

DATE: November 9, 2004

---

In re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 01-14456

## **DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Francisco J. Mendez Jr., Esq., Department Counsel

#### **FOR APPLICANT**

*Warren J. Borish, Esquire*

### **SYNOPSIS**

In 1998, Applicant admitted himself into a residential in-patient treatment program for alcohol dependence. He continued to consume alcoholic beverages after completing the program and admitted himself to another in-patient alcohol treatment program in December 2000 because his binge drinking caused him to miss a day of work. In his June 2003 answer to the SOR, Applicant asserted he had "never, before [1998] or since, consumed alcohol to excess." Clearance is denied.

### **STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 15 May 2003, DOHA issued a Statement of Reasons <sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on 4 June 2003 and elected to have his case decided on the written record in lieu of a hearing. A file of relevant material was prepared and sent to Applicant. Applicant withdrew his previous request and asked for a hearing before an administrative judge. The case was assigned to me on 30 July 2004. On 15 September 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 23 September 2004. I kept the record open so Applicant could provide a statement from a physician. Ex. C.

### **FINDINGS OF FACT**

Applicant is a 50-year-old senior member of the engineering staff of a defense contractor. He is well respected by his peers and superiors as a hardworking and reliable member of the staff. He held a security clearance while in the U.S. Army (1975-77) and has possessed a security clearance continuously since 1983.

Applicant started consuming alcohol, at least experimentally, when he was 14 years of age. In 1998, Applicant and his wife experienced marital difficulties which she blamed, in part, on his excessive drinking. He sought treatment for

depression from a psychiatrist. After six weeks, he terminated the treatment because he "did not react well" to the prescribed medication. Ex. 2 at 2. He then voluntarily entered a residential inpatient alcohol treatment program for eight days. The treating physician at the treatment center diagnosed Applicant as having an adjustment disorder and being alcohol and nicotine dependent. Ex. 5 at 2. Upon discharge, Applicant was referred to a psychologist for follow-up. *Id.* at 3. Applicant terminated this psychotherapy after four visits. The psychologist agreed with the diagnosis of alcohol dependence and opined that, because Applicant terminated the psychotherapy after such a short time, it is unlikely he benefitted from it. Ex. 4. Applicant attended Alcoholics Anonymous (AA) and did not consume any alcoholic beverages for several months.

In February 2000, after his divorce, Applicant completed a signed, sworn statement for an agent of the Defense Security Service (DSS). In it, he explained his treatment for depression and alcohol dependence, but denied having an alcohol problem. Ex. 2 at 3-4. Applicant also completed a release allowing the DSS agent to examine Applicant's medical records. In March 2000, Applicant completed another signed, sworn statement to answer discrepancies between his February 2000 statement and the medical records. Applicant claimed he exaggerated his alcohol use and fabricated his claims of recent marijuana and prescription drug abuse because he was afraid if he told the truth about his drinking he would not be admitted to the treatment center. Ex. 3 at 2.

In December 2000, Applicant began drinking heavily—one-fifth of a quart of vodka a day. It caused him to miss a day of work. On 27 December 2000, he had himself admitted as an in-patient to a different alcohol rehabilitation center. Applicant was diagnosed as alcohol dependent. He was treated and discharged on 30 December 2000. Ex. 6. After his discharge, Applicant returned to AA once or twice weekly, but also resumed drinking alcohol daily. Ex. 8 at 2, 3. In his 4 June 2003 answer to the SOR, Applicant claimed he had "never before that time or since, consumed alcohol to excess," and he stopped consuming alcoholic beverages in January 2003 after he realized that it could be a security concern. He currently attends AA once a week, but is not involved in the 12-step program and does not have a sponsor.

A psychologist with no particular expertise in alcohol or substance abuse met with Applicant and, based on what Applicant told him, opined that Applicant "is committed to sobriety and should not pose a risk of relapse or breach of security, if he continues on his present course." Ex. C at 9.

## 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 judgment, 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 predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ 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.

### **CONCLUSIONS**

In the SOR, DOHA alleged Applicant was diagnosed with alcohol dependence in 1998 (¶ 1.a) and continued to consume alcohol after such diagnosis (¶ 1.b). 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. Directive ¶ E2.A7.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR. Applicant was diagnosed by at least three credentialed medical professionals as alcohol dependent. DC E2.A7.1.2.3. On at least one occasion, he was unable to report for work due to his excessive consumption of alcohol--an alcohol-related incident away from work. DC E2.A7.1.2.2. He continued to consume alcohol after being diagnosed alcohol dependent and the completion of two alcohol rehabilitation programs. DC E2.A7.1.2.6.

Conditions that could mitigate the raised security concerns include the following: Positive changes in behavior supportive of sobriety (MC E2.A7.1.3.3) and the successful completion of an alcohol rehabilitation program, participation in meetings of an alcohol dependence organization such as AA, has abstained from alcohol for a period of at least 12 months, and had received a favorable prognosis from a medical professional (MC E2.A7.1.3.4).

After reviewing the evidence and hearing Applicant's testimony, I am not convinced he fully acknowledges that he is alcohol dependent. He claims he exaggerated his alcohol and drug use in 1998 so he would be admitted to a rehabilitation program and denied he had an alcohol abuse problem. He continued drinking even while attending AA meetings and binged in December 2000 after he had been questioned twice in relation to his security clearance about his excessive alcohol consumption. Most compelling is his 4 June 2003 answer to the SOR. He claimed that, since his admission into a alcohol rehabilitation program in 1998, he had never consumed alcohol to excess and that his consumption of alcohol was "limited to beer, no more than one 12 ounce container with a meal when such a beverage is appropriate." Yet in December 2000, he had missed at least one day of work because of his consumption of a fifth of vodka a day for several days and had checked himself into another rehabilitation program. And he appears to have kept this information from a personal and professional friend who testified for Applicant as a character witness. I did not find Applicant to be a credible witness. After considering all the evidence, I conclude Applicant has not mitigated alcohol consumption security concerns. I find against Applicant.

### **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

### **DECISION**

In light of all of 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. Clearance is denied.

**James A. Young**

**Administrative Judge**

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).