



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



In the matter of:)	
)	
-----)	ISCR Case No. 05-02102
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel

For Applicant: *Pro se*

September 29, 2009

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF-86), on January 27, 2003 (Item 6). On December 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant detailing security concerns under Guidelines G and B. 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 (Directive); and the revised adjudicative guidelines (AG) promulgated by President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on February 4, 2009, and requested a decision without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on March 17, 2009. The Applicant received the FORM on March 27, 2009, and was given 30 days to submit any additional information. He elected not to submit any additional information. The case was assigned to me on June 17, 2009. Based

upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Rulings on Procedure

Motion to Amend the SOR

The Government moved to amend the SOR by adding two allegations under Guideline E. (Item 2.) This amendment is dated March 12, 2009. The Applicant was provided a copy of this Motion to Amend the Statement of Reasons, along with the FORM, on March 17, 2009.

The Applicant was specifically informed that he had the ability to object to the proposed amendment and, if he did not object, to submit a response to the amended SOR. The Applicant did not submit an objection to the Motion. The Motion is granted and the SOR is amended to add Paragraph 3 under Guideline E and two subparagraphs, 3.a. and 3.b., as shown in Item 2.

The Applicant did not submit any additional information concerning the Guideline E allegations. I view this as being a denial of the allegations.

Request for Administrative Notice

Department Counsel submitted a formal request that I take administrative notice of certain facts relating to the ----- (Country One) and the ----- (Country Two). (FORM at 3-11.) The request and the attached documents were not admitted into evidence but were included in the record. The facts administratively noticed are set out in the Findings of Fact, below.

Findings of Fact

The Applicant is 52 and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline G - Alcohol Consumption)

The Government alleges under Guideline G that the Applicant is ineligible for clearance because he uses intoxicants to excess. The Applicant admitted subparagraphs 1.a., 1.b., and 1.c. Those admissions are hereby deemed findings of fact. He denied 1.d.

1.a. The Applicant was charged with Driving Under the Influence of Alcohol in 2007, while working for his employer in the ----- (Country Three). He paid a fine to the government of Country Three, and his employer transferred him back to the United States. (Item 8 at 3, and Item 10.)

1.b. The Applicant was arrested in October 2003 on an American military installation in Country Three for Driving Under the Influence of Alcohol. The Applicant admits being required to take alcohol education classes and his driver's license being restricted.

1.c. The Applicant was arrested for Driving Under the Influence of Alcohol (DUI) in August 1998 on an American military installation in ----- (Country Four). According to the Military Police report, the Applicant refused to complete the field sobriety test and also refused to take any breath tests. As a result of this incident his driving privileges on the base were suspended for one year. (Item 9.)

1.d. The Applicant denied that, as of November 2007, he drank to the point of intoxication two to three times per month. In his Answer the Applicant states, "I only stated that I only drink a few beers two to three times a month." In a report of an interview with the Applicant, which the Applicant authenticated as being accurate on the day he was interviewed, it is stated:

The subject [Applicant] becomes intoxicated after drinking three beers. When intoxicated, the subject becomes friendly and sociable. The subject will drink to intoxication two to three times a month. The subject does not believe he has a problem with alcohol. The subject's future intentions are to quit drinking alcohol all together. It has caused to (*sic*) many problems for him in the past. (Item 8 at 4.)

In an Interrogatory dated May 5, 2008, the Applicant stated that he continued to drink alcohol two to three times monthly. In addition, he stated that the last time he was intoxicated was December 24, 2005. (Item 7.)

Paragraph 2 (Guideline B - Foreign Influence)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts and interests that could lead to the exercise of poor judgment, unreliability or untrustworthiness on the part of the Applicant. The Applicant admitted all of the allegations under this paragraph. Those allegations are hereby deemed findings of fact.

The Applicant's wife is a citizen and resident Country One. She lives there with the Applicant's two children as well as his two step-children. The step-children are also citizens of Country One. The Applicant states in his Answer, "My wife has no interest in becoming an American citizen. . . . Because of the assignments I have chosen, my wife and I decided for the family to reside in [Country One] to receive family and moral support during my deployment. My intentions [are] to retire in [Country One] in the future."

The Applicant's mother-in-law and her second husband are citizens of Country One and reside in Country Two. The Applicant admits that the husband is employed on a personal basis by an important person in Country Two. The Applicant states in his Answer,

“I do not receive any benefits through my mother-in-law (*sic*) husband employment with [the important person].” Other than this statement, the record is silent regarding the extent and depth of the Applicant’s relationship with his relatives who live in Country Two.

The Applicant has many contacts with Country One. Accordingly, it is appropriate to discuss the situation in Country One at this time.¹ Country One is a multiparty republic with an elected president and bicameral legislature. It is a representative democracy modeled on the U.S. system and has been a close ally of the United States with ties stretching back more than a century. Country One has severe economic problems, exacerbated by threats from terrorist groups in certain parts of the country. A travel warning has been issued to U.S. citizens, warning them of the potential terrorist threat in Country One. In addition to the terrorist threat, the United States is also concerned about internal human rights issues which present a serious destabilizing concern. These include arbitrary, unlawful and extrajudicial killings by elements of the security services, as well as arbitrary and warrantless arrests and detentions.

The Applicant also has contacts, through his wife’s family, with Country Two. It is also appropriate to discuss the situation in that country as well. Country Two is a monarchy with an all-powerful ruling family. The central institution of the Country Two government is the monarchy, and there are no political parties or national elections. The United States Government finds that there are significant human rights problems in Country Two, such as judicially sanctioned corporal punishment, denial of public trials, and restrictions on civil liberties. There is corruption and a lack of government transparency, as well as discrimination and violence against women. Other religious, ethnic and minority groups have faced discrimination. Terrorist acts have been committed against Americans in Country Two and the U.S. Government has issued a travel warning due to the ongoing security threat.

Paragraph 3 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has made false statements to the Government during the clearance screening process. The Applicant is deemed to have denied the two allegations under this paragraph.

3.a. The Applicant filled out a Security Clearance Application on January 27, 2003. In that Application the Applicant was required to answer Question 24., which asked, “Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?” He stated “No.” This was a false answer to a relevant question concerning his prior use of alcohol. The report of the Applicant’s interview held in November 2007 states, “Regarding the unadmitted 1998 drunk driving arrest, the subject forgot about the incident when completing the SF86.” (Item 8 at 3.) The Applicant did not file an answer regarding this allegation in the amended SOR, which I find is a denial. Given the state of this record, I

¹All of the following statements regarding Country One and Country Two are supported by the documents submitted by the Department Counsel in support of her request for administrative notice and its attachments.

cannot find with a reasonable degree of certainty that the Applicant intentionally falsified his Application. This subparagraph is found for the Applicant.

3.b. The Government alleges in this subparagraph that the Applicant withheld information during his November 2007 interview. Specifically, that he was questioned about other alcohol related incidents and, while revealing one in January 2007, he actively failed to disclose information on the 2003 DUI arrest set forth in subparagraph 1.b., above. I have reviewed the statement and it does not state that the Applicant actively, or passively, denied any other alcohol related incidents. Given the state of this record, I cannot find with a reasonable degree of certainty that the Applicant intentionally did not tell the interviewer about his 2003 arrest. This subparagraph is found for the Applicant.

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized by President Eisenhower in Section 7 of 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (Guideline G - Alcohol Consumption)

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

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.

The Applicant was involved in three alcohol related incidents between 1998 and 2007. All three occurred in foreign countries. The Applicant continues to drink alcohol, even though he admits that his alcohol use has had an adverse impact on his life.

There are two Disqualifying Conditions concerning Alcohol Consumption that apply to this case. AG ¶ 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." In addition, AG ¶ 22.(c) applies, "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."

After considering the evidence in the record, I find that the arguably applicable Mitigating Conditions under Alcohol Consumption do not apply to this case. AG ¶ 23.(a) states that it can be a mitigating condition when, "so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness or good judgment." AG ¶ 23.(b) states that it can be mitigating where, "the individual acknowledges

his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).”

As stated above, the Applicant’s last alcohol related arrest was two years ago. However, he continues to drink alcohol even though he acknowledges that it has had an adverse impact on his life and job. His conduct by definition does not show reliability, trustworthiness or good judgment.

The Applicant has not mitigated the security significance of his alcohol consumption. Paragraph 1 of the SOR is found against the Applicant.

Paragraph 2 (Guideline B – Foreign Contacts)

The concern under Guideline B is styled as follows:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

The Applicant has close connections to both Country One and Country Two. The Applicant has not submitted any information which would overcome the government’s case. The evidence shows that his immediate family lives in Country One, which has a serious problem with domestic terrorism. His wife’s mother and her second husband live in Country Two. Not only that, but the husband works for an important person in Country Two, a nation where serious human rights violations take place. It is the Applicant’s burden to show that these connections do not have an impact on his security worthiness. His failure to respond in any way, other than the bald statements in his Answer, makes it impossible for me to mitigate these allegations.

Based on the evidence the government has presented, the following Disqualifying Conditions apply to this case: AG ¶ 7.(a) “contact with a foreign family member . . . who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion”; and AG ¶ 7.(b) “connections to a foreign person . . . or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information or technology and the individual’s desire to help a foreign person . . . or country by providing that information.” I have also considered the information concerning Country One and Country Two, provided by Department Counsel in her request for administrative notice and its attachments.

The Applicant has not provided compelling evidence to show that the following Mitigating Conditions also apply to this particular case, given his particular background: AG ¶ 8.(a) “the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.”; and AG ¶ 8.(b) “there is no conflict of interest, either because the individual’s sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest.” Paragraph 2 is found against the Applicant.

Paragraph 3 (Guideline E - Personal Conduct)

As stated above, I cannot find that the Applicant did intentionally falsify a Security Clearance Application and withhold information during an interview. Paragraph 3 is found for the Applicant.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a) in making a reasoned decision:

- (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) extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant has had three alcohol related arrests in 10 years. The acts are frequent and recent. He continues to drink alcohol. I find these incidents show a pattern of alcohol dependence and/or alcohol abuse. In addition, the Applicant has significant family connections in Country One and Country Two which make it impossible to grant him a security clearance at this time. In viewing all the facts of this case, I find that the Applicant has not mitigated the security significance of his prior conduct and situation. As set forth at length above, I find that there have not

been permanent behavioral changes under AG ¶ 2(a)(6); and that the likelihood of continuation or recurrence is very high (AG ¶ 2(a)(9)). In addition, I also find that the potential for pressure, coercion, exploitation, or duress also exists (AG ¶ 2(a)(8)).

Overall, the record evidence leaves me with questions and/or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from his alcohol related incidents, and his foreign contacts.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD 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 Government's Statement of Reasons. As set forth above, Paragraph 3 is found for the Applicant.

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:	AGAINST THE APPLICANT
Subparagraph 1.a:	Against the Applicant
Subparagraph 1.b:	Against the Applicant
Subparagraph 1.c:	Against the Applicant
Subparagraph 1.d:	Against the Applicant
Paragraph 2, Guideline B:	AGAINST THE APPLICANT
Subparagraph 2.a:	Against the Applicant
Subparagraph 2.b:	Against the Applicant
Subparagraph 2.c:	Against the Applicant
Subparagraph 2.d:	Against the Applicant
Subparagraph 2.e:	Against the Applicant
Subparagraph 2.f:	Against the Applicant
Paragraph 3, Guideline E:	FOR THE APPLICANT
Subparagraph 3.a:	For the Applicant
Subparagraph 3.b.:	For the Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge