

DATE: April 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00970

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 54-year-old employee of a university laboratory that has defense contracts, was a recreational user of marijuana for extended periods of time during the last 30 years. He last used marijuana less than a year and a half before the hearing in this matter. He admitted use of cocaine, LSD, and speed in the 1970's. Applicant stopped using drugs between 1986 and 1994 during and after participation in a self-help group for adult children of alcoholics. He resumed drug use in 1998 and continued it until September 2002. Clearance is denied.

STATEMENT OF CASE

On October 1, 2003, 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) 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 October 7, 2003, Applicant responded to the allegations set forth in the SOR and admitted one of the specific allegations and denied the remainder. He requested a hearing. The case was assigned to me on January 28, 2004. A hearing was held on March 1, 2004. The Government introduced four exhibits at the hearing and the Applicant introduced six All exhibits were accepted into evidence. The transcript was received on March 9, 2004.

FINDINGS OF FACT

Applicant denied all of the specific allegations except 1.b in the SOR. The admitted facts are hereby incorporated as findings of fact.

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, a 54-year-old employee of a university laboratory that has defense contracts, was a recreational user of marijuana for periods of time during the past 30 years.. He admitted use of cocaine, LSD and speed in the 1970's. Applicant stopped using drugs between 1986 and 1994 during and after participation in a self help group for adult children of alcoholics. He resumed drug use in 1994 and continued until September 2002 when he last used marijuana, less than a year and a half before the hearing in this matter.

Applicant has suffered from depression and been under medical treatment from 1998 to the present.

Applicant has worked for the same employer for the past three years and is highly regarded for his work. (Exh. D, E, and F) Before 1998 he worked as a psychological social worker in a county hospital for 12 years. Applicant has a master's degree in social work. He was unemployed between 1998 and 2000 living on savings and inheritance.

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).

Under the Directive the Government has alleged a number of Disqualifying Conditions (DC) These concern drug involvement including drug abuse (E2.A8.1.2.1.) under Guideline H. Also alleged is falsification of his SF 86 by failing to disclose the drug use (E2.A5.1.2.2) under Guideline E.

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 Disqualifying Condition (DC) 1 under Guideline H in the SOR concerning drug involvement as relevant to the proposed denial of a security clearance for the Applicant. 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. E2.A8.1.1.3 provides the following definition: "Drug abuse is the illegal use of a drug"

Applicant is attempting to recover from the drug problem and is a stable member of society. Mitigating Condition (MC) 3 could be applicable since there is a demonstrated intent not to abuse any drugs in the future. Also possibly applicable

is MC 1 in that the drug involvement was not recent. However, the last drug use is less than a year and a half ago and that, standing alone, is insufficient time to show a demonstrated intent likely to be successful. Applicant did stop using drugs for a six-year period but returned to his use thereafter and that shows he has had difficult abstaining from drug use.

Applicant has changed his social friends and does not see those with whom he used drugs. He is now friendly socially with his colleagues at the laboratory where he is employed. Although the laboratory offers counseling to employees with drug problems, Applicant has not taken advantage of the service.

With regard to Guideline E, the government has agreed that the answer of the Applicant was sufficient to rebut the allegation in the SOR.

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.

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 has not yet demonstrated that he will not resume use of drugs since the most recent past use occurred within the last two years. Thus, it is premature 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 H: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2 Guideline E: FOR APPLICANT

Subparagraph 2.a.: For 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