

KEYWORD: Drug Involvement; Criminal Conduct; Alcohol Consumption

DIGEST: This forty year old Applicant had a long history of abusing alcohol and amphetamines. He also committed criminal conduct during that period. Applicant has not used any illegal substance or consumed any alcoholic beverage since May 2004, and has no intention to in the future. Mitigation has been shown. Clearance is granted.

CASENO: 06-18599.h1

DATE: 07/12/2007

DATE: July 12, 2007

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| In Re: |) | |
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| SSN: ----- |) | ISCR Case No. 06-18599 |
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| Applicant for Security Clearance |) | |
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**DECISION OF ADMINISTRATIVE JUDGE
MARTIN H. MOGUL**

APPEARANCES

FOR GOVERNMENT
Candace Le'i , Department Counsel

FOR APPLICANT
Pro Se

SYNOPSIS

This forty year old Applicant had a long history of abusing alcohol and amphetamines. He also committed criminal conduct during that period. Applicant has not used any illegal substance or

consumed any alcoholic beverage since May 2004, and has no intention to in the future. Mitigation has been shown. Clearance is granted.

STATEMENT OF THE CASE

On October 24, 2006, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, 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. The SOR detailed reasons under Guideline H (Drug Involvement), Guideline J (Criminal Conduct), and Guideline G (Alcohol Consumption) 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, and recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted or denied.

In a signed and sworn statement, notarized on November 16, 2006, Applicant responded to the SOR allegations (RSOR). He requested that his case be decided on a hearing record.

On February 7, 2007, this case was assigned to another Administrative Judge to conduct a hearing and issue a written decision, but it was reassigned to this Administrative Judge on March 28, 2007. A Notice of Hearing was issued to the parties on May 29, 2007, and the hearing was conducted on June 12, 2007.

At the hearing, Department Counsel offered seven documentary exhibits (Government Exhibits 1 through 7) and no witnesses were called. Applicant offered two documentary exhibits (Applicant Exhibits A and B), and offered his own testimony. Exhibit A was a series of three letters that were on a disc and he was going to submit after the hearing. All of the documents have been entered into evidence. The transcript (Tr) was received on June 21, 2007. The record was held open until June 26, 2007, to allow Applicant to offer additional documents, which he has done. None of these additional documents have been objected to, and they have been marked collectively as Exhibit C and admitted into evidence.

FINDINGS OF FACT

The Government opposes Applicant's request for a security clearance, based upon the allegations set forth in the SOR. The SOR contains two allegations, 1.a. and 1.b., under Guideline H (Drug Involvement), two allegations, 2.a. and 2.b., under Guideline J (Criminal Conduct), and two allegations, 3.a. and 3.b., under Guideline G (Alcohol Consumption). In the RSOR Applicant admitted all of the SOR allegations except 2.b. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 40 years old. He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. Applicant is not married, and he has two sons and one daughter.

Applicant was in the United States Coast Guard from November 1988 through March 1994, when he received an Honorable Discharge. He also served in the United States Army National Guard in 1996 and 1997, from which he also received an Honorable Discharge.

Paragraph 1 (Guideline H - Drug Involvement)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has abused illegal substances.

1. a. Applicant used amphetamines with varying frequency from approximately 1995 until at least October 2003.

1. b. Applicant attended an inpatient alcohol treatment program, first from December 2003 until February 2004, and then from May 2004 until September 2004. The initial complaint of condition was alcohol dependence and methamphetamine dependence.

Applicant testified that he began using drugs because of problems that he was having after he left the military. He could not find decent employment, and when he tried to reenlist in the Coast Guard, he was turned down because he had Glaucoma. According to medical records, his history included 20 years of alcohol abuse and eight years of methamphetamine dependence (Exhibit 3). He tried to quit several times, but he was not able to quit, "until he was ready."

The first time he left the in patient program early because he was attempting to reconcile with his girlfriend, and because of other issues at the inpatient facility. He had not successfully overcome his alcohol and drug addictions. When he entered the inpatient program on the second occasions on May 2004, he was ready to quit. According to his credible testimony, which has not been controverted, Applicant has not used any illegal substance or imbibed any alcoholic beverage since May 2004. He left the program one or two weeks early because he had received a good employment offer, and he is still employed by that same company.

Paragraph 2 (Guideline J - Criminal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he committed three criminal acts.

2. a. On January 31, 2004, Applicant was arrested and charged with Battery.

2.b. On September 21, 2003 Applicant was arrested and charged with Annoying Phone Calls.

2.c. On August 15, 2002, Applicant was arrested and charged with Inflicting Corporal Injury on Spouse/Co-Habitant. He was found guilty and given 26 months probation, fined and ordered to complete 40 hours of community service. He violated his probation and was ordered to serve 180 days in jail beginning on September 29, 2005.

Applicant testified that the arrest on January 2004, listed above as 2.a., actually arose from the 2002 incident, listed above as 2.c. As a result of his 2002 arrest for Corporal Injury of his girlfriend, he was ordered to complete an anger management course. Because he failed to complete it, he ultimately was ordered to undergo four months of house arrest, which he did in 2005. According to Applicant this case was finally resolved to the courts satisfaction after he completed his house arrest.

In both his RSOR and during his testimony, Applicant denied that he had been arrested for making Annoying Phone Calls, although he did concede that there was a period where he did call his girlfriend frequently and ask her for help.

There is no evidence of any addition criminal acts by Applicant since his abstinence.

Paragraph 3 (Guideline G - Alcohol Consumption)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engages in excessive alcohol consumption.

3.a. Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1981 to at least 2004.

3.b. The information that is alleged in subparagraph 1,b, above.

As stated above, Applicant testified credibly that he has not consumed any alcoholic beverage since May 2004. No evidence has been introduced to dispute this contention.

Mitigation

Applicant submitted three character letters, from his brother, a roommate and his former supervisor (Exhibit A). All three acknowledged that Applicant had difficulties in his past, but that he has turned his life around. He was described as “diligent and conscientious about his employment” and “capable of handling any situation with maturity.”

He also submitted Honorable Discharge forms from both the United States Coast Guard and the Army National Guard (Exhibit C).

Finally, Applicant submitted two positive Performance Evaluations, one from the Coast Guard and the other from his private employment. He also enclosed two Letters of Commendation from the Coast Guard for excellent performance (Exhibit C).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance 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.

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between 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. Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to the allegations set forth in the SOR:

Paragraph 1 (Guideline H - Drug Involvement)

With respect to Guideline H, the Government has established its case. Applicant's improper and illegal drug abuse, including the possession, and use of amphetamines, is of concern, especially in light of his desire to have access to the nation's secrets. Applicant's overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement Disqualifying Condition (DC) 25. (a) (any drug abuse), (c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution), and (f) failure to successfully complete a drug treatment program.

Based on the fact that Applicant last used any illegal substance in May 2004, , I conclude that Applicant's conduct comes within Mitigating Condition (MC) 26. (a) (the drug involvement happened so long ago that it does not cast doubt about individual's current reliability, trustworthiness and good judgement), and (b) also applies because of Applicant's demonstrated intention not to continue using drugs in the future.

In this case, the Government has met its initial burden of proving by substantial evidence that Applicant has used illegal drugs for many years under Guideline H. Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him. Accordingly, Paragraph 1 Guideline H of the SOR is concluded for Applicant.

Paragraph 2 (Guideline J - Criminal Conduct)

Regarding Guideline J, the Government has established Applicant's criminal conduct, Applicant's physical altercation with his girlfriend in 2002. Applicant's criminal conduct falls within Criminal Conduct DC 31. (a) a single serious crime. Based on all of the factors involved, I conclude that MC 32. (d) applies, because there is sufficient evidence of successful rehabilitation including the passage of time without recurrence of criminal activity, remorse, and a good employment record. I find Paragraph 2 Guideline J of the SOR is concluded for Applicant.

Paragraph 3 (Guideline G - Alcohol Consumption)

With respect to Guideline G, the evidence establishes that Applicant consumed alcohol to excess for many years. However, he was credible when he testified that he has not consumed any alcohol since May 2004, nor will he consume alcohol in the future.

In reviewing the DCs under Guideline G, I conclude that DC 22. (c) applies because Applicant has engaged in habitual or binge consumption of alcohol to the point of impaired judgment. MC 23. (b) applies because Applicant has acknowledged his alcoholism, and he has established a pattern of abstinence. I resolve Paragraph 3 Guideline G for Applicant.

On balance, it is concluded that Applicant has overcome the Government's information opposing his request for a security clearance.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR are:

Paragraph 1: FOR APPLICANT

Subparagraph 1.a.: For Applicant
Subparagraph 1.b.: For Applicant

Paragraph 2: FOR APPLICANT

Subparagraph 2.a.: For Applicant
Subparagraph 2.b.: For Applicant
Subparagraph 2.c.: For Applicant

Paragraph 3: For APPLICANT

Subparagraph 3.a.: For Applicant
Subparagraph 3.b.: For Applicant

DECISION

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

Martin H. Mogul
Administrative Judge