

KEYWORD: Personal Conduct; Criminal Conduct

DIGEST: Applicant was arrested and convicted in 1998 and 2000 for alcohol-related offenses and drug possession. He had several delinquent debts in 2000 when he filed his security clearance application (SF 86) on which he failed to report the 1998 arrest and the delinquent debts. He also failed to reveal that he had received an other than honorable discharge from the Marine Corps reserves. Clearance is denied.

CASENO: 03-19002.h1

DATE: 01/26/2005

DATE: January 26, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-19002

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was arrested and convicted in 1998 and 2000 for alcohol-related offenses and drug possession. He had several delinquent debts in 2000 when he filed his security clearance application (SF 86) on which he failed to report the 1998 arrest and the delinquent debts. He also failed to reveal that he had received an other than honorable discharge from the Marine Corps reserves. Clearance is denied.

STATEMENT OF CASE

On August 3, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified 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 September 3, 2004, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on November 1, 2004. A notice of hearing was issued on November 24, 2004, and a hearing was held on December 2, 2004. Six government exhibits were admitted into evidence. The Applicant testified and called two witnesses who testified on his behalf. The transcript was received on December 13, 2004.

FINDINGS OF FACT

Applicant admitted with explanations all of the specific SOR allegations. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 35-year-old property accountability officer who has been employed the past four years by a prominent international consulting firm that is a contractor with the Defense Department. He started with the company as a security guard for one year and worked his way up into his present position where he has been for three years. He has a degree from a two-year college and is pursuing a degree in network engineering.

Applicant was arrested for drug and driving offenses on January 21, 1998. The drug charge was dismissed with six months probation, a fine, and a requirement to attend a drug awareness class. He was found guilty of the traffic offenses and fined.

When he filed his SF 86 on June 5, 2001, Applicant had delinquent debts to three creditors totaling approximately \$3,500.00. They were still unresolved in 2003, but two have now been settled and he is making payments on a third.

Applicant was arrested on September 3, 2000, for driving while intoxicated (DWI), driving under the influence of alcohol (DUI), and under the influence of drugs. Marijuana was found in his car when he was arrested. He pled guilty and was given one year probation before judgment with requirement for 40 hours of community service, an alcohol evaluation, and a fine of \$500.00 with costs. He was also charged with running a red light and pled guilty to that charge. A third related charge was nolle prosequi.

Applicant failed to report information on his SF 86 in response to Question 24 concerning alcohol offenses, Question 27 concerning use of drugs, and Questions 38 and 39 concerning financial delinquencies over 90 days and 180 days. He did report on his SF 86 the September 3, 2000, arrest but only as a DUI charge at Question 23 concerning pending charges although the record (Exh. 3) indicates that the matter had been concluded on November 6, 2000.

On October 19, 2001, Applicant gave false information to a Defense Security Service investigator regarding his discharge from the Marine Corps reserve stating that he had received a general discharge. In fact he was discharged under other than honorable conditions for failure to meet drill requirements.

Applicant is well regarded by his supervisors who testified for him. He is performing his work in a highly satisfactory manner and is regarded as trustworthy.

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 it is clearly consistent with the national interest to grant or continue a security 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 adjudicative factors, I conclude the following with respect to all allegations set forth in the SOR:

Under Guideline E (Personal Conduct) of the Directive, questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate the person may not properly safeguard classified information. (E2.A5.1.1.) The Government has established that Applicant has been involved in a pattern of rule violations (E2.A5.1.2.5.) and has failed to give complete and accurate information on his SF 86. (E2.A5.1.2.2.) The allegations include the fact that these willful omissions constitute a violation of 18 U.S.C. 1001, a felony.

Applicant stated that he believed the 1998 arrest did not need to be reported since it resulted in probation which he served. He denied that he deliberately withheld information about his delinquent debts saying that he was unaware of the extent and duration of the debts although admitting that he knew they were overdue having received letters from the creditors. However, the extent of the debts and their age leads to the conclusion that he should have been aware of them and reported them on his SF 86.

Applicant's rationale for his admitted misstatements to the investigator regarding the type of discharge he received from the Marine Corps was not persuasive but seemed to be based on what he believed should have been the type of discharge received based on his health and discussions with his Marine supervisor rather than the type of discharge he did receive. No mitigating conditions are applicable.

Under Guideline J (Criminal Conduct) is also applicable to Applicant. The Government has established a sufficient basis that Disqualifying Condition E2.A10.1.1. is applicable to Applicant in that he has had a pattern of criminal conduct. It could be mitigated by application of the facts in the case to certain of the Mitigating Conditions (MC) if the conduct was not recent (E2.A10.1.3.1.), they were isolated incidents (E2.A10.1.3.2), the circumstances leading to the violations are not likely to recur (E2.A10.1.3.4.), or there is clear evidence of successful rehabilitation. (E2.A10.1.3.6)

All the criminal conduct with which he was charged occurred four years or more ago in 2000 and 1998. The Applicant is doing well in his work and has had no additional problems since 2000. Applicant was also an occasional user of marijuana until sometime in 2000. He has not used illegal drugs or associated with drug users since that time and has no intention to do so. The Applicant's conduct during the period of time elapsed since 2000 shows clear evidence of rehabilitation.

The other conduct of Applicant charged as criminal conduct concerns his statement to the investigator about the character of his Marine discharge. Applicant admitted the allegation in his answer but no independent evidence was offered as to what was said in that interview. Although the statements made at the hearing did not justify the omission from the SF 86, I cannot conclude that whatever discussion occurred with the investigator rose to the level of criminal conduct under 18 U.S.C. Sec. 1001.

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 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. Although Applicant is an impressive person of talent who has risen in his company to a responsible position, his failure to fully report adverse information on several occasions leads to the conclusion that it is premature to grant a security clearance. While he expresses regret for his conduct and the omissions on his SF 86, he has offered excuses and reasons that are not credible.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude Applicant's record of conduct justifies a finding that it is not clearly consistent with the national interest to grant a security clearance to him. It is premature to grant a clearance.

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

Subparagraph 1.d.: Against 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 not clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge