

DATE: February 25, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24356

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

William F. Savarino, Esq.

SYNOPSIS

Applicant is a 43-year-old retired Chief Warrant Officer who held two eight hour jobs for two defense contractors and left one employment with a temp agency after receiving a thirty day warning letter. He had ample reason to leave the position on his own volition and did not report the departure on his SF 86 as leaving as a result of a notice of firing. He has mitigated the allegation. Clearance is granted.

STATEMENT OF CASE

On September 21, 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 October 16, 2004, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on January 3, 2005. A notice of hearing was issued on January 13, 2005, and a hearing was held on February 2, 2005. Eight government exhibits and five Applicant exhibits were admitted into evidence at the hearing. The government called four witnesses. The Applicant testified and called one witnesses who testified on his behalf. The transcript was received on February 10, 2005.

FINDINGS OF FACT

Applicant denied the first allegation and admitted the second with explanations. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 43-year-old former Chief Warrant Officer in the Army who retired in 2001 and is currently employed by a defense contractor who provides training services for the Joint counter-intelligence Training Academy of the Department of Defense. This case arose solely as a result of his leaving a temporary job with a defense contractor that hired temps for staffing services for overseas security investigations. He left on June 17, 2002, the same day he was given a 30-day-notice by his supervisor (Exh. 3). In that position he was responsible for a team of seven temporary employees that worked an eight hour evening shift so although it was a temp position, the work was for eight hours a day.

In addition to the work for the temp company, Applicant was employed full time by a major defense contractor as an intelligence analyst. He left that position four months after leaving his temp job to be hired in his present position.

Applicant listed both his jobs on his 2003 SF 86 but did not give any details concerning his departure from the temp company employment in answer to Question 20 concerning employment history. Complaints about his management style and supervision of his staff from the government manager to his corporate manager led to the notice. His corporate manager held him in high regard and assured him at the time of the notice that this would pass and that he was in no danger of losing his job. The day before the notice his immediate supervisor had sent an email saying the same thing to another member of corporate management (Exh. 2).

The president of the company believed that the customer was always right and was prepared to discharge him if the government manager did not want him on the job (TR. 68-69). There was no evidence that Applicant was aware of this attitude.

Applicant received from his former employer an undated letter on company stationery mailed on October 14, 2004, in a company envelope that spoke highly of his work for the company (Exhs. A and C). He had requested a recommendation from the company (Exh. B). The operations manager for the company whose name appears in the signature block did not sign the letter. Another letter with identical text was in the company file but dated October 13, 2004, using different type face was also introduced (Exh. 4).

Applicant gave information to a Defense Security Service investigator on July 23, 2003, regarding his departure from his employment attributing it to pressure from the hectic work schedule of two jobs and personal pressures.

Applicant was held in high regard by his supervisors at his temp company for his abilities and performance but was faulted for not getting along with the government manager concerning the supervision of his staff and certain other discrepancies such as being in the building earlier than the time his shift was to begin. He is highly regarded for his work in the position he now holds as a training officer according to his project manager. Applicant is his deputy. The project manager served with Applicant in the military in Bosnia and found his record in the service to be exemplary. (TR. 150-156)

Evidence was offered to impeach the testimony concerning Applicant's military record consisting of records showing an Article 15 in 1985 for misconduct on a test (Exh. 6), an altercation with his wife in 1990 (Exh. 5), and a DUI in 1996 (Exh. 8). The witness was unaware of these offenses.

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

Applicant testified that he was under pressure in his full time day job with his principal employer, was working 16 hours a day, had family problems with his wife whom he subsequently divorced, a son who appeared to be headed for legal troubles, probably stole Applicant's pistol which police investigated (Exh. D), and later was involved in an armed robbery. He needed to change the patterns in his life. There is little doubt that working two full time jobs would have created stresses even without the family deterioration. While it is hard to believe that the 30-day notice letter did not affect in some way his decision to leave the temp company employment when he did, his testimony and an objective look at the evidence leads me to conclude that he did not leave after being fired or for any of the other reasons identified in Question 20.

The employer was clearly unhappy that Applicant walked off the job without giving notice but he was apparently within his rights to do so. While the origin of the October 13, 2004, letter seems a mystery, Applicant testified that he received it and it was sent from the appropriate office of the company. The government labeled it a "forgery" without offering any proof of the charge. Both parties introduced the letter in evidence in its two versions.

It is not disputed that one day before the 30-day notice was sent, his company supervisor wrote to her superior that while he could be fired to please the government manager, a better option was to only put him on notice as he was "doing a fantastic job of running the team and his staff adores him". Thus, one might reasonably wonder whether his job was truly in any jeopardy. The possibility that the president of his company might be willing to discharge him despite his doing a fantastic job to please the government manager does not appear to have been communicated to him so he had no way of knowing that the information from his supervisor might be overridden by the president.

While the information used to impeach the testimony concerning Applicant's military career cast some doubt on the testimony about Applicant's military service, the fact that Applicant retired in the most senior warrant officer position and is now employed in a responsible position working with the joint staff provides more important evidence of the reputation and career of Applicant than the offenses occurring nine to twenty years ago.

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 very proud person who takes great pride in doing a successful job for his employers.

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 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 E: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: 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

1.