

DATE: June 7, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06091

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 53-year-old security guard, failed to mitigate security concerns over his alcohol consumption, criminal conduct relating to alcohol, and personal conduct for failing to report employment at a company from which he was discharged for alcohol related conduct, his alcohol treatment, and all but the most recent criminal conduct. Clearance is denied.

STATEMENT OF CASE

On April 29, 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 June 10, 2004, Applicant responded to the allegations, and requested a hearing. Amended answers were filed on August 18, 2004, and September 17, 2004. The matter was assigned another administrative judge November 18, 2004 and re-assigned to me on February 1, 2005. A notice of hearing was issued on February 3, 2005, and a hearing was held on February 18, 2005. Five government exhibits and two Applicant exhibits were admitted into evidence. The Applicant and his wife testified. The record was left open for 30 days for submission of additional material and two exhibits were received from Applicant. The transcript was received on February 28, 2005.

FINDINGS OF FACT

Applicant admitted all but two of the allegations relating to alcohol consumption, two of the three relating to criminal activity, and denied the personal conduct allegations. After a complete review of the evidence in the record and upon

due consideration of the record the following findings of fact are made:

Applicant is a 53-year-old security guard employee of a defense contractor who served in the Army and Marine Corps. He has consumed alcohol to excess for over 20 years, received alcohol treatment for four months in 2001, but did not complete the program. He attended Alcoholics Anonymous meetings beginning in May 2001 and still attends them occasionally. Applicant was arrested in 1979, 1989, and 1994 on alcohol related driving offenses. The first arrest resulted in a sentence to attend an alcohol education program and the other two resulted in convictions, suspended sentence of 30 days, fines and probation for one year. Both those arrest records have been expunged. He was also cited for refusing a chemical test in 1994 and his driver's license suspended for six months. He was arrested in 1997 and charged with domestic violence, but the record has been expunged. The most recent alcohol related driving arrest was in 1998 when he was convicted, fined, and ordered to enrol in an alcohol treatment program and a four month alcohol education program.

Applicant was discharged from a prior position in 2001 when, after two alcohol counseling sessions, he appeared for work intoxicated. He appealed the decision but it was upheld in 2002 by the Merit Systems Protection Board. He is questioning the decision with two Members of Congress. He failed to report his employment by the company at Question 6 and the discharge at Question 20 on his SF 86. At Question 24 relating to alcohol offenses he reported the 1998 arrest but none of the others.

Applicant has some serious medical problems including cancer and hepatitis (Exhs. B and D). As a result, he has significantly reduced the amount of his drinking on medical advice but still takes an occasional drink at holiday occasions the last being at Christmas 2004. He has an intention not to drink because of the medical problems. His medical condition has resulted in financial problems for his family. His annual income from his employment is \$62,000.00.

Applicant has been married since 1976 and has one child and two step-children. His heavy consumption of alcohol began in the 1980's. When a child died in 1991 in an auto accident he reacted by even more drinking including disappearing from home for a period. Similar conduct occurred when his mother died. Applicant is well regarded by his supervisor on his security team and his employer (Exhs. A 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 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. *See* 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:

The government has cited a Disqualifying Condition (DC) pursuant to the Directive concerning alcohol consumption under Guideline G. This relates to excessive alcohol consumption

(E2.A7.1.1) and alcohol-related incidents away from work, such as driving while under the influence. (E2.A7.1.2.2.) Possible mitigating conditions (MC) might include the fact that several events occurred a number of years ago and there is no current problem (E2.A7.1.3.2.), and that there have been positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)

Applicant last drank at Christmas 2004 even though advised by medical professionals that he should not do so. While his consumption of alcohol has been limited since receiving that advice, it is not sufficient to conclude that the conduct has changed and the mitigating condition is applicable. From his past conduct as the testimony showed, he drinks to excess when under stress from family matters.

The government has also alleged personal conduct under Guideline E of the Directive, relating to questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations that could indicate the person may not properly safeguard classified information. (E2.A5.1.1.) The Government has established that Applicant deliberately omitted and concealed relevant and material facts about his alcohol use and treatment on his SF 86,, and his employment by and discharge by that former employer for intoxication on the job. (E2.A5.1.2.2.)

The fact that he omitted information about his employment indicates that he hoped to preclude the government from finding out about the discharge and the reasons for it. His contention that he had forgotten about the omitted employment is not credible in view of the fact that it resulted in a contested proceeding before the Merit Systems Protection Board with an adverse decision for Applicant that is still being challenged by him. I conclude that the omissions were deliberate and that no mitigating conditions apply.

Guideline J (Criminal Conduct) is also cited. The Government has established a sufficient basis that Disqualifying Condition E2.A10.1.1. might be applicable to Applicant in that he has on five occasions been charged with criminal offenses. It could be mitigated by application of the facts in the case to certain of the mitigating Conditions (MC). The most recent criminal behavior occurred almost seven years ago (E2.A10.1.3.1.), and there is clear evidence of rehabilitation (E2.A10.1.3.6.).

While the length of time from the last arrest is sufficient to apply the MC, there is insufficient clear evidence of rehabilitation in view of the failure to complete the alcohol education courses he was ordered to attend and the fact that he does continue to drink albeit in moderation.

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 a family man who has many good characteristics and is well regarded by his superiors. His conduct at the hearing showed him to be a person who was attempting to be truthful but his memory loss and health problems created a certain level of mental confusion. However, the conduct alleged in this matter was not caused by factors beyond his control and persisted for many years during which time little action was taken to remedy the causes even though opportunities to do so were provided to him. I cannot conclude that the standards for ruling in his favor applying the whole person concept have been met.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude it is not 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 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

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: For Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: Against Applicant

Paragraph 2 Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard

Administrative Judge