 October 15, 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 November 25, 2003. A notice of hearing was issued on December 2, 2003 and a hearing was held on December 10, 2003. The Government introduced seven exhibits and the Applicant introduced three exhibits. All of the exhibits were admitted into evidence. The Applicant was the only witness. The transcript was received on December 30, 2003.

### **FINDINGS OF FACT**

Applicant admitted to only one of the specific allegations in the SOR relating to alcohol violations and disagreed with all of the conclusions reached.

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 61-year-old engineer who retired from NASA in 1994 after 14 years of service and has since been an employee of a defense contractor. Before his employment by NASA he was employed by the Defense Logistics Agency for nine years and on active duty with the Navy for seven years. After his discharge for the Navy he was a reservist in the Air Force for three years. (TR. 18-19)

Applicant had three alcohol related driving offenses resulting in convictions for driving under the influence in 1983, 1984, and 1997. The first offense resulted in a 12 month probation; the other two resulted in fines. He attended alcohol awareness classes after each offense. (TR. 22-23)

After his last offense he paid a fine and was allowed to leave the state where the offense occurred and travel across the country to his residence with the agreement that he was to report to local authorities and enroll in an alcohol counseling program. (TR. 30) Applicant's driver's license was not suspended as was alleged. (Exh. C)

Applicant received alcohol counseling after the last offense in his home state and was discharged after six months in 1999 with a finding of no indication of alcoholism. (Exh. 7) He now drinks beer occasionally at social occasions on weekends. (TR. 35)

At the hearing the government conceded that allegations of alcohol abuse had been mitigated in that there was no evidence of habitual consumption and the three arrests had occurred over a 19 year period and the last one six years ago. (TR. 45-47)

Applicant has an excellent employment record with two federal agencies and service in two branches of the military. (Exh. 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)

The Government has cited a number of Disqualifying Conditions (DC) pursuant to the Directive. The first concerns alcohol abuse under Guideline G. This concerns 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.) Also that there have been positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)

The second 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)

### **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 applicable in that the problems occurred a number of years ago and there is no indication of a recent problem; and there have been positive changes in behavior supportive of sobriety.

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 are applicable in that the behavior was not recent and there is clear evidence of successful rehabilitation and change in conduct of the Applicant.

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 is a trustworthy and reliable person whose record of conduct and employment justifies a finding that it is clearly consistent with the national interest to grant a security clearance to him.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c. : For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is granted.

Charles D. Ablard

## Administrative Judge