



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



In the matter of:)	
)	
-----)	ISCR Case No. 05-00948
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: Pro Se

April 10, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on July 30, 2003. On October 21, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G and E for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended, and modified (Directive).

Applicant requested a hearing before an Administrative Judge. I received the case assignment on February 21, 2008. DOHA issued a notice of hearing on February 29, 2008, and I convened the hearing as scheduled on March 26, 2008. The government offered Exhibits (Ex.) 1 and 2, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through E, without objection. DOHA received the transcript of the hearing (Tr.) on April 4, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant admitted, with explanation, to allegations in subparagraphs 1.a, 1.b, and 1.c in the SOR under Guideline G. He also admitted, with explanations, to allegations in subparagraph 2.a through 2.g under Guideline E. (Applicant's Answer to SOR, dated November 14, 2005). His admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 50-year-old employee of a defense contractor (GE 1). He has worked for his current employer for almost 30 years. Applicant is married with one child and three step-children. He has an associate of arts degree. He served in the U.S. Navy from 1976 until 1980. *Id.* During his military career, he served aboard an aircraft carrier and worked with an aviation rating. He held a top secret clearance. After his discharge from active duty, he served in the Reserves (Tr. 22).

Applicant started drinking alcohol while in the Navy. In April 1986, Applicant was arrested and charged with (1) driving under the influence of alcohol, (2) blood alcohol level of .10 or above, and (3) unlicensed driver. He pled guilty to the first charge. Applicant was sentenced to attend 12 weeks of intensive alcohol information school. He was given a 90 day restriction on his driver's license, received 36 months probation, and ordered to pay a fine of \$750. He admits consuming alcohol, at times to the point of intoxication, from 1986 to at least September 2005 (Tr. 24).

Applicant was arrested on March 24, 1992. He was charged with (1) driving while intoxicated (DWI) and (2) driving under the influence of alcohol (DUI). He pled not guilty to count (1). The court found Applicant guilty on count (2). He was granted probation before judgment for one year and fined \$250 plus court costs of \$20.

Applicant has worked for his current employer, as noted above, since 1980. In 1997, Applicant received counseling for having alcohol on his breath at work. He is diabetic (requires insulin) and maintains that the odor was not alcohol but due to high blood sugar level it may smell like alcohol. He further states that the only time he received any negative notice at work was when he worked under a certain supervisor with whom he had a conflict (Tr. 34-35).

In January 1997, Applicant received an unsatisfactory evaluation from the same supervisor. He was cited for excessive absenteeism. Applicant had medical problems at the time. He had an angiogram and a stent put in his heart. In September 1997, he was given a work performance counseling for wandering off the job. Applicant admitted to the allegations in the SOR, but he explained at the hearing that he could not remember the circumstances. He was adamant that they were all given by the same supervisor with whom he had a personality conflict. He also stated the March 4, 1998 disciplinary counseling for failure to follow directions was also without merit (Tr. 40-43).

On January 13, 1999, Applicant received a citation from work for a security violation. He does not know the reason for this violation. He was not working on

anything secret or top secret at the time. He went to security and asked about this violation. He wanted to see his record. He was told there is no record of the violation (Tr. 48).

On August 4, 2003, Applicant received a final written warning about personal use of the internet on a government computer. He checked his emails during lunch time. He received spam and the company told him not to check personal email again (Tr. 49).

Applicant was never court ordered to alcohol counseling, nor does he have any diagnosis of alcohol abuse or dependence. He does not go out at night very much due to his medical conditions. He had a stroke in 2004. He does not go to bars anymore because he can no longer play darts and this was a form of entertainment to him. He won various titles for dart competition (Tr. 23).

Applicant currently drinks at home in the evening from approximately 5:00 p.m. until 11:00. He consumes four or five drinks. He will have two cocktails before dinner and then maybe two or three drinks before he retires for the evening. He explained he may have one drink per hour before he goes to bed. He reports that he does not put himself in any situations with drinking (such as driving) that would jeopardize him (Tr. 57).

Applicant enjoys his current position and is very committed to its success. He is a well respected employee and a valued member of the team. He maintains a professional appearance and sets a good example to the other staff. He displays a high degree of proficiency and professionalism in his work. He has been acknowledged for his innovation, expertise and support by his peer, the company and its customers (AE A-C). He has excellent rapport with his customers and his work exceeds expectations. His most recent Performance Appraisals (2005-7) rate him as outstanding (AE D). He received a prestigious award from the company in 2007. He is highly recommended for a security clearance by his employer.

Policies

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.” *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth Adjudicative Guidelines which must be considered in the evaluation of security suitability. Paragraph E2.2., Enclosure 2 of the Directive sets forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security decision must be a fair and impartial

commonsense decision based on the relevant and material facts and circumstances, and the whole-person concept.

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider the following factors: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive Enclosure 3, Paragraph E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. Directive, Enclosure 3, Paragraph E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his 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, Enclosure 2, E2.2.2.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

Guideline G (Alcohol Consumption) The Concern; Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and can increase the risk of unauthorized disclosure of classified information due to carelessness.

In this matter, the government provided substantial evidence that Applicant was arrested in 1986 and 1992 for alcohol related driving incidents. Consequently, Alcohol Consumption Disqualifying Condition (AC DC) E2.A7.1.2.1 ("*alcohol-related incidents away from work, such as driving under the influence, fighting, child or spouse abuse, disturbing the peace, or other criminal incidents related to alcohol use*") applies. Applicant admitted that he consumed alcohol, at times to excess and to the point of intoxication, from 1986 to at least 2005. Thus, AC DC E2.A7.1.2.5 ("*habitual or binge consumption of alcohol to the point of impaired judgment*") applies.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. I

considered the Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.1 (“*the alcohol-related incidents do not indicate a pattern*”) and (AC MC) E2.A7.1.3.2 (“*the problem occurred a number of years ago and there is no indication of a recent problem*”). There are no “bright line” rules for determining when conduct is “recent.” The determination must be based on “a careful evaluation of the totality of the record within the parameters set by the directive. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). If the evidence shows “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.” *Id.* AC MC 1 and 2 have some applicability in this case. Applicant was found guilty of DUI in 1986. He did not have any alcohol driving incidents again until 1992 when he was leaving a party. He was given a Probation Before Judgment and successfully completed probation. Thus, the last alcohol driving incident was sixteen years ago. He has changed his drinking habits and does not drink and drive. He has no problems at work directly related to alcohol consumption and has received outstanding evaluations. His past conduct does not cast doubt on his current reliability, trustworthiness or good judgment. The whole person analysis, *infra*, provides additional discussion of mitigating circumstances

Guideline E (Personal Conduct) The Concern; Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Personal Conduct Disqualifying Condition (PC DC) E2.A.5.1.2.1 (“*reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances*”), and PC DC E2.A5.1.2.5 (“*a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency*”) apply. During the period in 1997 and 1999, Applicant had several counseling actions at work for absenteeism and alcohol on his breath. He also had a warning in 2003 concerning his personal use of the computer. He has more than 30 years with his employer.

Personal Conduct Mitigating Condition (PC MC) E2.A5.1.3.1. (“*the information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability*”) applies. The SOR was completed in 2005. Initially, Applicant admitted to all the allegations and did not want a hearing. When he testified at the hearing, he had explanations for the various incidents. He tried to find a record on the security violation and was told that there was none. I find under these circumstances that this mitigating condition applies to SOR 2.f. Also, the incidents are distant in time, and Applicant has performed in an outstanding manner since then. E2.A5.1.3.5 (“*the individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation or duress*”) applies.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the clearance determination process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

Applicant was candid in his demeanor and testimony at the hearing. He acknowledged that he did not want a hearing initially, and did not understand the process. He was forthright in acknowledging that he filled out his SF 86 a long time ago and the incidents are ten years ago. He has received outstanding evaluations. The incidents have been documented for twenty years and he does not understand why this is an issue now.

He has completed his alcohol probation and does not have an alcohol-related diagnosis. He does not drink and drive. He is no longer going out to bars to drink. He has a clearance and enjoys his work. He has letters of appreciation and commendations over the years. Despite his prior two alcohol-related incidents, he continued to perform in his work. He never mishandled classified information and continued to work on a regular basis. His circumstances have changed due to his medical condition and his life is devoted to work. He works long hours and lives a quiet life. Although he admits that he still drinks alcohol every evening at home, he is adamant that he does not drink and drive. He has no incidents or absences at work. His past three year evaluations are outstanding. His employers praise his commitment and accomplishments.

I have considered all the evidence and the "whole person" in evaluating Applicant's security clearance determination. Applicant has mitigated the government's concern pertaining to his alcohol consumption and his personal conduct.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline G:	FOR APPLICANT
Subparagraph 1.a-1.d:	For Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph 2.a-g:	For Applicant

DECISION

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

Noreen A. Lynch
Administrative Judge