

DATE: November 13, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-00818

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 54-year-old construction supervisor has been consuming alcohol since at least 1975, and had alcohol-related arrests and/or convictions in 1975, 1981, 1982 (negligent homicide), and 1988. He is still consuming two or three beers at a time, up to twice a week. In August 1999, he knowingly falsified his answers to two questions relating to his arrests. Neither his drinking nor the falsifications have been mitigated. Clearance denied.

STATEMENT OF THE CASE

On May 20, 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. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On June 10, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. The matter was assigned to me for resolution on August 19, 2002. A Notice of Hearing was issued on September 12, 2002, setting the matter for October 2, 2002. At the hearing, Applicant testified on his own behalf, and called two additional witnesses, but did not offer any exhibits. The Government did not call any witnesses, but offered five exhibits, which were marked as Government Exhibits (GX) 1 - 5, to which Applicant did not object. All exhibits were admitted as marked. The transcript (Tr) was received at DOHA on October 9, 2002.

FINDINGS OF FACT

Applicant is a 54-year-old construction superintendent, employed by a defense contractor. His employer is seeking a security clearance for Applicant in connection with his employment. In his response to the SOR, Appellant admitted allegations 1.b., 1.c., and 1.e, and denied allegations 1.a., 1.e., and 1.f., under Guideline G (Alcohol). He denied both allegations under Guideline E (Personal Conduct).

After considering the totality of the evidence derived from Applicant's response to the SOR, her testimony and that of her witnesses, and the Government's exhibits, I make the following FINDINGS OF FACT as to each SOR allegation:

GUIDELINE G (Alcohol)

1.a. - Applicant has consumed alcohol, on occasion to excess and to the point of intoxication, from 1975 to the present.

1.b. - Applicant was arrested in 1975 and charged with Driving Under the Influence of an Alcoholic Beverage (DUI).

1.c. - Applicant was arrested on September 16, 1981 and charged with Driving While Intoxicated (DWI).

1.d. - Applicant was arrested on October 19, 1982 and charged with Negligent Homicide While Under the Influence of Alcohol (blood alcohol content of .19). He pleaded guilty and was sentenced to serve on day in jail.

1.e. - Applicant was arrested in 1988 and charged with DUI.

1.f. - Applicant continued to use alcohol, notwithstanding the four alcohol-related arrests cited above.

Guideline E (Personal Conduct)

2.a. - Applicant falsified his August 5, 1999 Questionnaire for National Security Positions (SF 86) (GX 4), when he answered "No" to Item 23a., "**Have you ever been charged with or convicted of a felony,**" when he knew he had been convicted of the felony cited in SOR 1.d., above.

2.b. - Applicant falsified his August 6, 199 SF 86 (GX 1), when he answered "Yes" to Item 24d. "**Have you ever been charged with or convicted of any offense related to alcohol or drugs,**" but cited only the 1988 and 1975 arrested cited in SOR 1.b. and 1.e., above, but failed to mention the alcohol-related arrest cited in SOR 1.d., above.

In his first sworn statement to an agent of the Defense Security Service (DSS) (GX 1), Applicant discussed his 1975 and 1988 alcohol-related arrests and his 1982 arrest and conviction for alcohol-related negligent homicide. He denied any other alcohol-related arrests (Tr at 24). In his second sworn statement to DSS, dated March 28, 2000, he explained that he had not mentioned this conviction on his SF 86 because he had tried to blank this incident out of [his] life," did not feel "he was really guilty of a felony," and that the arrest was more than seven years in the past and "may not be required" to be reported (GX 2).

Of the four alcohol-related arrests and/or convictions cited above, only the 1975 arrest for DUI is *not* cited in the "FBI Identification Record" (GX 3), but it is admitted by Applicant in his sworn statement to DSS (GX 1) and in his Response to the SOR. As to the 1982 conviction for negligent homicide, while Applicant denies the allegation and adds that it is not factual," the substance of the allegation is clearly supported by the official record (GX 5), and Applicant admitted the substance of the offense (Tr at 28).

Applicant's explanations for his false and/or incomplete answers are that (1) a company employee told him he was required to report only arrests that had occurred within the previous seven years (Attachment to Response to SOR and Tr at 41 - 43); (2) that he had "blanked this incident [the negligent homicide] out of [his] life" (GX 2); (3) that "decided to wait until [his] arrest [for negligent homicide] was discovered and then, if necessary, [he] would provide the details" (*Id.*); and that (4) he "didn't think of it [the negligent homicide] as a felony offense," referring to Item 23a on the SF 86 (Tr at 31). The offense is a felony under the cited state law (Tr at 39, 40 and Official Notice document 1). As to why he didn't mention the alcohol-related negligent homicide arrest and conviction under Item 23d (any alcohol-related arrest),

Applicant admitted he didn't "have a good answer for that" (*Id.*) and he "guess[es he] was in denial" (Tr at 38).

As of the hearing date, October 2, 2002, Applicant continued to consume alcohol, at the rate of about "three or four beers . . . once or twice a week" (Tr at 35, 36).

Applicant's witness, a co-worker who works under Applicant, sees him as a "good supervisor" and having "excellent" work habits (Tr at 46).

POLICIES

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to 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.

Conditions that could raise security concerns and may be disqualifying include:

1. Alcohol-related incidents away from work, such as driving while under the influence.
5. Habitual or binge consumption of alcohol to the point of impaired judgment.

Conditions that could mitigate security concerns include:

None that are applicable under the facts and circumstances of this case. [\(U\)](#)

GUIDELINE E (Personal Conduct)

The Concern: Conduct involving questionable judgment, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Condition that could raise security concerns and may be disqualifying includes:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire.

Condition that could mitigate security concerns includes:

None that are applicable under the facts and circumstances of this case.

I have also evaluated the totality of the evidence under both the specific additional guidance found in Enclosure 3 to the Directive and the nine general guidelines found in Section E2.2.1. of Enclosure 2 to the Directive.

CONCLUSIONS

Paragraph 1 - Guideline G (Alcohol Consumption)

Applicant has been a consumer of alcohol since at least 1975, when he was 27. In 1975, 1981, 1982, and 1988, he had four separate alcohol-related arrests and/or convictions, one of which involved negligent homicide. Despite this history, Applicant continues to drink several times a week on average, consuming two to three beers on each occasion. Despite the passage of 14 years since his last arrest, it is difficult to avoid the conclusion that the lack of recent arrests is due more to luck than to any basic change in Applicant's drinking patterns. There clearly is no indication that he understands the risks he is creating by his continued drinking. Since that risk continues to the present day, I cannot conclude that the 1975 - 1988 arrests have no current security significance. Indeed, I conclude that they do continue to have such

significance.

Paragraph 2 - Guideline E (Personal Conduct)

Applicant explanations for his material falsification of his answers to Items 23a and 23d on his SF 86 are not persuasive. Answering "no" to a question that asks "have you ever," because someone told him only arrest within the previous seven years had to be reported is not something a reasonable man seeking a security clearance would do. His explanation that he would wait to see if the 1982 conviction were noticed by DSS before he said anything about it is not indicative of good judgment, reliability, or candor. Both his conduct and his explanations concerning his answers to Items 23a and 23d on his SF 86 raise more questions and doubts than they satisfy.

Under each and both of the Guidelines, the totality of the evidence supports the Government's concerns and establishes a nexus or connection between the conduct proven by the evidence and Applicant's suitability to hold a security clearance. At the same time, Applicant has not demonstrated the applicability of any of the possible mitigating conditions. His explanations are not supported by any other evidence and, on their face, are neither consistent nor entitled to any substantial weight in my evaluation of the record.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security." After considering all the evidence in this case and determining which Disqualifying and Mitigating Conditions are applicable under the facts of record, I conclude that such doubts do exist in the present case. Applicant has not demonstrated he possesses the requisite judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline G (Alcohol Consumption) 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

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Paragraph 2 Guideline E (Personal Conduct) For the Applicant

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. 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 Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. The alcohol-related incidents do indicate a pattern (MC 1); while the arrests occurred some years ago, the drinking continues at a level that does not support allow a conclusion that there is no indication of a recent problem (MC 2); and the record does not establish "positive changes in behavior supportive of sobriety" (MC 3).