

DATE: August 20, 2003

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-04037

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's past history of alcohol abuse that included an arrest in 1989 for DWI, and an alcohol assessment in 1990-1991 with a poor prognosis has been mitigated. No alcohol related incidents have occurred over the past thirteen years. His deliberate attempt to falsify his security clearance application dated February 17, 1999, by failing to include his alcohol related arrest in 1989 has not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On December 27, 2002, 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 February 5, 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 May 23, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on June 2, 2003, and submitted a response dated June 20, 2003.

The case was assigned to the undersigned for resolution on July 10, 2003.

FINDINGS OF FACT

The Applicant is 39 years old and married. He is employed as a Branch Supervisor 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 1982 until at least 1991. In 1982, at the age of twenty-two, the Applicant joined the United States Air Force and began consuming alcohol. By the age of twenty-two, he was drinking on a regular basis. He usually consumed between one to three beers at a sitting, with a maximum of seven to eight beers, or one to three mixed drinks per sitting, with a maximum of six mixed drinks. (*See*, Government Exhibit 5). He would typically drink one to two times a week, on Fridays and Saturdays with friends. He admits to experiencing one blackout as a result of his abusive drinking in 1990. He has never considered himself to be an alcoholic. Since 1993, he states that his consumption of alcohol has been moderate. He now consumes one or two beers once every two months.

In 1989, the Applicant, was arrested on base and charged with Driving While Intoxicated. For this offense he received an Article 15. The Applicant explained that he was consuming alcohol with his friends at a club off base. He had consumed about 4, 16 ounce mixed drinks of Coke and Jim Beam. When he left the club, he felt fine. When he arrived at the base gate, he was stopped for an identification check and alcohol was detected. He was arrested by military police. It was later determined that the Applicant's blood alcohol level was greater than .20%. His base privileges were suspended for one year and he was referred to the social action program for an alcohol assessment.

Sometime in 1990, it was reported to the Applicant's command that the Applicant was discovered passed out on the front steps, intoxicated outside of the base club. The Applicant was evaluated by the Alcoholic Assessment Center and diagnosed with a condition called episodic/binge drinking, alcohol abuse. The Applicant was ordered to attend an inpatient alcohol treatment program for approximately 30 days that included counseling, group meetings, films, lectures, one on one counseling and alcohol abstinence. He also had to participate in a six month after-care program for alcohol abuse. The Applicant indicates that he successfully completed the alcohol treatment and counseling.

The Applicant's alcohol assessment by the military's Chief of the Alcoholism Rehabilitation Center stated,

It is doubtful if he has any identification with the disease of alcoholism or the seriousness of past symptoms. He does not appreciate the full impact of his powerlessness over alcohol as evidenced by his belief that he can return to his lifestyle before treatment. The patient lacks the commitment to work a program of sobriety which includes life changes over an extended period. His prognosis at the time of discharge is poor. (*See*, Government Exhibit 6, p.13, dated May 31, 1990).

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 Questionnaire for National Security Positions (Standard Form 86) dated February 17, 1999. Question 24, of the application asked the Applicant if he had ever been charged with or convicted of any offenses related to alcohol or drugs. The Applicant answered, "No". This was a false answer. The Applicant failed to disclose his arrest of 1989 for Driving While Intoxicated. (*See*, Government Exhibit 4).

The Applicant indicated that he did not report his arrest for Driving While Intoxicated nor his alcohol treatment because he was embarrassed. He was also afraid of being denied a security clearance and/or an unfavorable employment action. (*See*, Government Exhibit 5).

I find that the Applicant intentionally concealed his alcohol related arrest in 1989 from the government. There is no other reasonable excuse for his inaccurate response. Accordingly, I find that the Applicant intentionally attempted to conceal material information from the Government on his security clearance application.

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.

Condition 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.

Although there is some evidence in the record to show that the Applicant did not take his problem with alcohol seriously, there is stronger evidence to suggest that the Applicant's history of alcohol abuse from 1989 until at least 1991 is now reformed and rehabilitated. Thirteen years have passed since the Applicant's last alcohol related incident. In 1990, he completed an alcohol treatment program, although not with a favorable prognosis, but has since then reduced his consumption of alcohol. Although he admits that he continues to use alcohol, there is no evidence in the record to show that he continues to abuse it. His last incident of abuse documented in this record occurred in 1990. 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, however, is the fact that the evidence shows that the Applicant deliberately attempted to conceal material information from the Government in his security clearance application. The Applicant was embarrassed about his past arrest and did not want to divulge it. The Government, however, relies heavily on the Applicant's responses to the questionnaire and requires that the responses be honest and truthful. There is no reasonable excuse for the Applicant's failure to provide inaccurate information in his security clearance application. 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