

DATE: August 22, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12661

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Esq. , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated alcohol consumption security concerns over six alcohol related driving offenses over a 28 year period. The last was in 2001 resulting in intensive alcohol education program. He has since stopped drinking, a decision re-enforced by medical advice based his high blood pressure and family history. Applicant served 20 years in the army retiring in 1989 and has worked for his contractor employer since that time. He is highly regarded by his employer and supervisors. Clearance is granted.

STATEMENT OF CASE

On March 22, 2006, 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 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 March 31, 2006, Applicant responded to the allegations and requested a hearing. The matter was assigned to me on May 25, 2006. A notice of hearing was issued on June 12, 2006 for a hearing held on June 27, 2006. Six government exhibits and eleven Applicant exhibits were admitted into evidence. The Applicant and three witnesses testified on his behalf. The transcript was received on July 14, 2006.

FINDINGS OF FACT

Applicant admitted with explanation the seven allegations relating to alcohol consumption. After a complete review of the evidence in the record and upon due consideration of the entire record, the following findings of fact are made:

Applicant is a 59-year-old employee of a major defense contractor who has worked as a senior analyst in military training for exercises since retiring from the army. He has held a security clearance since 1969 when he entered the Army. He was drafted in 1968, attended OCS, and retired as a major in 1988. While he was on active duty he obtained a bachelor of arts degree in sociology and a master's of business administration.

Applicant has had difficulty with excessive alcohol consumption resulting in six separate alcohol related arrests over a 28 year period from 1973 until 2001. The first four of these offenses were while he was on active duty the last of which in 1984 resulted in failure to be promoted causing him to leave the service after only 20 years.

Since leaving the service he has had two arrests for alcohol related driving. The first was in 1994 when he was charged with DUI, placed in a diversion program, fined \$500.00 and given educational counseling on alcohol which designed to develop behavior modification.

His last arrest was in 2001 on a military base and involved dozing off while driving home late at night after dinner. He hit a parked car, awakened the owners whose house was near the car to advise them of the accident, and asked them call the police. The police came and administered a

breathalyser test and he was charged with DUI. The matter was reported to his security officer and an adverse information report was filed by his employer (Exh. 6). He was fined \$1,500.00 and placed in house arrest for a week, and sent to a three-day weekend intensive alcohol education program which he completed.

After completing that program he did not drink for almost a 18 months. Thereafter for a couple of years he drank an occasional glass of wine at social events. One year ago, he stopped drinking completely after being diagnosed with high blood pressure and being advised to totally abstain by his doctor. This decision was reinforced by the fact that high blood pressure problems run in his family and a brother had recently had a stroke as a result of high blood pressure.

He is highly regarded by his employer and his colleagues. Three colleagues and team members testified for him. They had known and worked with him for three to 18 years. His supervisor who wrote the adverse information report on the 2001 incident stated favorable information about him and vouched for his character and reputation. The evaluation reports introduced in evidence are glowing as to his abilities, effectiveness, and compliance with the rules.

Applicant is single, plays golf, lives alone, and likes to cook as a hobby. He is dedicated to the military exercise training that he provides for the army in his corporate employment.

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. The security concern is that excessive alcohol consumption leads to exercise of questionable judgment increasing the risk of unauthorized disclosure of classified information.(E2.A7.1.1) The specific concern is 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 the 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.) Those mitigating factors are applicable. The arrests occurred over a 28 year period and were on average four years apart. The last three were ten and seven years apart respectively. This does not indicate a pattern of conduct. (E2.A7.1.3.1.) While Applicant might have learned not to drink and drive earlier in his life, it seems conclusive that the lesson has now been learned and reinforced by medical reasons.

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. I conclude that based on that analysis, Applicant's record both in the service and his subsequent private career justifies application of the whole person analysis.

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 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: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or renew a security clearance for Applicant. Clearance is granted.

Charles D. Ablard
Administrative Judge