

DATE: March 22, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02486

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

R. Wayne Pierce, Esq.

SYNOPSIS

Applicant, a 26-year-old employee of a government contractor, used marijuana on weekends for eight months in 1997 when he was 19 years old. He was arrested in August 1997 when marijuana was found in his car and he was charged with possession. The charges were nol prosequi. He failed to disclose the full extent of his drug use on his SF 86 reporting only the one use in 1997 that resulted in the criminal charge. He voluntarily entered a treatment program and has become a stable member of society with a strong record of employment. Clearance is granted.

STATEMENT OF CASE

On October 15, 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 November 8, 2003, Applicant responded to the allegations set forth in the SOR and admitted all of the specific allegations. He requested a hearing. The case was assigned to me on January 22, 2004. A hearing was held on February 23, 2004. The Government introduced four exhibits at the hearing and the Applicant introduced five. All exhibits were accepted into evidence. At the request of Applicant and without objection from the Government the answer was amended to deny Paragraph 2.b of the SOR. The transcript was received on March 2, 2004.

FINDINGS OF FACT

Applicant admitted to all of the specific allegations as to drug use under Guideline H and one of the two allegations under Guideline E 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 26-year-old employee of a government contractor, used marijuana on weekends for eight months in 1997 when he was 19 years old. He was arrested in August 1997 when marijuana was found in his car and he was charged with possession. The charges were nol prosequi. He failed to disclose the full extent of his drug use over the six month period that he was a user on his SF 86 reporting only the one use in 1997 that resulted in the criminal charge in his answer to Question 24. Applicant denied treatment for alcohol abuse in his response to Question 30.

During a six-month period between October 1997 and April 1998, Applicant voluntarily entered and completed a treatment and education program that met weekly. He was tested and found not to be a problem drinker and certified as recovered. (Exh. 3). The arrest for drug possession and his treatment had a life changing effect on him. Since then he has abstained from marijuana use, married, become a homeowner, and a stable member of society. His wife is a friend from high school and they have had a stable and productive relationship for ten years.

Applicant has been in a stable employment situation since 1998 and is highly regarded by his employer. (Exh. B and C)

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.) and illegal possession (E2.A8.1.2.2.) under Guideline H. Also alleged is falsification of his SF 86 by failing to disclose the full extent of his drug use and the fact that he was treated for alcohol abuse (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" Mitigating Condition (MC) 2 applies since there is "[a] demonstrated intent not to abuse any drugs in the future."

Applicant has shown an ability to recover from the drug problem he had six years ago and has become a stable member of society. He shows no signs to regression and has strong support from a strong wife. The fact that the conduct occurred six years ago when Applicant was younger and that he voluntarily entered a program to solve his problems leads me to conclude that he is worthy of future trust and the ability to hold a security clearance.

With regard to Guideline E, Applicant did not disclose the full extent of his marijuana use on the SF 86 but did admit to the most serious problem, namely the arrest and criminal charge for possession of marijuana. Since he freely admitted to the arrest and charge, the omission of details about the six months of usage is deemed mitigated by (MC) 2 as not pertinent to a determination of judgment, trustworthiness, or reliability.

Applicant did not admit to having had alcohol abuse treatment because he believed that the treatment he received was solely for drug use. Indeed, the report of the clinic issued upon his discharge noted that their analysis of his problems showed that he was not a problem drinker and discussed only the drug treatment he had received. Thus, it is understandable that since he did not think he had an alcohol problem and the treatment facility didn't either, that he would not report it on his SF 86 as alcohol treatment.

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 is a trustworthy and reliable person whose record of conduct and employment 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 H: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Paragraph 2 Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

DECISION

After full consideration of all the facts and documents presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Charles D. Ablard
Administrative Judge