

DATE: August 21, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-01677

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's past history of alcohol abuse that includes an arrest in 1991 or 1992 for DUI and 1994 charges involving domestic violence that were later dismissed has been mitigated as there is no indication of a recent or continuing alcohol abuse problem. His recent attempt to intentionally conceal his 1994 charges on his security clearance application has not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On February 28, 2003, 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, 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 24, 2003, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on June 27, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on July 10, 2003, and submitted no response.

The case was assigned to the undersigned for resolution on August 12, 2003.

FINDINGS OF FACT

The Applicant is 45 years old and married. He is employed as a Senior Software Engineer by a defense contractor and is seeking to retain a security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth in the attached 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 admits that he consumed alcohol at times to the point of intoxication from 1993 until at least December 2001. The Applicant continues to consume alcohol. He states that he no longer abuses it.

The Applicant was arrested in 1991 or 1992 and charged with Driving Under the Influence of Alcohol (DUI). He was sentenced to ten days in jail, required to pay a fine of \$1200.00 and complete a DUI, level one class. (*See*, Government Exhibit 3).

In January 1994, the Applicant was charged with 1) Inflicting Corporal Injury Upon Spouse, a misdemeanor; and 2) battery, a misdemeanor. The Applicant had been consuming alcohol at the time of the altercation. In his answer to the SOR, the Applicant explained that his wife, who suffers from Bipolar Disorder (a type of manic depression), was cooking Thanksgiving dinner and became upset with the way in which the Applicant was cooking the carrots, and started to hit the Applicant. The Applicant claims that she hurt herself in the attempt to hit the Applicant. The next day she went to the hospital to see if she had broken anything. He further states that an over zealous nurse assumed that the Applicant had hit his wife and reported the incident to the police. Immediately after the incident the Applicant and his wife began marital counseling. The Applicant's wife also began taking antidepressant medication. By the time the case went to court, some three years later, the judge dropped the charges in the interest of justice. (*See*, Applicant's Answer to SOR dated March 24, 2003)

The police report of the incident gives a much more detailed account of the incident and blames the Applicant for all of his wife's physical injuries. It states that a verbal dispute ensued in which the Applicant began to verbally abuse his wife with profanity and then threatened to physically injure her. It states that at some point during the argument, the Applicant then threw his wife across the kitchen which injured her ribs and back. He also struck her continuously with his closed fist five or six times. As a result of the incident, the Applicant's wife suffered a black eye, split lip, and bruises around her mouth and shoulder, and pain in her back and ribs. (*See*, Government Exhibit 5 p. 13).

Paragraph 2 (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 July 10, 2002. Question 26, of the application asked the Applicant if in the last seven years had he been arrested for, charged with or convicted of an offenses not listed in modules 21, 22, 23, 24, or 25. The Applicant answered "NO." This was a false answer. The Applicant failed to list the charges filed against him in January 1994, for 1) Inflicting Corporal Injury Upon Spouse, and 2) Battery, a misdemeanor.

The Applicant indicated that he did not include the 1994 charges on his security clearance application because to the best of his knowledge the incident occurred prior to seven years before the date of his application. The actual incident occurred on November 26, 1993. He incorrectly calculated the time as being seven years and eight months instead of six years and eight months.

I find that the Applicant intentionally concealed the 1994 charges from the Government. Had the description of the incident contained in the police report and the Applicant's account of the incident been similar or close to the same, the Applicant's excuse as to why he did not reveal the 1994 charges on his security clearance application would be more believable. However, his account of the incident that he provided in his answer to the Statement of Reasons and the details that are set forth in the police report are entirely contradictory. Thus, I do not find the Applicant credible. Accordingly, I find that the Applicant deliberately attempted to conceal material information from the Government on his security clearance application concerning the 1994 charges.

POLICIES

Enclosure 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.

Conditions that could mitigate security concerns:

2. The problem occurred a number of years ago and there is not indication of a recent problem.

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.

Condition 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 a history of alcohol abuse and dishonesty, which demonstrate 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 or her a security clearance.

In this case the Government has met its initial burden of proving by evidence that the Applicant has engaged in alcohol abuse, (Guideline G), and that he intentionally falsified his security clearance application (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.

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.

The evidence shows that the Applicant obviously had a problem in the past with alcohol. For the past ten years, however, since 1994, there is no indication of a recent or continuing problem with alcohol abuse. Given the significant period of time that has passed with no reoccurrences of alcohol abuse, I find that he has sufficiently rehabilitated himself in this area of concern. Accordingly, Guideline G (Alcohol Consumption) is found for the Applicant.

More troubling in this case, is the fact that the evidence shows that the Applicant was not candid when he completed the security clearance application and he deliberately attempted to conceal material information from the Government. The Government, however, relies heavily on the Applicant's responses to the questionnaire and requires that the responses be honest and truthful. I do not find the Applicant's excuse for failing to reveal his 1994 charges credible. The intentional concealment or omission of a material fact is an act of great security significance and cannot be tolerated. Under the particular facts of this case, the Applicant cannot be trusted. Accordingly, Guideline E (Personal Conduct) is found against the Applicant.

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 2 of the Government's Statement of Reasons.

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: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Subpara. 1.c.: For the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: 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 the Applicant.

DARLENE LOKEY ANDERSON

Administrative Judge