

DATE: December 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23694

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Jennifer Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 51-year-old employee of a defense contractor, was arrested in January 2000 while on active duty with the Navy and charged with larceny at a base exchange. He was brought before a captain's mast, pled guilty, and received non-judicial punishment of a letter of reprimand. Applicant falsified information about the incident on two security clearance applications (SF 86) in 2002 and 2003, and to a security investigator in 2002. Clearance is denied.

STATEMENT OF CASE

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) dated June 15, 2004, 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. It was received by Applicant on June 29, 2004. 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 12, 2004, 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 26, 2004. 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. Applicant did not do so and the case was assigned to me on September 13, 2004.

FINDINGS OF FACT

Applicant admitted to the allegations in the SOR but offered extenuating and mitigating circumstances. 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 is a 51-year-old employee of a defense contractor. He was arrested in January 2000 while on active duty with the Navy and charged with larceny at a base exchange. He was brought before a captain's mast, pled guilty, and received non-judicial punishment in the form of a letter of reprimand.

Applicant falsified information on his security clearance application (SF 86) dated January 17, 2003, by failing to disclose the military offense and discipline in answer to Question 25 that inquires about punishment under the Uniform Code of Military Justice (UCMJ). He had also failed to report the same matter on an earlier SF 86 in dated January 17, 2002, in response to Question 23. After that SF 86 was completed he was interviewed by a security investigator and denied that he had been arrested, charged, or convicted of any offense in the past seven years or disciplined under the UCMJ.

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 arrest for criminal conduct raises issues 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, and an admission of criminal conduct (E2.A10.1.2.1.), and a single serious crime or multiple lesser offenses (E2.A10.1.2.2.). I conclude that the allegation is mitigated by the fact that it was not recent since it occurred over four years ago (E2.A10.1.3.1.), and is an isolated incident (E2.A10.1.3.2.) since it was the only criminal offense Applicant has committed.

Under Guideline E, Applicant's failure to report his captain's mast on two SF 86s and to an investigator indicates questionable judgment, unreliability, and unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information. (E2.A5.1.1.) Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a personnel security application could raise a security concern and be disqualifying. (E2.A5.1.2.2.); deliberately providing false or misleading information concerning relevant and material matters to an investigator in connection with a personnel security determination (E2.A5.1.2.3.); and a pattern of dishonesty or rule violations. (E2.A5.1.2.5.) He knew the information would be regarded as adverse and he

had no sound reason to believe such information was not relevant to his holding a security clearance since it was clearly requested on the form and in his interview.

Applicant states in his answer to the SOR that he regrets his actions, has been truthful since and apologizes for his conduct. He seeks forgiveness. In view of the fact that he failed to report the incident and the punishment on three separate occasions, no mitigating conditions are applicable.

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's actions on three occasions in concealing the action taken against him for his minor offense precludes 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 J : FOR APPLICANT

Subparagraph 1.a.: For Applicant

Paragraph 2. Guideline D: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: 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