



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 06-18897

Appearances

For Government: Caroline H. Jeffreys, Department Counsel

For Applicant: *Pro Se*

September 29, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On March 28, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guideline G. 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 the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on April 24, 2008, and requested an Administrative Decision by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on June 13, 2008. Applicant did not file a response to the FORM. The case was assigned to me on August 15, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 33 years of age.

Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1987 to at least October 2003.

In 1994, he was charged with Driving Under the Influence. He was convicted of the charge, fined, ordered to attend an alcohol highway safety class, and was placed on probation for one year.

In September 1994, he was charged with Possession of Alcohol and fined. Later that year he was charged with Furnishing Alcohol to a Minor and fined.

In 1995, he was charged with Minor in Possession of Alcohol and fined.

In October 2003, applicant was arrested and charged with Domestic Assault, Risk of Injury to a Minor, and Public Disturbance. Exhibit 9 is a report of an interview applicant had with an OPM investigator. In pertinent part, the report states:

Subject related that his most recent arrest occurred in OCT 03 in the vicinity of his home Subject explained that he had just returned from a business trip . . . and had subsequently consumed a 12 pack of 12 OZ beers while watching a football game, when he lost control. When the team he followed lost, subject became upset. Subject related that he did not have exact recall of the incident or sequence of events, but he did admit to having slapped his young daughter, having pushed and slapped his wife on the top of the head, having thrown household items, having punched a hole in the wall and having broken a drawer, while inside the condo. Subject conveyed that the verbal and physical abuse towards his wife continued outside the condo, when a neighbor witnessed the incident, he immediately contacted the police. Subject related when the . . . police arrived, he walked out the back door of his condo and hid in a densely wooded area behind the condominium complex Sometime later that evening subject returned to the condo where the arresting officers awaited and took him into custody. . . . Subject stated that the charges against him were eventually nolle in DEC 03 because his spouse did not want to pursue further criminal action against him.

Although the charges were dropped, applicant spent about a week in custody following his arrest and missed about two weeks of work due to the incident.

Following this last incident, applicant began treatment with a psychotherapist who describes himself as a "Doctor of Addictive Disorders." In an October 2007 letter, the psychotherapist stated (1) applicant was under his clinical care from 10/25/2003 through 12/15/2003, (2) applicant's diagnosis is "Alcohol Dependence Disorder," and (3) in spite of applicant's diagnosis, he should not be of any concern as long as he remains sober [and] attends AA meetings regularly."

Applicant abstained from the use of alcohol for three to four months following the 2003 incident. However, he eventually resumed its use, and continues to consume it today. He states, however, that he has not consumed it to the point of intoxication since the October 2003 incident (Exhibit 8).

Applicant attended AA meetings from the time of his arrest until February 2004. He stopped attending AA in February 2004 because he felt it didn't help. Although he admits to previously perceiving himself as having an alcohol problem, he does not believe he currently has such a problem.

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* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

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, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, 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." (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) "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, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

Analysis

Guideline G: Alcohol Consumption

The security concern for alcohol consumption is set forth in Paragraph 21 of the AG, and is as follows:

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 AG note several conditions that could raise a security concern. Under Paragraph 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,” may be disqualifying. Under Paragraph 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,” may be disqualifying. Under Paragraph 22.d., “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence” may be disqualifying. Applicant’s history of consuming alcohol to excess and involvement in alcohol-related incidents requires application of the first two disqualifying conditions. The fact he was diagnosed with “alcohol dependence disorder” by his psychotherapist requires application of the last disqualifying condition.

Paragraph 23 of the AG sets out potentially mitigating conditions. Under Paragraph 23.a., it may be mitigating if “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.” Although it has been over four years since applicant’s last alcohol-related incident, given his long history of alcohol abuse, his unwillingness to participate in an AA type program (as his psychotherapist recommended), and his continued consumption of alcohol, I cannot conclude a recurrence of his alcohol-related poor judgment is unlikely. Accordingly, this mitigation condition is not applicable.

“Whole Person” Analysis

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 2(a): “(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.” Under AG Paragraph 2c, the ultimate determination of whether to grant a security clearance must be an overall common

sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Although applicant began abusing alcohol while a teenager, he continued to abuse it well into adulthood. The October 2003 incident should have been a wake up call for him, and for a short period of time he acted as though it was. By abstaining from the use of alcohol, seeking counseling and regularly attending AA, applicant seemed to have acknowledged he had a serious problem that needed a serious solution. However, shortly after the charges against him were dropped, he stopped attending counseling and AA, and resumed drinking. In light of his alcohol dependence diagnosis, this conduct precludes a finding that future alcohol-related incidents are unlikely. For this reason, Guideline G is found against 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 APPLICANT

Conclusion

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

JOSEPH TESTAN
Administrative Judge