

DATE: September 10, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-01041

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant did not intentionally falsify his security clearance application. However, his history of alcohol abuse involving two arrests for Driving Under the Influence of Alcohol, an unsuccessful alcohol treatment program, and a diagnosis of alcohol dependence have not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On January 21, 2004, 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, 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 March 7, 2004 and April 4, 2004 and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on May 20, 2004. A notice of hearing was issued on June 23, 2004, scheduling the hearing for July 28, 2004. At the hearing the Government presented seven exhibits. The Applicant presented no exhibits, but testified on his own behalf. The official transcript (Tr.) was received on August 18, 2004.

FINDINGS OF FACT

The Applicant is 46 years old. He has five years of college, but no degree. He is employed by a defense contractor as a Production Control Specialist II, and is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant began consuming alcohol in the early 1990's, during his twenties. He normally consumed one or two beers twice a week. By 1993, his marital problems caused his drinking to increase to about a six pack of beer each evening. On occasion he would consume some brandy or a shot of Tequila. The Applicant would drink several days in a row before stopping. In 1994, he realized that his drinking had gotten out of control and he voluntarily sought counseling through his Employee Assistance Program (EAP) at work.

From August 23, 1994 through January 1995, the Applicant received treatment for alcohol abuse. The treatment consisted of the initial screening, group counseling and Alcoholics Anonymous meetings. Once the Applicant started the program and began attending Alcoholics Anonymous meetings, he realized that he was an alcoholic. During the treatment program the Applicant was diagnosed with "Alcohol Dependence." The Applicant consumed no alcohol whatsoever from the time he began the program until approximately June 1996. (*See* Government Exhibit 4).

When the Applicant resumed drinking, it was about the time he was experiencing marriage problems and an uncle with whom he was very close passed away. The Applicant indicates that over the years he has stopped consuming alcohol for various periods of time ranging from six months to two years before resumed his alcohol consumption.

On June 1, 2002, the Applicant was arrested for Driving Under the Influence of Alcohol/Drugs and Driving a Vehicle with More than .08% alcohol in his blood. He testified that he had been consuming wine and beer earlier that evening, and he was driving to visit a friend. His car hit the curb and flattened his tire. He pulled over into a store parking lot, and was subsequently arrested. (Tr. p. 29). The Applicant was found guilty of Driving a Vehicle with More than .08% alcohol in his blood. He was sentenced to three years summary probation and other terms and conditions. (*See* Government Exhibit 5 and 6).

On June 8, 2003, the Applicant was arrested a second time and charged with Under the Influence of Alcohol/Drugs In Vehicle; Driving a Vehicle with More than .08% alcohol in his blood, and Unlicensed Driver. The Applicant explained that he was consuming alcohol at a picnic he had given for his son who had just graduated. On his way home, he drove onto the freeway and got off going the wrong way. He then took a U-turn and was pulled over by the police. The Applicant was administered the sobriety test and did not pass it. (Tr. pp. 33-34). On or about July 25, 2003, the Applicant was convicted of Driving a Vehicle with more than .08% alcohol in his blood. The other charges were dismissed. He was sentenced to 60 months summary probation, 30 days in jail, a fine and court costs of \$1,602.00 and required to enroll in an 18 month licensed second offender program for alcohol and drug education. (*See* Government Exhibit 7).

The Applicant testified that he has not consumed alcohol for three weeks prior to the hearing. He has started the Defense Driver's program as well as the EAP program. He has not driven a vehicle while under the influence of alcohol since his last arrest in 2003. (Tr. p. 35). He states that he is committed to remaining sober this time for his family, his brother's family, and his daughter.

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

In October 1974, when the Applicant was seventeen years old, he was arrested and charged with Murder. He was convicted and sentenced to three years in a juvenile detention facility. On appeal a retrial was ordered. The Applicant was found innocent and acquitted of all charges during the subsequent retrial. The Applicant had served 21 or 22 months of his sentence before he was released. It was the Applicant's understanding that the record was to be expunged as if it never took place. (*See* Government Exhibit 3).

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.

The Applicant completed a Security Clearance Application (Standard Form 86) dated September 24, 1999. Question 21, of the application asked the Applicant if he had ever been charged with or convicted of any felony offense. The

Applicant responded, "NO". (See Government Exhibit 1). This was a false answer. The Applicant failed to list the fact that he was charged with Murder in October 1974.

The Applicant explained that he had no intention of falsifying his security clearance application in any manner. It was simply his understanding that because he was a juvenile at the time of the charge, and because he was acquitted of the charge, the charge was erased from his record. (Tr. p. 18).

POLICIES

Enclosure 2 and Section E.2.2. 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 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.

Condition that could mitigate security concerns:

None.

Guideline J (Criminal Conduct)

Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

Condition 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.

Conditions 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 alcohol abuse that demonstrates 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 a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in alcohol abuse (Guideline G); criminal conduct (Guideline J); and dishonesty (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.

From the evidence presented, I cannot find that the Applicant deliberately falsified his security clearance application in response to Question 21. The Applicant was a juvenile at the time of the charge and he was ultimately acquitted. As a ward of the court at the time of the alleged offense, it is quite understandable how he could have believed that the initial charge was ultimately either dismissed or expunged. Consequently, the evidence shows that the Applicant did not intentionally provide false information to the Government on his security clearance application. Accordingly, I find for the Applicant under Guideline E.

With respect to the allegation of criminal conduct, the Applicant was ultimately acquitted of the charge of Murder.

There is no other criminal conduct alleged in the SOR. Accordingly, I find for the Applicant under Guideline J.

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 under Guideline G of the SOR. On the other hand, the Applicant's history of alcohol abuse began in the early 1990's and is a continuing problem. In 1994, during his first alcohol treatment program, he was diagnosed by competent medical authority as an alcoholic. Over the years, he has tried to stop drinking but has been unsuccessful at remaining sober for any period of time beyond two years. He has two alcohol related arrests, the most recent of which occurred just last year. The Applicant expresses that he has renewed his commitment to abstain from drinking, and that he has not consumed alcohol for three weeks. He has also just started a second alcohol treatment program. The fact remains that the Applicant's consumption of alcohol is a serious problem that he has only recently begun to readdress. He has not demonstrated that he can remain sober or control his drinking and not return to an abusive pattern of alcohol consumption. Sufficient rehabilitation and mitigation has not been shown. Accordingly Guideline G is found against the Applicant.

The Applicant has not provided this Administrative Judge with sufficient evidence in mitigation that would negate the negative impact his alcohol abuse has on his security worthiness. At this time, I cannot find that it is clearly consistent with the national interests to grant the Applicant a security clearance.

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 Paragraph 1 of the SOR. As stated above, Paragraphs 2 and 3 are found for the Applicant.

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.: For the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant

Paragraph 2: For the Applicant.

Subpara. 2.a.: For the Applicant.

Paragraph 3: For the Applicant.

Subpara. 3.a.: For 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