

DATE: December 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06919

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq. , Department Counsel

FOR APPLICANT

Stephen J. Britt, Esq.

SYNOPSIS

Applicant, a 53-year-old employee of a defense contractor used marijuana and cocaine at varying frequencies between 1980 and 1998. He held a security clearance for the last 16 years of that time. He denied such use on his SF 86 filed in 2002, because he did not want his employer to know of the drug use. Clearance is denied.

STATEMENT OF CASE

On April 27, 2005, 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 8, 2005, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me June 20, 2005. A notice of hearing was issued on August 30, 2005, and a hearing was held on September 16, 2005. Three government exhibits were offered into evidence and Applicant offered two. All were admitted into evidence. Applicant and one witness testified. The transcript was received on October 4, 2005.

FINDINGS OF FACT

Applicant denied the specifics of all of the specific SOR allegations relating to drugs and admitted the personal conduct allegations with one qualification. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 53-year-old employee of a defense contractor working as a program manager in the communications

field. He held a security clearance from 1982 until 2001 while working for other defense contractors. He was unemployed for a period and then submitted a new security clearance application (SF 86) on August 8, 2002, when he began work for his present employer.

Applicant used marijuana with varying frequency, from 1970 until 1998. He began as a college student and continued to use it until his mid-40s. He used cocaine with varying frequency, from 1980 until 1998. The frequency was less in the latter years for both drugs. Thus, 16 years of marijuana and cocaine use occurred while he held a security clearance. During that period he applied for renewal of his security clearance on three occasions. He also had problems with alcohol leading to a divorce in 2004.

Applicant denied the drug use on his SF 86 in response to Questions 27 and 28 relating to drugs. He did so, by his own admission in his security investigation interview of March 31, 2004, because he did not want his employer to know of it. He was advised at the time that he would likely be required to take a life-style polygraph after his employment at which time he would have to reveal the drug use. This did happen and he told the polygraph examiner he had lied on two questions and then revealed the drug use (Tr. 22-23). Applicant's security clearance for SCI with the National Security Agency was revoked on August 20, 2003 (Exh. 3).

Applicant is well regarded for his work by his colleagues (Exhs. A and B). He has three children and pays \$1,000.00 per week in child support and alimony. His annual salary is \$125,000.00. He is active in his son's scout work. Applicant does not now use drugs or alcohol and has not done so since 1998, when he realized that his conduct must change. He had a gradual spiritual awakening beginning in the mid-1990's and culminating in 2004 (Tr. 43). He moved to a different part of his state and no longer sees the friends with whom he took drugs. He attends church weekly. He has been given several random drug tests in the past four years and all produced negative results.

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 Disqualifying Condition (DC) 1 under Guideline H 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. The following definition is provided: "Drug abuse is the illegal use of a drug" (E2.A8.1.1.3) Possible mitigating conditions that might be applicable are that the drug involvement was not recent (E2.A8.1.3.1.), and there is a demonstrated intent not to abuse any drugs in the future. (E2.A8.1.3.3.) Applicant has indicated his intention not to use drugs in the future and has not done so for seven years after his decision to abstain. Ordinarily, this might justify the application of the mitigating condition based on the passage of time, but the fact that the use occurred over 16 years while Applicant held a security clearance with three renewals during that time, leads me to conclude that the mitigating condition should not be applied.

Under Guideline E (Personal Conduct), questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate the person may not properly safeguard classified information. (E2.A5.1.1.) The government has established that Applicant has been involved in a pattern of rule violations (E2.A5.1.2.5.) and failed to give complete and accurate information in 2002 on his SF 86. His only effort at mitigating these allegations was to say that he knew he would be given a polygraph examination at some time and all the adverse information would be revealed at that time. No mitigating factors are applicable.

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 an impressive person who has held a responsible position. However, his conduct in the use of drugs especially while holding a security clearance and his failure to report the use on his SF 86 leads me to the conclusion that it is premature to grant a security clearance. While he expresses regret for his conduct and the omissions on his SF 86, the fact he used drugs over such an extended period well into adulthood, and did not reveal that use on his SF 86 in 2002, in an effort to prevent his employer from learning of it, causes me to deny the clearance. He took a calculated risk in withholding the information to obtain a job which he was able to do and hold these past three years. While it is to his credit that he has successfully held the job and abstained from drugs, the extent of the drug use and his failure to admit it when he was required to do so to obtain a security clearance makes clearance at this time a hurdle that cannot be met.

After considering all the evidence in its totality, and as an integrated whole to focus on the whole person of Applicant, I conclude Applicant's record of conduct justifies a finding that it is not clearly consistent with the national interest to grant a security clearance to him. It is premature to grant Applicant a clearance at this time.

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 AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: 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