

DATE: November 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-03832

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was arrested and/or convicted on at least eight occasions between 1977 and 2000 for alcohol related incidents, including six driving under the influence charges. His last reported intoxication was in March 2003, he continues to consume alcohol, and he has failed to take adequate steps to deal with his obvious alcohol problem. Applicant has failed to mitigate the security concerns that arise from his alcohol consumption and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On July 22, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline G, alcohol consumption, and Guideline E, personal conduct. Applicant submitted an answer to the SOR on September 5, 2003, and admitted some, but not all SOR allegations.

The case was assigned to me on July 15, 2004. A notice of hearing was issued on August 26, 2004, scheduling the hearing for September 15, 2004. The hearing was conducted as scheduled. The government submitted 14 documentary exhibits that were marked as Government Exhibits (GE) 1-14, and admitted into the record without an objection. Applicant testified, and submitted 38 documentary exhibits that were marked as Applicant's Exhibits (AE) 1-38. The government did not object to AE 1-5 and AE 22-38, but did object to AE 6-21. The government's objections to AE 6-12 were overruled, while its objections to AE 13-21 were sustained. AE 1-12 and AE 22-38 were then admitted into the record. The transcript was received on September 23, 2004.

PROCEDURAL MATTERS

Applicant requested a decision without a hearing in his SOR answer. The government thereafter prepared a file of relevant material (FORM) which was mailed to Applicant. Following receipt of the FORM, Applicant submitted a letter to the DOHA on September 15, 2003 and requested a hearing. That request was granted. The letter requesting the hearing is included in the file as Appellate Exhibit I.

In accordance with paragraph E3.1.17 of Enclosure 3 of the Directive, upon motion by Department Counsel, the SOR was amended by adding the

following paragraphs: (2)

1. Guideline G:

f. In about 1977, you were charged with driving under the influence. You were convicted and fined \$75.00. Your driver's license was suspended for a period of one year.

g. In about 1979, you were charged with driving under the influence. You were convicted and fined approximately \$70.00. Your driver's license was suspended for a period of one year.

h. In about 1996 or 1997, you were charged with driving under the influence. You failed a breathalyzer test. The charges were later dismissed.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 43-year-old man, never married, who has been employed by several different defense contractors since March 1988. He was employed as an aircraft mechanic from March 1988 to March 1998, as a site lead from March 1997 to September 1999, and has been employed as a senior mechanic from October 1999 to the present. He graduated from college in December 1986 and was awarded a bachelor of science degree with a major in aeronautical studies. He submitted letters of recommendation, employment certificates, and performance appraisals that attest to him being a skilled, dedicated and conscientious professional aircraft mechanic.

Applicant has been involved in a spouse-like relationship with a woman for a number of years. She has been arrested on a couple of occasions for assaulting Applicant, and on at least one occasion they obtained mutual orders of protection against each other. According to Applicant, she has an alcohol problem and is presently in jail. He has two children who reside with him, a son who is five years old and a daughter who is three years old.

Applicant was convicted of driving under the influence of alcohol (DUI) in 1977, and fined \$75.00. He was 16 years old at the time of this arrest. He was again convicted of DUI in approximately 1979, when he was either 17 or 18 years old, and fined about \$70.00. His next arrest occurred in either 1981 or 1982 when he was jailed for public intoxication.

Applicant was convicted of DUI on March 28, 1982, and sentenced to ten days in jail, a \$339.00 fine, and ordered to attend DUI school. His driver's license was also suspended for three months. He was next convicted of DUI on February 8, 1983, and sentenced to ten days in jail, one year probation, and a \$549.00 fine. His driver's license was suspended for five years due to this conviction. He was also arrested sometime during the 1980s for urinating in public.

Applicant's next DUI arrest occurred on March 25, 1997. Although he now admits to driving a vehicle and failing a breathalyzer test, the charge was dismissed because the arresting officer was unable to testify that he had observed Applicant operating a motor vehicle. Applicant was arrested in June 1997 and charged with DUI and unlawful possession of a firearm. Although the DUI was dismissed, Applicant was convicted of the weapon charge, and placed on two years probation, fined \$2,000.00 (\$1,000.00 suspended), and ordered to perform 100 hours community service work. He attended about 20 alcoholics anonymous (AA) meetings in connection with this arrest upon the advice of his attorney.

Applicant was convicted of being drunk in public in November 2000 and fined \$90.00. He was summarily found to be in contempt of court on December 4, 2000 for lying to the court during his testimony in a domestic relations case and was fined \$100.00. Lastly, Applicant was charged with disorderly conduct in July 2001 for an incident involving his landlord that does not appear to be alcohol related.

Applicant continues to drink alcohol. He estimates that he drinks about a six-pack of beer each week, usually at home. The last time he drank to intoxication was in March 2003. In addition to the 1997 attendance at AA meetings, he attended 15-20 AA meetings following his 2000 arrest. He stopped attending because he does not think he has the type of alcohol problems described by others in attendance at the meetings. He states he will quit drinking entirely if he loses his job because he is unable to obtain a security clearance, or if quitting drinking will enable him to obtain a clearance.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, and Guideline E, pertaining to personal conduct, with their respective DC

and MC, are most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁵⁾, although the government is required to present

substantial evidence to meet its burden of proof.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that

security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹²⁾

CONCLUSIONS

Under Guideline G, alcohol consumption is a security concern because 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. Those who abuse alcohol are more likely than others to engage in high-risk, thoughtless, and sometimes violent behavior. Recurrent use of alcohol to the point of intoxication may affect an individual's ability to exercise the care, judgment, and discretion necessary to protect classified information.

Between 1977 and 2000, Applicant was arrested eight times for alcohol related incidents, including six DUIs. He was convicted of four of the DUIs, and one DUI was dismissed only because the arresting officer did not actually observe him driving the automobile, although he did fail a breathalyzer that was administered. His last alcohol related conviction was for public intoxication in 2000. DC 1: *Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*; and DC 5: *Habitual or binge consumption of alcohol to the point of impaired judgment* apply in this case.

Although more than four years have passed since Applicant's last conviction, he still consumes alcohol, and was last intoxicated in March 2003. His attorney suggested he attend AA meetings in 1997, and he decided on his own to attend following his last alcohol related arrest. Despite the obvious problems that alcohol has caused in Applicant's life for almost a quarter of a century, he appears to have learned nothing from his experiences, has walked away from AA, and continues to present a risk of further abuse. Accordingly, having considered all Mitigating Conditions under Guideline G, I find that none apply. Guideline G is decided against Applicant.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information. In addition to the alcohol incidents alleged in SOR subparagraphs 1.a. through 1.d.,⁽¹³⁾ Applicant was found in contempt of court in 2001 for lying during the testimony he provided in a domestic relations case. DC 5: *A pattern of dishonesty or rule violations . . .* applies. I have considered all Mitigating Conditions under Guideline E and find none apply. Guideline E is decided against Applicant.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to overcome the case against him and satisfy his ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance.

FORMAL FINDINGS

SOR ¶ 1-Guideline G: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

SOR ¶ 1-Guideline E: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph 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. Clearance is denied.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Applicant interposed an objection that apparently was based upon the fact that the information supporting the amendments was known to the government prior to the hearing and issuance of the SOR. However, he indicated in response to my questions that he was not prejudiced by the amendments and did not need additional time to respond to the amended SOR. Accordingly, the requested amendments were allowed over Applicant's objection.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
10. *Egan*, 484 U.S. at 528, 531.
11. *Id* at 531.
12. *Egan*, Executive Order 10865, and the Directive.
13. Department Counsel did not move to amend SOR subparagraph 2.a. to add the additional allegations contained in SOR subparagraphs 1.f. through 1.h.