

DATE: April 1, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-11448

ECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 31-year-old employee of a government contractor since the age of 18, has held a security clearance for three years and was a recreational user of marijuana for approximately ten years before having a clearance. He was arrested twice on marijuana-related offenses in 1990 and 1998. Applicant failed to report these facts in 2001 on his Security Clearance Application (SF 86) fearing the loss of his job. Applicant has undergone a change of lifestyle and has shown a recognition of the magnitude of his error in judgment three years ago that warrants the grant of his clearance. 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 12, 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 12, 2004. The Government introduced four exhibits at the hearing and the Applicant introduced five. All exhibits were accepted into evidence. The transcript was received on February 24, 2004.

FINDINGS OF FACT

Applicant admitted to all of the specific allegations as to drug use under Guideline H and the two falsification 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 31-year-old employee of a government contractor, who has held a security clearance for three years, was a recreational user of marijuana for approximately ten years before holding a security clearance. He was arrested twice on marijuana-related offenses in 1990 and 1998. Applicant failed to report these facts on his SF 86 when he filled it out in 2001 for fear of losing his job.

Applicant's confinement for one night on the occasion of the last arrest caused him to change his ways and he has not been a user of marijuana since then. Applicant encountered a difficult period in his life during a two year period between 1996 and 1998 when he separated from his wife and later was divorced. During that time his only child was in the care of a brother-in-law when the child was shaken and died. The brother-in-law was tried, convicted, and imprisoned for causing the death resulting in disruption in the relations with the extended family.

Applicant is in a stable employment situation having worked for the same employer for the past 13 years and is highly regarded by his employer. (Attachments to Answer). Two civilian employees of the Department of the Army with whom Applicant works testified as to his job performance and general reputation for truthfulness.

His contributions to the work of his command has been recognized by the Department of Defense. (Exh. B and C)

Applicant's employer established a drug free workplace policy in 2003 and he has agreed to abide by it.(Exh. D and E)

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 drug use and his two arrests (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 has shown an ability to recover from the drug problem he had six years ago and has become a stable member of society. He has remarried and has two small children. Mitigating Condition (MC) 3 is applicable since there is a demonstrated intent not to abuse any drugs in the future. Also applicable is (MC) 1 in that the drug involvement was not recent.

With regard to Guideline E, Applicant did not disclose his drug use and the two arrests in 1990 and 1998 and the confinement for one night in 1998 on his SF 86. Thus, Disqualifying Condition (DC) 2 is applicable in that he deliberately omitted relevant and material facts from his SF 86. He candidly admitted the omissions were deliberate in an effort to prevent the loss of his employment. He knows it was a very bad decision on his part. He failed to report the conduct when he panicked at the thought of losing his job. He is contrite about his conduct and comprehends the gravity of his actions. He candidly admitted the facts surrounding his omissions in an honest and forthright manner. While no specific mitigating conditions are applicable the matter deserves further analysis.

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. Applying the standards set for the Directive for application of the whole person analysis (E2.2.1.) I conclude that he meets the test established by the whole person standard. While the nature of the offense was serious and he deliberately withheld information for a reason that is not acceptable, the act occurred once three years ago when he was in his twenties after an emotional and traumatic period in his life. There have been behavioral changes since then and the potential for coercion, exploitation or duress has been eliminated since his conduct has changed and his employer knows of the problems created by his conduct. Most importantly, the likelihood of continuance or recurrence of either the drug use or falsification of information has been eliminated. Having heard his testimony and observed him, I believe there is no likelihood of a recurrence of similar conduct.

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 good conduct over the past six years and employment stability for the past 13 years 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

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