

DATE: January 5, 2004

In Re:

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SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23133

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Kathryn A. Trowbridge, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant, a 42-year-old employee of a government contractor doing tunneling work used alcohol to excess on several occasions and had six alcohol related offenses five of them over ten years old. He has since been in the care of a physician and in an alcohol rehabilitation program. He has had no offenses in the past two years. He failed to report on his Security Clearance Application (SF 86) five of the six offenses believing that only those within the last ten years were required to be reported. He reported all of them to the security investigator. Clearance is granted.

**STATEMENT OF CASE**

On November 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 March 4, 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 October 2, 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 so within the specified time period. The case was assigned to, and received by, me on December 2, 2003.

**FINDINGS OF FACT**

Applicant admitted to all of the specific allegations in the SOR but stated qualifications or mitigating facts in both his

first answer and supplemental material. The admitted facts are hereby incorporated as findings of fact.

After a complete and thorough review of the information in the record, and upon due consideration of same, I make the following additional findings of fact.

Applicant, a 42-year-old employee of a government contractor, used alcohol to the point of intoxication and has six alcohol related offenses on his record . The dates of the offenses are 1985, 1987, 1989, 1990, 1992 and 2001. Two related to refusal to take alcohol tests while driving, a third was nolle prosequi, a fourth charged disorderly conduct, and the remaining two were driving under the influence. After the last offense he received medical treatment for six weeks for alcohol dependence and began a continuing care program in which he continues to participate.

Applicant was married in 1992 and assumed responsibility for his wife's 14-year-old son. They had another child in 1993.

Applicant failed to disclose the five alcohol related offenses that were over ten years old on his Security Clearance Application (SF 86) giving only his 2001 offense.

### 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)

Under the Directive the Government has alleged a number of Disqualifying Conditions (DC) These concern alcohol related incidents away from work (E2.A7.1.2.1.), under Guideline G.Possible Mitigating Conditions (MC) 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.)

Also alleged is falsification of his SF 86 by failing to disclose five of his six prior offenses (E2.A5.1.2.2) under Guideline E Personal Conduct. Guideline E raises an issue involving questionable judgment, unreliability and unwillingness to comply with rules and regulations including a deliberate omission of relevant and material facts from a personnel security application. The Guideline also provides for Mitigating Conditions (MC) including the fact that the information was not pertinent to a determination of trustworthiness. (E2.A5.1.3.1)

### 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.

With regard to Guideline G, Applicant has admitted alcohol related offenses five of them over ten years ago. With regard to the sixth, driving under the influence of alcohol, the offense occurred the last night of his employment in a Western state before he was to return home on the East Coast. He was allowed to leave the state, hired a local lawyer, was found guilty, and agreed to spend one night in jail at his home city and pay a fine. He avers that this was aberrational behavior and it is the only offense during the past ten years and there has been no recurrence during the past two years.

He subsequently entered the treatment program for alcohol dependence under the care of a doctor. He completed the course and was found to be on the road to lifestyle change and maintenance of abstinence. There is no evidence of alcohol related offenses or occurrences in over two years since he began the program. Mitigating Conditions are applicable in that the problem occurred a number of years ago and there is no indication of a recent problem, and that there has been positive changes in behavior supportive of sobriety.

With regard to Guideline E Applicant believed that he was required to list only those offenses occurring during the past ten years. Significantly, Applicant listed the most recent offense from 2001 that was the most potentially damaging one since it was much more recent than the others. He subsequently revealed all offenses in his security interview. His omission of the earlier offenses was not deliberate as required by the Guideline. The applicable Mitigating Condition has been met in that the information is not pertinent to a determination of judgment, trustworthiness, or reliability.

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 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 G: 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

Subparagraph 1.h.: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 3.a.: For Applicant

### **DECISION**

After full consideration of all the facts and documents presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

## Administrative Judge