

KEYWORD: Criminal Conduct; Personal Conduct

DIGEST: Applicant failed to mitigate criminal conduct and personal conduct allegations relating to criminal conduct from 1989 until 2002 culminating in a charge of assault in a domestic dispute. Applicant failed to report any of the arrests and convictions and an employment discharge on his SF 86. Clearance is denied.

CASENO: 03-22689.h1

DATE: 03/30/2006

DATE: March 30,2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-22689

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Jeff A. Nagel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate criminal conduct and personal conduct allegations relating to criminal conduct from 1989 until 2002 culminating in a charge of assault in a domestic dispute. Applicant failed to report any of the arrests and convictions and an employment discharge on his SF 86. Clearance is denied.

STATEMENT OF CASE

On February 3, 2005, 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.

In a sworn written statement dated March 15, 2005, 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 June 13, 2005. A complete copy of the file of relevant material (FORM) was provided to the Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information on July 28, 2005, with one additional document. The case was assigned to me on February 17, 2006.

FINDINGS OF FACT

Applicant is a 35-year-old employee of a defense contractor who works in equipment maintenance. He admitted all of the allegations concerning criminal conduct between 1989 and 2002 and personal conduct in falsifying information on his security clearance application (SF 86). 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 has a history of arrests primarily related to alcohol use between 1989 and 2002. The first was drinking under age while on active military duty. Further arrests occurred in 1994 (Damage to Government Property) and 1994 (Assault with a Weapon). He next was charged in February 2002 with 4th degree assault and sent to anger management classes. The charge was dismissed. Five months after the earlier charge he was arrested and charged in July 2002 with another 4th degree assault relating to domestic violence. On August 21, 2003, he was fined \$5,000.00 with all but \$500.00 suspended, and sentenced to a year in confinement with all but 15 days suspended with two years probation. He also was ordered into parenting classes and to receive domestic violence treatment. The period of probation expired in August 2005.

Applicant failed to report any of his arrests and convictions in response to Questions 24 and 26, and his employment discharge at Question 20 on his SF 86 filed arch 21 and 22, 2002. He offered some explanatory information about several arrests primarily relating to his lack of focus on the SF 86 questions and his forgetfulness. He offered no explanation for his failure to report the earlier 2002 arrest, the most serious allegation of all that occurred before the filing of the SF 86. The second arrest in 2002 occurred after filing his SF 86.

Applicant's supervisor speaks well of him in a written statement. He has met work and training requirements performing above standard in all categories.

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:

Applicant's arrests and conviction for criminal conduct raises concerns under Guideline J (E2.A10.1.1) involving a history or pattern of criminal activity creating doubt about a person's judgment, reliability and trustworthiness. Conditions that could raise a security concern and may be disqualifying include allegations or admissions of criminal conduct whether the person was formally charged (E2.A10.1.2.1.), or a single serious crime or multiple lesser offenses (E2.A10.1.2.2.). The allegations concerning incidents occurring in 1989 until 1997 might be mitigated by the fact that all occurred over five years ago. (E2.A10.1.3.1.)

However, the last two arrests were in 2002 both concerning serious assault allegations and violence for which he was sent to anger management and parenting classes. For the second and latest he was given a substantial sentence and a two year probation that was not completed until last year. No mitigating conditions apply.

Also alleged under Guideline E is Applicant's failure to acknowledge on his SF 86 any of his arrests and convictions and his discharge by an earlier employer for conduct and ethics violations. These omissions indicate questionable judgment, unreliability, unwillingness to comply with rules and regulations, and could indicate that the person may not properly safeguard classified information (E2.A5.1.1.). His conduct falls under E2.A5.1.2.2 regarding the deliberate omission of relevant and material facts from any personnel security questionnaire. His stated excuses for the omissions that he forgot about several of the incidents and was not properly focused on the questions are not credible and thus insufficient to mitigate the security concerns.

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. While Applicant expresses his regret for his conduct and omissions asserting his care in working on classified matters, the record is insufficient to establish a basis for applying this mitigating 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

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Paragraph 2.Guideline E: 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

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