

DATE: March 22, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-09485

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 53-year-old employee of a defense contractor who engaged in a sexual relationship with a coworker between 1996 and 1998 and engaged in extra-marital activities with approximately five women between 1972 and 1987 while married to his former wife. When interviewed by a Defense Security Service investigator in 2002 he declined to provide a written statement regarding the above information believing that the statement might end up in the wrong hands and result in blackmail. Clearance is denied.

STATEMENT OF CASE

On June 23, 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 July 9, 2003, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on November 4, 2003. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded on December 10, 2003, and the case was assigned to me on January 15, 2004.

FINDINGS OF FACT

Applicant admitted to all of the specific facts alleged 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 is a 53-year-old employee of a defense contractor. He engaged in a sexual relationship with a coworker between 1996 and 1998 and his wife is unaware of that relationship and he does not wish her to know of it. He also engaged in extra-marital activities with approximately five women between 1972 and 1987 while married to his former wife.

When he was interviewed by a Defense Security Service investigator in 2002 he declined to provide a written statement regarding the above information that he had provided to the investigator believing that the statement might end up in the wrong hands and result in blackmail.

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)

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.

Applicant's conduct raises concerns under Guideline D (E2.A4.1.1.) involving sexual behavior that may subject an individual to coercion, exploitation or duress (E2.A4.1.2.3.) and of a public nature that reflects lack of discretion or judgment. (E2.A4.1.2.4.).

Also alleged is Applicant's refusal to provide a written statement to the investigator raising an issue under Guideline E involving questionable judgment, unreliability, and unwillingness to comply with rules and regulations that could indicate that the person may not properly safeguard classified information (E2.A5.1.1.) including personal conduct that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities, which, if known, may affect the person's personal, professional, or community standing or render the person subject to blackmail. (E2.A5.1.2.4.).

Applicant's conduct with his co-worker and earlier during his first marriage was sexual behavior that exposed him to

possible blackmail and coercion and is inconsistent with the requirements for a security clearance.

Applicant's refusal to provide a statement to investigators who questioned him about his conduct showed a lack of willingness to comply with security requirements. Applicant argues that to do so might have subjected him to blackmail. His reasoning does not justify the failure to comply with the request. No mitigating factors under Guideline E are applicable.

After considering all the evidence in its totality and as an integrated whole to focus on the whole person of Applicant, I conclude that it is not clearly consistent with the national interest to grant clearance to Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline D: 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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against 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