

DATE: February 18, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-14624

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esq., Department Counsel

Francisco Mendez, Esq., Department Counsel

FOR APPLICANT

Philip D. Cave, Esq.

SYNOPSIS

Applicant failed to mitigate security concerns raised by his personal conduct involving employment issues, financial matters and alcohol use. Despite court-directed participation in an alcohol abuse program requiring attendance at Alcoholics Anonymous and an evaluation of early to middle stage ethanolism, he continues to drink alcohol. Applicant's unmitigated personal conduct involves questionable judgment, unreliability, and unwillingness to comply with rules and regulations, and strongly suggests an inability or unwillingness to safeguard confidential information. 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 April 9, 2003, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on May 15, 2003, and elected to have a hearing before an administrative judge. The case was assigned to me on August 13, 2003. On September 24, 2003, 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 transcript (Tr.) of the proceeding on October 2, 2003.

FINDINGS OF FACT

The SOR contains 16 allegations of disqualifying conduct under Guideline E, Personal Conduct. Applicant admits all 16 allegations. Applicant's admissions are incorporated herein as findings of fact.

Applicant is 32 years old, unmarried, and employed as a network engineer by a government contractor. His family

background is one of relative affluence. In addition to the salary he earns from his employer, he also receives income from a trust account established for him by his parents, who are deceased. In 1997, he began receiving \$36,000 per year in distributions from one family trust. In 2016 he will receive approximately \$400,000 from another trust fund established for him by his parents.

Applicant has a congenital heart condition and had a pacemaker installed when he was 16 years old. He has trouble with reading, handwriting, and spelling, and he attributes these difficulties to dyslexia. In 1996, Applicant received an Associate of Arts degree.

In his high school and young adult years, Applicant found it difficult to conform to the requirements of responsible employment. He failed to report self-employment income on his 1997 federal tax return. He was habitually tardy in reporting for work for several of his jobs, resulting in counseling, disciplinary action, or termination. On at least two occasions, he left jobs under unfavorable conditions. He also left one job without giving notice, which caused him to be barred from re-employment with that company. Applicant's unreliable behavior and negative work attitudes caused conflicts with supervisors and managers.

At Applicant's hearing, his most recent supervisor stated that Applicant was honest and truthful and a reliable worker. He supervised Applicant for over 2½ years. (Tr. 26, 30.) The supervisor stated that Applicant held a secret clearance.

The record shows that Applicant has failed to pay his debts timely. In 1999, when he filed his SF-86, Applicant listed a medical bill and a credit card debt as overdue for more than 180 days. The medical bill had been pending since 1995. He paid the bill in 2002. Two credit card companies cancelled Applicant's accounts when he failed to pay his debts to them. Applicant recounted that in the past he would let his utility bills lapse until the companies threatened to disconnect his services and then he would pay his bills. In a signed sworn statement dated February 18, 2001, he reported that he paid off all his bills when he received an \$18,000 distribution from one of his trust accounts.

In his signed, sworn statement, Applicant expressed his financial philosophy as follows:

"Financial Philosophy. Due to procrastination and because I prefer to spend money on entertainment rather than creditors, at any one time, I am normally anywhere from 30 days to nine (9) months late with payments to creditors. Additionally, I believe in enjoying my money rather than saving it."

(Ex. 2, at 28.) Applicant also stated: "Perspective. I chase fun versus responsibility. I spend money on dancing, cars; gasoline; dating and travel." (Ex. 2, at 30.) Applicant also stated in February 2001: "I feel I must live responsib[ly] financially. Consequently, for about the past year, I've been using my salary instead of distributions from trusts to pay bills. This is an improvement for me. I intend to continue with this improvement." (Ex. 2, at 30.) At his hearing, Applicant presented a credit report showing that he was current on his financial obligations. (Ex. A.)

Applicant began drinking alcohol as a child, and he drank alcohol to excess from 1983 to 1987 and from 1990 to 1996. At times he drank to intoxication. In 1996 Applicant was arrested for driving while intoxicated. He was ordered into a 26-week alcohol/drug abuse education program, which he began in May 1996. As part of the program, Applicant was required to attend meetings of Alcoholics Anonymous. Progress notes from the weekly treatment sessions indicate that Applicant was late to or absent from some of the sessions. He successfully completed the program and was discharged January 25, 1997.

The Discharge Summary, prepared by the professional clinical staff at the hospital where Applicant received his alcohol/drug abuse education, states that Applicant presented symptoms of early to middle stage alcoholism. Under RECOMMENDATIONS AND COMMENTS, the Discharge Summary states: "[Patient] reported he will not drink and drive again, but does not plan to remain abstinent. His prognosis is poor with continued [alcohol] use."

Applicant denies he is alcohol dependent. (Tr. 78-79.) He has used alcohol to combat depression. (Ex. 2, at 12.) He drinks on average two drinks a day, and he has not attended Alcoholics Anonymous since completing the alcohol/drug abuse education course. He avers that his drinking is normal and a reflection of his mother's European cultural heritage, which predominated in his family while he was growing up in the United States. Applicant says his use of alcohol would be considered unremarkable in Europe, where people drink alcohol throughout the day.

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 personal security guidelines, as well as the disqualifying conditions and mitigating conditions 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 demonstrated conduct, under Guideline E, reflecting poor judgment, unreliability, and failure to comply with rules and regulations when he failed to report self-employment income to the Internal Revenue Service (1.a); was repeatedly tardy for work (1.b.), (1.c.), (1.d.); failed to provide notice to his employer when he resigned (1.b.); drank alcohol to excess and to the point of intoxication from 1983 to 1987 and from 1990 to 1996 (1.e. and 1.f.); and, on at least two occasions since May 1997, drove an automobile while impaired by alcohol (1.g.). The SOR also alleged that Applicant was arrested for driving while intoxicated on or about March 15, 1996 (1.h.), and, as a result of the arrest, was ordered to take part in alcohol related treatment and to attend Alcoholics Anonymous meetings as part of the program (1.i.). Additionally, the SOR alleged that Applicant continues to drink in spite of his alcohol treatment and from 1997 to at least February 2001 he drank alcohol to excess and sometimes to intoxication (1.j.); that he repeatedly failed to pay his bills on time, as illustrated by failure to pay bills to three hospitals until they were over 180 days late (1.k.1.); that he failed to pay a credit card debt that resulted in cancellation of the credit card (1.k.2.); that he failed to pay another credit card debt until it was at least 120 past due (1.k.3.); that he failed to pay a utility bill that resulted in his service being disconnected for non-payment (1.k.4.); that he failed to keep track of his finances, resulting in having checks returned for insufficient funds approximately 20 times since 1994 (1.k.5.); and that as of February 18, 2001, he was indebted to a utility company for a past due amount of \$250. (1.k.6.).

The security concern under Guideline E, Personal Conduct, is with conduct or behavior which demonstrates questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty or unwillingness to comply with rules and regulations. Individuals who exhibit such conduct may not possess the personal qualities required to properly safeguard classified information. E.2.A5.1.1.

Applicant's conduct as identified in the SOR raises concerns about his security worthiness. His habitual alcohol consumption after notification of alcohol dependence has increased his vulnerability to coercion, exploitation or duress and, if known, could affect his personal or professional standing or render him susceptible to blackmail. E2.A5.1.2.4. Applicant's conduct also shows a pattern of rule violations, relating to his work and credit responsibilities. E2.A5.1.2.5.

Applicant's history of inattentiveness to his job and financial obligations suggests that he may also be inattentive to classified information entrusted to him. He has refused to follow well-established societal norms and rules required of those who work and contract for goods and services. Even though he completed a court-directed alcohol education program which identified his problems with alcohol and advised him to abstain from drinking, he persists in drinking, frequently on a daily basis.

Applicant has taken some positive steps to reduce his vulnerability to coercion, exploitation, or duress that could grow out of his inattentiveness to job and financial obligations, and, thus, mitigating condition E2.A5.1.3.5. might be applicable. The SOR alleges that Applicant was habitually tardy for several jobs he held in the past, and he failed to give notice to his employer when he left one of those jobs. This conduct occurred in the period between Applicant's teen-aged years and his late twenties. At Applicant's hearing, his supervisor testified that he had supervised Applicant for approximately 2½ years and that during that time Applicant had been reliable in getting his work done. The supervisor said he found Applicant to be honest and truthful. Applicant offered this testimony as evidence of his reliability and the positive steps he had taken to reduce his vulnerability to coercion, exploitation, or duress related to his previous unreliability and poor judgment.

Applicant also provided a recent credit report to demonstrate that he had paid his long-term debts and that he now pays his current bills on time. (Ex. A.) The credit report is offered to show that Applicant has mitigated his vulnerability to coercion, exploitation, or duress resulting from his financial irresponsibility in the past.

Applicant continues to assert that he has no problems with alcohol abuse, although he acknowledges he has used alcohol in the past to deal with depression. He states that in most instances he no longer drinks and drives. He usually has about two drinks a day, and he does not intend to stop drinking, even though in 1997 he demonstrated symptoms of early to middle stage alcoholism. Applicant's current conduct and attitudes toward the use of alcohol continue to make him vulnerable to coercion, exploitation, and duress.

Applicant admitted all 16 allegations in the SOR. Those allegations cover a period of 18 years, from 1983 to 2001. Applicant is now 32 years old. Since adolescence and for most of his adult life, he has demonstrated questionable judgment by engaging in a pattern of conduct that ignores the rules that apply to responsibly holding a job, paying one's bills, and using alcohol. His past conduct has made him an untrustworthy employee, a serious credit risk, and an unreliable security risk. To his credit, Applicant has taken some positive steps to change his nearly life-long pattern of unreliability and rule violations. His supervisor expresses confidence in his reliability. He has paid old debts, thereby improving his credit rating. These actions were taken in the recent past and demonstrate Applicant's capacity for reliability. However, it is too soon to tell whether these behavior changes indicate a permanent commitment to reliability and following rules.

At the same time, after being identified as symptomatic for alcoholism, Applicant continues to use alcohol on a regular basis, thus demonstrating questionable judgment. Because of his questionable judgment regarding his alcohol use, Applicant remains vulnerable to coercion and exploitation and remains a security risk. Thus, mitigating condition E2.A5.1.3.5. applies only in part to the facts of this case.

In ISCR Case No. 98-0761 at 3 (Dec. 27, 1999), DOHA's Appeal Board states that an administrative judge, in deciding an Applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*." After weighing the favorable and unfavorable evidence presented in this case, I find the evidence against Applicant's security worthiness stronger than the evidence favoring his security worthiness. I conclude that the Government has established its case by proving facts and circumstances indicating that Applicant does not demonstrate the high degree of judgment, reliability or trustworthiness required of persons handling classified information. Under the whole person concept, I conclude that Applicant has not successfully overcome the Government's case opposing his request for a security clearance. Accordingly, the allegations

in the SOR are concluded against the Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline E.: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.(1): Against Applicant

Subparagraph 1.k.(2): Against Applicant

Subparagraph 1.k.(3): Against Applicant

Subparagraph 1.k.(4): Against Applicant

Subparagraph 1.k.(5): Against Applicant

Subparagraph 1.k.(6): 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.

Joan Caton Anthony

Administrative Judge

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