

DATE: January 9, 2007

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-03554

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

Nicole Noel, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant successfully rebutted allegations of security concerns for drug involvement and personal conduct for making inconsistent statements in two interrogatories. He has recovered from the trauma over the death of a daughter and the ensuing psychological difficulties and hospitalization. He had no intent to falsify. Clearance is granted.

STATEMENT OF CASE

On February 23, 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 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 March 22, 2006, Applicant responded to the SOR allegations, and requested a hearing. The matter was assigned to me on July 20, 2006. A notice of hearing was issued on September 5, 2006, and a hearing was held on September 18, 2006. Seven government exhibits and nine applicant exhibits were admitted into evidence. Applicant, his wife and four other witnesses testified on his behalf. The transcript was received on September 27, 2006.

FINDINGS OF FACT

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

Applicant is a 52-year-old employee of a defense contractor working as a computer operator where he has been employed for 14 years holding a security clearance most of the time. He has been married for 27 years with three grown

daughters. The two older daughters are step-daughters from his wife's first marriage and the youngest is his biological daughter. He regards all of them as his own. In July 2004 the middle daughter died after being strangled either from a suicide attempt or a criminal assault with a rope around her neck. She lived for several days when life support was withdrawn by the parents because of brain damage from the trauma. A delay in summoning medical help by her boyfriend may have contributed to her death.

Applicant and his wife grieved over her death and particularly the circumstances of it as they blamed the boyfriend for either an assault or negligence in post-traumatic care. Applicant became severely depressed as a result of her death and had continuing thoughts of suicide. At one point he was seen loading a gun by his youngest daughter who prevented him from taking any action and his wife locked up the gun. He sought help at a hospital. His family has a history of both depression and suicide. His mother committed suicide in 1979.

Applicant's employer filed a formal security report dated August 9, 2004, stating he had been admitted on August 5, 2004, to a mental hospital in the city where he worked. The hospital recommended he be transferred to a psychiatric facility in the state capital 95 miles away. He was in no condition to drive so his wife drove him to the hospital.

On the day of his admission, August 6, 2004, he was tested for possible drug use. The test showed positive for marijuana and for a chemical substance in valium which he was taking by prescription from his local doctor. He was interviewed first by a psychiatrist on August 7, 2004, and two days later by a social worker. The medical report dated on August 7 (Exh. 7) signed by the doctor indicated Applicant had said that he "probably" used marijuana on weekends. He said this to the social worker in her interview in an effort to receive individual counseling and better therapy which he believed he needed since he considered the counseling he was receiving in group sessions was of little value. This was a misrepresentation made for treatment purposes.

Applicant made sufficient progress over one month of treatment at the hospital to be released. A drug was prescribed that has had a positive effect on his depression, and he continues to use it. The hospital recommended continuing counseling which he does on a regular basis. He is now stable.

Applicant's wife has used drugs in the past but no longer uses them. She had worked in construction but, because of a drug arrest in 2004 and its consequences, she is now employed by hospice until she resolves remaining obligations arising from the offense. She is in the same counseling program as is he. He has tested negative for drugs since beginning the counseling program (Exh. F). She has also tested negative (Exh. D, E and G). Applicant has no intention of using illegal drugs.

In the course of the security investigation in 2005 Applicant was first apprised by the Defense Security Service (DSS) of the results of the marijuana testing in 2004. He had not seen the medical report from the hospital. Initially, he believed the test results had been mixed up with another patient since he had not used marijuana. He later surmised that the positive test for marijuana resulted from the fact that his wife had smoked 2-4 joints of marijuana while they were in driving the 95 mile trip from their home to the hospital in a closed air conditioned truck cab. He had not used marijuana.

Two interrogatories were taken of Applicant. In the response to the first on September 28, 2005, he denied any use of marijuana. In the second dated November 4, 2005, he was asked to explain the inconsistency in his earlier interrogatory and his statement at the hospital admitting to use of marijuana. He answered giving his reason for so stating to the hospital as an effort to obtain individual counseling. He again denied use of any illegal drug.

Applicant is highly regarded by his company in his evaluation (Exh. H), by his supervisor, and by his colleagues who testified on his behalf (Tr. 65-76), or submitted a statement on his behalf (Exh. I). His minister also testified for him, vouched for his character and credibility, and works with the family on their problems (Tr. 59-64). None of the witnesses have ever suspected any drug use by Applicant. One witness, a friend of over 30 years who is also a colleague at the same company, testified that Applicant is "the most honest person I know" with a "flawless" reputation for honesty (Tr. 73-75).

Applicant has a high school education with a few hours of college. He and his wife own their own home with no mortgage and have had responsibility for the past two years for raising a teen age grandson which they are doing skillfully.

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:

Drugs

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).

Mitigating Conditions that might be applicable are that the drug involvement was an isolated or aberrational event (E2.A8.1.3.2.), there is a demonstrated intent not to abuse any drugs in the future. (E2.A8.1.3.3.) Applicant is not charged with being a drug abuser; the allegation is that he tested positive once while hospitalized in a private psychiatric clinic and that he stated to someone on the staff that he used marijuana possibly once a week. He has admitted saying this while institutionalized for the purpose of obtaining additional treatment. He acknowledged that he did test positive, but is not sure of the reason. He testified credibly that he was not a user of illegal drugs. The government indicated at the hearing that it was not very concerned about the drug allegations (Tr. 78). I conclude the allegations have been mitigated as an isolated and aberrational event. He showed strong indications of intent not to use illegal drugs. The fact that his wife was a drug user and is also on the road to recovery is also indicative of the improvement in the environment in which Applicant lives. (See recent decision of Appeal Board reversing Guideline H denial with admitted use and psychiatric issues ISCR Case No 04-09239).

Personal Conduct

Applicant stated on his September 28, 2005, interrogatory that he did not use drugs, yet tested positive on one occasion. That inconsistency is alleged as a disqualifying condition under Guideline E (Personal Conduct). He denied using drugs and offered his explanation for his statement to the hospital on his November 4, 2005, interrogatory which the

government also alleges was untruthful. Under Guideline E, conduct involving untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate the person may not properly safeguard classified information. (E2.A5.1.1.) Specifically, the deliberate omission, concealment, or falsification of relevant and material facts from a person security application could raise a security concern and may be disqualifying. (E2.A5.1.2.2.)

The testimony of Applicant as well as the evidence offered by the government is unclear. No evidence was offered on either side as to the likelihood or possibility that his theory of ingestion of second hand smoke might have been possible. The mental condition of Applicant during the hospitalization makes it difficult to evaluate his behavior and his reasons for it during his hospitalization.

The Government allegations under Guidelines E alleged in the SOR are rebutted since the statements cited and attributed to Applicant on his two interrogatory answers were not deliberate falsifications as required by the guideline. I found his explanations credible.

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 hard-working employee who has successfully held a security clearance during his 14 year employment. He has a reputation for honesty among his colleagues and friends who testified for him. He had a family tragedy to which he reacted strongly causing severe depression. It has been treated and he is now able to carry on his work and fulfill his work and family obligations. The potential for any pressure is de minimis and the situation that led to his problems is not likely to recur. While there are certain inconsistencies and questions about accuracy of some of the events and their sequence when he was hospitalized and distraught from the family tragedy, the security concerns have been mitigated by the testimony of Applicant and his witnesses.

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 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

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.a.: 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