

DATE: March 30, 2004

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-23186

**DECISION OF ADMINISTRATIVE JUDGE**

**CHARLES D. ABLARD**

**APPEARANCES**

**FOR GOVERNMENT**

Rita C. O'Brien, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is an employee of a defense contractor who had five alcohol related driving offenses most of them in 2000. One resulted in an assault charge and an earlier incident in 1994 resulted in a domestic protective order. Applicant admits that he drank to excess from 1979 until at least 2000 notwithstanding treatment he received for alcohol dependence and depression. At the time of his most recent sworn statement in November 2000 he continued to drink. No evidence was offered to show a change of conduct. Clearance is denied.

**STATEMENT OF CASE**

On June 30, 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 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 November 24, 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 23, 2004.

**FINDINGS OF FACT**

Applicant admitted to all of the specific allegations in the SOR. 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:

Applicant is an employee of a defense contractor who had five alcohol related driving offenses most of them in 2000. One of them resulted in an assault charge and an earlier incident in 1994 resulted in a domestic protective order. Applicant admits that he drank to excess from 1979 until at least 2000 notwithstanding treatment he received for alcohol dependence and depression. He attended an alcohol awareness education program for four months in 2000 and group counseling for one year. He also attended an anger management class for four months in 2000. At the time of his most recent sworn statement in November 2000 he continued to drink.

Applicant offered no evidence to show any change in behavior from 2000 to the present except a statement attached to his answer stating that he is "sane, sober and uncompromising".

### 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)

### 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.

Alcohol Consumption Disqualifying Condition (DC) 1 under Guideline G of the Directive (E2.A7.1.2.1.) 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 and consumption of alcohol to the point of impaired judgment (E2.A7.1.2.5.). 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.

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. I cannot conclude that Applicant has demonstrated that it is clearly consistent with national security to grant him a security clearance. There have been no positive changes in behavior supportive of sobriety.(MC 3)

With regard to criminal conduct under DC 2 of Guideline J of the Directive (E2.A10.1.2.2.) relating to multiple lesser offenses, Applicant has admitted the convictions, sentences and orders imposed by the courts. The facts admitted to by Applicant and found herein clearly meet the tests of the Disqualifying Conditions alleged.

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 shows such a pattern of multiple lesser offenses over many years. Mitigating Conditions are not applicable in that there is no evidence of successful rehabilitation. (MC 6) Although the offenses occurred in 2000 and before and thus might be considered not to be "recent" under the Guideline, no evidence has been offered to show a change of conduct in the past four years sufficient to overcome the disqualifying condition.

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

Paragraph 2. Guideline G AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Subparagraph 2.f.: Against Applicant

Subparagraph 2.g.: Against Applicant

Subparagraph 2.h.: Against Applicant

Subparagraph 2.i.: 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