



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
-----)	ISCR Case No. 06-26640
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer Goldstein, Esquire, Department Counsel
For Applicant: *Pro Se*

April 8, 2008

Decision

LOKEY-ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on December 2, 2005. On November 9, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on December 10, 2007, and requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on February 4, 2008. A notice of hearing was issued on February 11, 2008, scheduling the hearing for March 5, 2008. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5. The Applicant presented three exhibits, referred to as Applicant's Exhibits A through C. The Applicant also testified on his own behalf. The official transcript (Tr.) was received on March 14, 2008.

FINDINGS OF FACT

The Applicant is 30 years old and single. He holds a Bachelors of Science degree in Mechanical Engineering. He is employed by a defense contractor as a Mechanical Engineer and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

Paragraph 2 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant started consuming alcohol at family gatherings at the age of eighteen. By the age of twenty-one, his use of alcohol had increased to five beers about once every weekend. This pattern continued for about a year until he decided that he needed to focus on school. Although his drinking did not occur more frequently, when it did occur, he often drank to the point of intoxication. During this early period of alcohol consumption, he also experienced a black out.

On May 5, 2002, the Applicant was charged with Open Alcohol Container. He was found guilty and was fined \$60.00. The Applicant explained that he and some friends went to a festival. Instead of paying the charges to get in, they parked close to the festival and opened their containers of hard liquor (tequila) when they were cited by police. This offense did not effect the Applicant's drinking habits whatsoever.

Two months later, in July 2002, the Applicant was charged and arrested for (1) Sexual Battery and (2) Sexual Arousal. The Applicant stated that he and several friends, including his girlfriend, were consuming alcohol in a public establishment. The Applicant had consumed about two or three drinks when he went to the rest room. As he left the restroom, he bumped into a woman and continued walking by her. The police were contacted and the Applicant was accused of grabbing the woman's posterior. The Applicant denied that it occurred, however he admits that he was unstable from the effects of the alcohol. The charges were amended to Disturbing the Peace. On September 4, 2002, he pled nolo contendere and was fined approximately \$200.00. He was placed on two years probation and a restraining order was in place for three years. (See Government Exhibit 4).

On January 8, 2004, the Applicant was arrested and charged with (1) Under Influence Alcohol/Drug in Vehicle, and (2) 0.08% More Weight Alcohol Driving Vehicle. The Applicant explained that he and some friends were consuming alcohol at a sporting event. The Applicant remembers drinking six, eight ounce beers. He and his friends walked to another bar and continued consuming alcohol. At this bar, the Applicant consumed three more beers. At some point, the Applicant's friends asked him for his car keys because he was not coherent, as his speech was slurred and he was talking loudly. The Applicant complied and gave his car keys to a friend. The Applicant later left the bar, found a spare key in his wallet, and drove his car. The Applicant indicates that he was taking a weight loss drug at the time and it altered his ability to sense his level intoxication. He pled nolo contendere to Charge (2), and was convicted of charge

(2). He was ordered to complete a 6-month First Offender alcohol and drug education and counseling program. His license was suspended for 90 days, he was fined \$1,438.00, and he was sentenced to one day in jail. Charge (1) was dismissed. (See Government Exhibits 3 and 4).

The Applicant testified that there were at least three or four other times that he drove a vehicle while either intoxicated or under the influence of alcohol and he was not arrested.

On March 18, 2006, the Applicant was charged with (1) Under Influence Alcohol/Drug in Vehicle and (2) 0.08% More Weight Alcohol Driving Vehicle. It was the Applicant's birthday and he was on his way with some friends to a charity function. A friend convinced him to go to a local bar where the Applicant consumed four alcoholic beverages. The Applicant's friend and his friend's girlfriend got into an altercation and left the bar. The Applicant then went to go sit in his car for a while, but instead he drove off. He pled nolo contendere to Charge (2), and was convicted of charge (2). He was ordered to complete an 18 month Second Offender alcohol and drug education and counseling program, his license was suspended for one year, and he was fined approximately \$1,511.00. The Applicant currently remains on probation for this offense until June 2009. Charge (1) was dismissed. (See Government Exhibits 3 and 4).

The Applicant is currently working on completing the sentencing requirements imposed by the court as a result of his most recent conviction. He has been attending a Hospital and Morgue Program (HAM program) that he believes has had a profound impact on him. In a letter from the Applicant dated April 24, 2006, concerning the HAM program, the Applicant indicated that he was made aware of the consequences, including death, that can happen as a result of drunk driving. The Applicant indicates that the insidious nature of the vices that seemed harmless but had a tragic end were too much for him to handle. At one point during the program, he fainted and was unable to finish the program. (See Applicant's Exhibit B).

The Applicant is currently twelve months into an eighteen month program. The program consists of Alcoholics Anonymous meetings (AA), an alcohol education course, and individual counseling. Since January 2007, he has attended 26 AA meetings. He stopped attending because of the difficulty in getting to the meetings. He has completed 26 of the 32 required group counseling sessions. He is restricted to drive to work and to drug and alcohol court mandated programs. (See Applicant's Exhibit C).

The Applicant indicates that since he began consuming alcohol, his longest period of abstinence was for six months, following his DUI arrest in January 8, 2004. (Tr. P. 52). He also remained abstinent for two months following his most recent DUI in March 2006. He admits that he normally keeps alcohol in the house. He buys a case of beer from Costco and keeps it until it is gone, and then buys another. (Tr. P. 53). He continues to maintain friendships with people that he has consumed alcohol with, as they are good friends of his. (Tr. P. 57).

Two weekends before the hearing the Applicant consumed a beer with his girlfriend when they went to dinner at a restaurant. (Tr. p. 49). The Applicant believes that he has had a problem with alcohol. Presently, however, he believes that he has

made some changes to correct his problem. He no longer drinks and drives and does not over indulge. (Tr. p. 50). He does not believe that total sobriety is the solution for him. (Tr. P. 51). His parents, family and friends have expressed concern about his alcohol consumption.

Mitigation.

A letter from the Director of the company for which the Applicant is employed, dated March 4, 2008, indicates that the Applicant has been an exemplary employee. He has worked on a number of highly visible and critical assignments. The quality of his work product has been of the highest standard and his overall performance has been of a substantive benefit to the company. The Applicant is considered to be a highly reliable and trustworthy employee. (See Applicant's Exhibit A).

Applicant's progress report from the Safety Education Center dated October 30, 2007, estimates the date the Applicant will complete the alcohol education program as July 29, 2008. (See Applicant's Exhibit C).

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline J (Criminal Conduct)

30. *The Concern.* Criminal activity creates a doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Conditions that could raise a security concern:

30.(a) a single serious crime or multiple offenses;

30.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

Condition that could mitigate security concerns:

None.

Guideline G (Alcohol Consumption)

21. *The Concern.* Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Conditions that could raise a security concern:

22.(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

22.(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person

concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination.” The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, “Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned.”

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in alcohol abuse and criminal conduct that demonstrates poor judgment or unreliability.

It is the Government’s responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant’s conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government’s case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in alcohol abuse (Guideline G) and criminal conduct (Guideline J). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines J and G of the SOR.

Under Guideline J, Criminal Conduct, disqualifying Conditions 30.(a) *a single serious crime or multiple offenses*, and 30.(c) *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted* apply. None of the mitigating conditions are applicable. The same conduct alleged under Guideline J is applicable under Guideline G.

Under Guideline G, Alcohol Consumption, disqualifying conditions, 22.(a) *alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent* and 22.(c) *habitual or binge consumption of alcohol to the point of impaired*

judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent apply. I have considered mitigating condition 23(a), and decide that it does not apply because, viewed in its entirety, his conduct does cast doubt on his current reliability, trustworthiness and good judgment. Accordingly, none of the mitigating conditions are applicable.

The evidence shows that the Applicant has consumed alcohol at times to excess and to the point of intoxication over the past twelve years. As a result of his alcohol abuse he has been cited, arrested, charged and convicted of various alcohol related incidents, the most recent of which occurred in 2006 for DUI. He currently remains on probation for this offense until June 2009, and is on a restricted driver's license. The only alcohol counseling he has received has been court ordered. Although the Applicant has not been formally diagnosed as an alcoholic, his abusive drinking pattern, numerous alcohol related incidents, and his inability to remain abstinent for any significant length of time is a strong indicator that he has a serious alcohol problem. His parents, family and friends have expressed concern about his welfare and on one occasion his friends have taken his car keys away from him to prevent him from driving. Despite all of this, the Applicant is in denial. In order to battle his alcohol problem, he must first admit to himself that he has a problem. At the present time, he does not believe that he has a drinking problem. In any event, the Applicant continues to drink alcohol and can easily overindulge at any moment. I do not see a changed pattern of conduct that would guarantee prevention of this sort of abuse in the future. His history of excessive alcohol abuse has not been mitigated by sufficient rehabilitation and reform. Accordingly, Guideline G, Alcohol Consumption and Guideline J, Criminal Conduct are found against the Applicant.

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of questionable judgement, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified information.

This Applicant has a serious alcohol problem and has not stopped drinking. He has not demonstrated that he is trustworthy, and he does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guidelines G (Alcohol Consumption), and J (Criminal Conduct).

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, and 2 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge