

DATE: July 28, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-08953

DECISION OF ADMINISTRATIVE JUDGE

CHARLES D. ABLARD

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Boris Plotniskey, Personal Representative

SYNOPSIS

Applicant, a 29-year-old defense contractor employee, mitigated security concern regarding alcohol consumption resulting in arrests for traffic related offenses in 1996 and 2002 by passage of time and clear showing of positive changes in behavior. Clearance is granted.

STATEMENT OF CASE

On December 23, 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 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 January 13, 2006, Applicant responded to the allegations and requested a hearing. The matter was assigned to me on March 23, 2006. An amended notice of hearing was issued on April 19, 2006 for a hearing held on May 3, 2006. Six government exhibits and seven Applicant exhibits were admitted into evidence. The Applicant and one witness on her behalf testified. The record was left open for 30 days for submission of additional material. The transcript was received on May 11, 2006. One document was received from Applicant after the hearing and transmitted to me by Department Counsel on May 18, 2006. There was no objection to the document and it was admitted in evidence.

FINDINGS OF FACT

Applicant admitted with explanation the three 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 29-year-old employee of a major defense contractor who has worked as a computer specialist since February, 2003.

Applicant has had difficulty with excessive alcohol consumption since she was a teenager until 2002. She has had two arrests for alcohol-related activities. The first was in 1996, when she was 19 years old. She was charged with a traffic misdemeanor but not DUI since she was underage and a first time offender. She was fined \$85.00 and was under court supervision for 60 days (Exh. 6).

The second arrest was six years later in 2002 when she was a college student. She was charged with DUI after testing at a .13 blood alcohol level. As a result of a plea agreement the DUI charge was dropped and she plead guilty to a speeding charge. She lost her driving privilege for three months, was ordered to take alcohol education classes, and do 96 hours of community service in lieu of a \$1,200.00 fine (Exh. 6). She worked in a soup kitchen and washed police cars to fulfill her community service.

She was arrested six times for speeding during the six year period between 1996 and 2002 but no such violations since then. The DUI in 2002 was the only traffic violation involving alcohol.

After the 2002 arrest and conviction Applicant was enrolled in a alcohol counseling program for one week in October, 2002. The agency report on Applicant was submitted as a post-hearing exhibit (Exh. H). It concluded that there were no substance abuse or dependence symptoms, and classified her as "minimal risk." It certified that she completed the DUI risk education program. The report also noted that her reported consumption of alcohol on the night of the arrest was inconsistent with her BAC level indicating that she may have had more to drink than she admitted.

Applicant received her bachelor of arts degree in 2002 after attending college intermittently since 1996. She was married in November 2005, resulting in a change of name. Her husband is employed in a responsible position. They have a young daughter and own a home. Since her employment after graduation she has become focused on family and her work. Applicant does drink in social settings, but in moderation and usually only one drink in an evening.

She is well regarded by her employer for whom she has now worked for over three years (Exhs. E, F, and G). Her supervisors vouch for her abilities and character (Exhs. A, B, and C), and one testified for her as to her work ethic and good character (Tr. 19-23). Her personal representative in the hearing was her corporate security officer.

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. Both arrests occurred while Applicant was a college student and they were six years apart. This does not indicate a pattern of conduct.

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 on a successful career path as a college graduate who has held steady employment for the past three years. She is a young professional who made a mistake in her alcohol consumption during her youth and college years. Her record since graduation and during employment is impressive and shows the prospects of a bright future. Testimony from a supervisor and letters of reference from her supervisors and colleagues show a changed person and one who has settled down as she settled down in family life and employment. She has had over three years to illustrate a changed life as a result of marriage and motherhood.

The conclusion of the evaluation from the state in 2002 has proven correct and she shows no signs of reverting to the conduct that caused her problems four years ago. The changed circumstances from her youth to maturity with professional and family responsibilities indicate a level of responsibility that mitigates against any security concerns.

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 her.

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

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