

DATE: September 14, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23762

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant failed to mitigate security concerns involving alcohol abuse, personal conduct and misuse of a prescription drug. He continues to use alcohol after diagnosis of alcohol dependence and admitted to misuse of a painkiller for other purposes and failing to report it on his Security Clearance Application (SF 86). No mitigating conditions were established. 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 December 9, 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 November 12, 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 January 17, 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 March 29, 2005, requesting to amend the SOR to allege an additional security concern of drug involvement for use of prescription medication over a ten year period in a manner that deviated from approved direction. 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 submit any additional material and filed no objection to the proposed amendment to the SOR so the amendment was made. The case was assigned to me on June 15, 2005.

FINDINGS OF FACT

Applicant admitted all the allegations in the SOR but offered some explanatory information in his answer and statements given to the investigating officer. 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 50-year-old technician employed by a defense contractor since 1988. He has had alcohol problems and was arrested for alcohol related driving offenses in 1999 and 2001. He was fined and given suspended sentences. After the second offense he was ordered to be evaluated for alcohol abuse and placed on probation. He received treatment from January 2003 until January 2004. He dropped out of the program briefly during that period until reminded by the Defense Security Service (DSS) that he was obliged to finish it pursuant to his probation. He did so, completing 34 required sessions. He was diagnosed with alcohol dependence by a licensed clinical social worker in a recognized alcohol treatment program (Exhibit 6). The diagnosis also included misuse of prescription painkillers (Exh. 9). He stopped use of alcohol for two months during his treatment but began again in May 2003. He continues to use alcohol but in moderation. The continued use of alcohol is contrary to the plan developed for him by the program. He misused a diagnosed prescription painkiller with varied frequency over a period of time between 1993 and 2003.

Applicant failed to report the drug misuse at Question 27 on his Security Clearance Application (SF 86) dated December 19, 2000. Applicant denied the omission was deliberate citing various physical ailments that prompted the use of the painkiller.

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:

The government has cited a Disqualifying Condition (DC) pursuant to the Directive concerning alcohol consumption under Guideline G. This relates to excessive alcohol consumption that leads to the exercise of questionable judgment, and unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. (E2.A7.1.1) Conditions that could raise a security concern and may be disqualifying include evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a

recognized alcohol treatment program. (E2.A7.1.2.4) This evidence was established and no mitigating conditions are applicable. Applicant continues to drink despite a diagnosis of alcohol dependence and there is no proof of positive changes in his behavior.

Under Guideline E, Applicant's failure to report his drug misuse on his SF 86 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.) His statement in his answer that he did not regard it as misuse at the time of its use because he had a number of other ailments as a result of accidents is insufficient to mitigate the allegation as he now recognizes that he used the drug inappropriately to make him "feel better" and that it was wrong to do so (Exh. 6).

The government amended the SOR to include disqualifying condition (DC) 1 under Guideline H concerning drug involvement. Drug involvement is always a security concern because it raises questions about a person's willingness or ability to protect classified information. Any drug abuse is a condition that may be disqualifying. The following definition is provided: "Drug abuse includes "the use of a legal drug in a manner that deviates from approved medical direction." (E2.A8.1.1.3) Applicant admitted improper use of the drug over approximately ten years from 1993 until 2003. Since the misuse of the drug was within the last two years, was over a long period of time and no evidence was offered to show that it would not recur, 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. Applicant has held a position of trust with his company for 17 years but has offered no evidence to counter the proof and admission of the conduct that disqualify him from holding a security clearance. 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 a security clearance to Applicant.

FORMAL FINDINGS

Formal findings as required by the Directive (Par. E3.1.25) are as follows:

Paragraph 1. Guideline G: 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

Paragraph 3. Guideline H: AGAINST APPLICANT

Subparagraph 3.a.: 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