

DATE: March 20, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-09557

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has a criminal history involving two alcohol related arrests within the past seven years, the most recent of which occurred just three years ago. His alcohol abuse and his intentional concealment of material facts on his sworn statement to DSS have not been mitigated by sufficient evidence or reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On September 19, 2002, 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, (as amended) 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 October 14, 2002, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on January 13, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on January 28, 2002.

The case was assigned to the undersigned for resolution on March 6, 2003.

FINDINGS OF FACT

The Applicant is 30 years old. He is employed as a Security Officer by a defense contractor and is seeking to retain a security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth

in the attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and Guideline in the SOR:

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

In December 1994, the Applicant, while serving in the United States Marines, went with a few of his friends to the enlisted club located on base for a few drinks. The Applicant states that he purchased a beer. While at the bar, someone made several derogatory remarks to the Applicant. A verbal altercation ensued. As the Applicant made an attempt to walk away, the individual swung and struck the Applicant on the shoulder. The Applicant states that in order to defend himself, the Applicant swung the beer bottle he was holding in his hand and struck the individual on the side on his forehead. At the time of the assault, the Applicant's blood alcohol level was .14%. The Applicant was detained by the military police until he was picked up by his first Sergeant. The Applicant stated that he was never formally charged for the offense of aggravated assault, that he never underwent any kind of blood alcohol testing, and that his blood alcohol level was not .14% at the time of the incident.

Excerpts from the Applicant's military records, specifically The Commander's Report of Discipline or Administrative Action, states that the Applicant's blood alcohol level was .14%, indicating that the Applicant's Alcohol abuse was a factor in the altercation. (*See*, Government Exhibit 6).

On March 5, 2000, the Applicant had consumed two beers at home and then decided to drive to a local casino with a friend, where he consumed five more beers. On his way home, he was stopped by a highway patrol officer for speeding. He was administered a field sobriety test after the odor of alcohol was detected on his breath. The Applicant failed the field sobriety test and was arrested for Driving Under the Influence of Alcohol/Drugs and Driving While Having a Blood Alcohol of More than .08%. On May 22, 2000, the Applicant pled guilty to Driving Under the Influence of Alcohol/Drugs and was placed on five years probation, fined \$1,810.00, his driver's license was restricted for 90 days, and he was directed to complete a substance abuse assessment program. The Applicant has completed each of the court's requirements, except probation. He will remain on probation until 2005. (*See*, Government Exhibit 7).

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

The Applicant denies that he consumed alcohol at times to the point of intoxication from at least December 1994 until at least March 2000. He indicates that prior to his arrest in March 2000, his consumption of alcohol was limited to one or two beers during social activities with friends. This is obviously not true, since at the time he committed the offense of aggravated assault in 1994, his blood alcohol level was .14%. The Applicant further states that since his arrest his consumption of alcohol is limited to a six pack of beer in a month He states that he does not intend to abuse alcohol or consume alcohol and drive in the future.

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

In a signed sworn statement dated January 23, 2002, before the Defense Security Service, (DSS) the Applicant stated that prior to his arrest on March 5, 2000, his consumption of alcohol was limited to one or two beers and never to the point of intoxication, and that he had no other adverse incidents with regard to his use of alcohol. (*See*, Government Exhibit 5). Again, this was not a true statement. In fact, in December 1994, the Applicant committed aggravated assault, and at the time of the assault had a blood alcohol level of .14%. (*See*, Government Exhibit 6).

I find that the Applicant intentionally falsified his statement concerning his alcohol related incident of 1994. There is no other reasonable excuse for his inaccurate response. Accordingly, I find that the Applicant intentionally attempted to conceal material information from the Government on his sworn statement to DSS.

Mitigation.

A letter of recommendation submitted by the Applicant's Project Manager, dated October 15, 2002, indicates that the

Applicant performs his job in an outstanding manner and exhibits a high degree of personal pride, honesty and integrity at all times. He is considered reliable and maintains a cooperative attitude. (See, attachment to Applicant's Response to SOR).

POLICIES

Enclosure 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)

Conditions that could raise a security concern:

1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses;
 - A pattern of dishonesty or rule violations.

Conditions that could mitigate security concerns:

None.

Guideline G (Alcohol Consumption)

Conditions that could raise a security concern:

1. alcohol-related incidents away from work, such as driving under the influence . . . ;
4. habitual or binge consumption of alcohol to the point of impaired judgement.

Conditions that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

Condition that could raise a security concern:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

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 a history of criminal conduct, alcohol abuse, and dishonesty, which demonstrate 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 or her a security clearance.

In this case the Government has met its initial burden of proving by evidence that the Applicant has engaged in acts of criminal conduct (Guideline J), that he has abused alcohol (Guideline G), and that he intentionally falsified his sworn statement to DSS (Guideline E). 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.

The evidence shows that the Applicant's criminal conduct involves two alcohol related arrests within the last seven years, the most recent of which occurred in arch 2000, just three years ago. He will remain on probation for this offense until 2005. Given the recency of this offense, I cannot find at this time, that the Applicant is sufficiently rehabilitated in the area of criminal conduct to warrant the granting of a security clearance. Accordingly, Guideline J (Criminal Conduct) is found against the Applicant.

The evidence also suggests that the Applicant abused alcohol from at least December 1994 to at least March 2000. Given the recency of this abuse, as evidenced by his arrest in March 2000, I cannot find that he has sufficiently rehabilitated himself in this area of concern. Accordingly, Guideline G (Alcohol Consumption) is found against the Applicant.

The evidence further shows that the Applicant deliberately attempted to conceal material information from the Government in his sworn statement to DSS. There is no reasonable excuse for his failure to provide accurate information in his statement. The intentional concealment or omission of a material fact is an act of great security significance and cannot be tolerated. Accordingly, Guideline E (Personal Conduct) is also found against the Applicant.

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, 2 and 3 of the Government's Statement of Reasons.

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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.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