

DATE: March 23, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 03-24233

## DECISION OF ADMINISTRATIVE JUDGE

**CHARLES D. ABLARD**

### APPEARANCES

#### FOR GOVERNMENT

Melvin A. Howry, Esq. , Department Counsel

#### FOR APPLICANT

*Pro Se*

### SYNOPSIS

Applicant, a 43-year-old former agent of the Drug Enforcement Agency (DEA), was discharged from the agency for making false statements under oath on at least twelve occasions between 1991 and 1997. The statements related to his experience in law enforcement when he stated that he had been a state trooper whereas he was an officer in a city police department and had only worked with state troopers. The statements were in his resumes given in trials when he was testifying in drug prosecutions. Applicant's record before and after the falsifications and the fact that he has taken positive steps to eliminate the possibility of coercion, and applying the whole person rule mitigates the conduct. Clearance is granted.

### STATEMENT OF CASE

On October 7, 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 November 7, 2004, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on January 14, 2005, and a notice of hearing was issued the same day for a hearing that was held on February 2, 2005. Three government exhibits and six Applicant exhibits were admitted into evidence at the hearing. One segment of the SOR was withdrawn at the hearing regarding falsification of an application for federal employment (SF 171). The record was left open for 30 days and a complete copy of the last Applicant exhibit was produced during that period and admitted. The Applicant testified on his own behalf. The transcript was received on February 22, 2005.

### FINDINGS OF FACT

Applicant denied the single allegation in the SOR with explanations. One segment of the allegation was withdrawn at the hearing. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 43-year-old former agent of the Drug Enforcement Agency (DEA) who was discharged from the agency after twelve years of service for making false statements under oath on at least twelve occasions between 1991 and 1997. The false statements all related to statements concerning his experience in law enforcement when he stated that he had been a state trooper whereas he was an officer in a city police department but had only worked with state troopers. The statements were submitted in court proceedings in identical language in the form of a biographical statement in connection with Applicant's testimony in drug prosecutions. Applicant received no benefit either financial or professional from the false statements. Nor were any cases jeopardized as a result of them.

Applicant's record while working at DEA was outstanding and he received numerous awards from DEA, national and international organizations, and U.S. Attorneys where the prosecutions occurred (Exh. A). Despite this record the DEA obviously believed that any falsification of experience in a criminal trial was sufficient to justify dismissal and they did so in 1999 after a lengthy proceeding before the Merit Systems Protection Board. Applicant prevailed in the first proceeding but lost the second and did not appeal to the courts.

Since his dismissal from the DEA eight years ago, Applicant was employed by several law enforcement agencies and, since 2001, by a university that has a contract with the U.S. government to train Navy personnel in counter-terrorism. His record in this work is outstanding and he is highly regarded by students and the management of the program (Exhs. B-E).

Applicant has been married for 17 years to another law enforcement officer and they have two children. His family and his employer know of the DEA action against him.

Applicant is remorseful about the misstatements concerning his employment and knows that his foolish actions caused the loss of an excellent job where he had a bright future. He has had no difficulty of any kind either before or since his problems in the DEA in the 1990's.

### 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. 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, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the person may not properly safeguard classified information. (E2.A5.1.1.)

Applicant's misstatement on his resume in court proceedings caused the DEA to lose confidence in him and dismiss him from the service. False testimony of any kind in a Federal criminal prosecution causes a loss of confidence in the criminal justice system. Applicant understands the gravity of his actions and has been suffering the consequences since the action by DEA was taken including a 50% cut in pay and difficulty in finding steady employment until the position he now holds.

Applicant's actions in revealing the past conduct to his family and employer lessens any likelihood of those actions being used against him. A mitigating condition under Guideline E is that the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation or duress. The condition is 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 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 is an impressive person of talent who has risen in his company to a responsible position. Applicant is a proud person who takes great pride in doing a successful job for his employers whether they be the DEA or his current teaching responsibilities.

Applicant's conduct eight years ago in exaggerating his qualifications on a resume that was used in criminal trials was a serious mistake but the likelihood of a recurrence is totally unlikely in view of his recognition of the error he made and the fact that he is no longer employed in a position that would require a repetition of the mistake. His motivation for the conduct is perplexing since he had nothing to gain by it, had not used false information to gain employment, and the whole problem when exposed, caused loss of employment and substantial income that continues to the present.

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, both before and after the discharge by DEA, justifies a finding that it is clearly consistent with the national interest to grant a security clearance.

### **FORMAL FINDINGS**

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

Paragraph 1. Guideline E: FOR APPLICANT

Subparagraph 1.a.: For Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is granted.

Charles D. Ablard

Administrative Judge