

DATE: March 15, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10330

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Rita O'Brien, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a security guard for a defense contractor. He had alcohol problems for many years, including two driving while intoxicated convictions in 1985 and 1998. Applicant abstains from alcohol, does not have alcohol in his home, attended alcohol counseling sessions, and works two jobs to support his family. Applicant mitigated the alcohol and personal conduct concerns. Clearance is granted.

STATEMENT OF THE CASE

On July 25, 2003, 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 the personnel security Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn Answer, dated September 25, 2003, Applicant responded to the SOR allegations. He requested a hearing. This case was assigned to me on November 15, 2003.

A Notice of Hearing was issued on November 18, 2003 setting the hearing for December 11, 2003. Two subsequent amended Notices of Hearing were issued on November 25th and December 8th changing the time of the hearing, but keeping the date the same. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented eight exhibits which were admitted into evidence. Applicant appeared and testified. Applicant offered one exhibit. I received the transcript (Tr.) of the hearing on December 29, 2003.

FINDINGS OF FACT

Applicant admitted the allegations in subparagraphs 1.b., 1.c., 1.d., 1.e., 1.f., and 1.h. Those admissions are incorporated herein as findings of fact. Applicant denied the SOR allegations in subparagraphs 1.a., 1.g., and 2.a. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 51 years old. He is married, with two children, 21 and 12 years of age. He is employed by a defense contractor as a protection specialist. Applicant has had a security clearance for 16 years. Applicant has a second job at a local hotel. (Tr. 13, 27, 32; Exhibit 1 at 1 to 3)

Applicant admitted himself to an alcohol diagnosis and treatment program in 1996. He was diagnosed as an alcohol abuser, and remained in the program for six weeks until January 1997. He was advised to attend a support group, but has not done so. Applicant does not attend Alcoholics Anonymous meetings or similar group support sessions. His prognosis after this program was rated as "guarded" by the therapist. The therapist also noted Applicant engaged in "superficial compliance" with the "programmatically expectations of the treatment contract". Applicant was identified as suffering from "alcohol abuse" in a diagnosis update form signed by the primary therapist and a physician in December 1996. Applicant started drinking alcohol in 1971 at the age of 19. He continued drinking until 1998 regularly. He did consume beer in April or May 2002 at a basketball playoff game. Applicant does not drink at home because his wife does not allow alcohol in the house. Applicant finds his church community provides a strong environment, coupled with his family, to abstain from alcohol. He attends a monthly family counseling program at his church. With the exception of the 2002 basketball game, Applicant has not consumed alcohol since 2000. (Tr. 11 to 18, 29, 39; Exhibit 2 at 3; Exhibit 3 at 3; Exhibit 8 at 4 and 5)

Applicant was arrested in 1985 for Driving While Intoxicated (DWI). The sentencing court ordered Applicant to attend alcohol counseling sessions for six weeks in 1985. Applicant completed his probation successfully. (Tr. 16 and 17; Exhibit 2 at 2; Exhibit 4 at 1)

Applicant started having alcohol abuse problems in 1980, at the age of 28, while he was working around his house. He recognized the alcohol consumption problem worsened in 1995 when his mother died. Also, between 1996 and 1997 several friends died, and Applicant increased his drinking to deal with his grief. (Tr. 18 to 20; Exhibit 2 at 3)

Applicant was arrested again for DWI in 1998. He was sentenced to 365 days in jail with 361 days suspended, six months of probation, and attendance at an alcohol treatment program. Applicant successfully completed the terms of his probation. Applicant committed this DWI while he was seeking help from an alcohol counselor for his alcohol problem through his employer's employee assistance program. Applicant has had no further DWI incidents. (Tr. 18, 19, 21, 25; Exhibit 2 at 3; Exhibit 7)

Applicant counseled with an alcohol counselor through his employer's employee assistance program for a year. That time period was 1998 to 1999. That counseling helped Applicant stop his alcohol consumption. (Tr. 22, 23, 26)

Applicant was sent home from work once for having alcohol on his breath. That incident was in December 1997. He was never reprimanded for having alcohol on his breath by any employer. Applicant was not sent home for work at any time for any reason in 1999. (Tr. 20, 21; Exhibit 2 at 3)

In response to Question 30 on his security clearance application Applicant disclosed his treatment for alcohol abuse in 1998 and 1999. He did not disclose his 1996 self-referral to treatment or his 1998 attendance at an alcohol treatment program after his 1998 DWI arrest. Applicant misunderstood the question, thinking his medical records would contain that information. He did disclose them in his interview with the investigator in November 2001. (Tr. 24, 25, 26; Exhibit 1 at 7)

Applicant testified credibly and truthfully on the issues at the hearing. I find his explanations persuasive. His work evaluations show he is a good employee, and received a bonus in 2001 for his good efforts at work. (Applicant's Exhibit A)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* At 527. The president has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgement, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation;
- (3) how recent and frequent the behavior was;
- (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 (See Directive, Section E2.2.1. of Enclosure 2).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 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 ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See*

Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline G - Alcohol Consumption

The Concern: Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. E2.A7.1.1.

Conditions that could raise a security concern and may be disqualifying include:

- (1) Alcohol-related incidents away from work, such as driving while under the influence. E2.A7.1.2.1.
- (2) Alcohol-related incidents at work, such as reporting for work in an intoxicated or impaired condition. E2.A7.1.2.2.
- (3) Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist) of alcohol abuse or alcohol dependence. E2.A7.1.2.3

Conditions that could mitigate security concerns include:

- (2) The problem occurred a number of years ago and there is no indication of a present problem. E2.A7.1.3.2.
- (3) Positive changes in behavior supportive of sobriety. E2.A7.1.3.3.

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. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility: E2.A5.1.1

Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination. E2.A5.1.1.2.

Conditions that could raise a security concern and may be disqualifying include: E2.A5.1.2.

- (2) The deliberate omission, concealment, falsification or misrepresentation 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; E2.A5.1.2.2.

Conditions that could mitigate security concerns include:

- (2) The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily. E2.A5.1.3.2.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. I reached conclusions which have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

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

Addressing the alcohol involvement under Guideline G, Applicant committed two DWI incidents in his life, in 1985 and 1998. Therefore, Disqualifying Condition (DC) 1 applies (*alcohol-related offenses away from work, such as DWI*). Applicant was sent home from work once in 1997 for having the smell of alcohol on his breath. DC 2 (*alcohol-related incidents at work*) applies. Applicant has a diagnosis by a credentialed medical professional of alcohol abuse (DC 3 - *diagnosis by a credentialed medical professional, which includes a clinical psychologist, of alcohol abuse*). Applicant drank alcohol starting at the age of 19 in 1971 until 1998 on a frequent basis. Applicant continued to drink alcohol after he participated in two alcohol rehabilitation programs, and after he had a diagnosis of alcohol abuse. The Government has clearly established its case.

Mitigating Condition (MC) 2 applies. These problems occurred for 27 years, but Applicant recognized his problem and sought help in one program, and then in another program through his company's employee assistance program. He has not consumed alcohol in the volume he once did, and his few drinks in 2000 were of beer and in celebration of a local athletic victory. He is maintaining his sobriety. MC 3 (*positive changes in behavior supportive of sobriety*) applies. Applicant attends his church and has family counseling there monthly. Applicant deserves credit for his nearly four year abstention from alcohol. His home life does not tolerate alcohol consumption, and he has college educations of his two children for which to pay, creating a strong incentive for him to avoid alcohol so he can continue to work his two jobs. His evaluations show he performs his work well, and he has received a bonus in 2001 for his efforts. Accordingly, I conclude for Applicant on Guideline G.

Considering Paragraph 2 and Guideline E, I conclude the Government established its case. Applicant did not disclose fully his two previous alcohol treatment programs as asked in Question 30. (DC 2 - *the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire or similar form used to conduct investigations or determine security clearance eligibility or trustworthiness*).

The mitigating condition which I apply to these facts is MC 2. Applicant disclosed the most recent evaluation program in which he voluntarily participated. He thought his medical records and other records would show his earlier rehabilitation programs, including the one in which he participated as ordered by the Court as part of his probation for his 1998 DWI arrest. He disclosed the arrest, and the Government did have access to all of those records. As Applicant is an unsophisticated person, I find it reasonable, looking at the total person of Applicant, to believe he thought he was doing the correct thing in disclosing the latest in a series of treatments into which he had admitted himself. The evaluations and programs were so close together between 1997 and 1998 that they could be considered as merely parts of a whole. Applicant disclosed all the information during his investigative interview in 2001. Therefore, I conclude for the Applicant on Guideline E.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline G: For Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Paragraph 2 Guideline E: For Applicant

Subparagraph 2.a.: For Applicant

DECISION

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

Philip S. Howe

Administrative Judge