

DATE: September 26, 2003

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-06268

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Juan R. Rivera, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a lengthy history of alcohol abuse and related criminal conduct, including a driving while intoxicated (DWI) conviction, a driving under the influence (DUI) conviction, and several public intoxication convictions. He voluntarily sought and received inpatient and outpatient alcohol abuse treatment in June 2001, has regularly attended alcoholics anonymous since his completion of that treatment, and has not had an alcoholic beverage in more than two years. He has successfully mitigated the security concerns that arose from his alcohol consumption and criminal conduct. Applicant also has a lengthy history of financial delinquencies that he had failed to remedy by the time of the hearing. Having failed to introduce satisfactory evidence to demonstrate that he is on the path to becoming a financially responsible individual, Applicant is unable to mitigate the financial issues that have been raised. Clearance is denied.

STATEMENT OF THE CASE

On April 3, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find that 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 a security concern under Guideline G, alcohol consumption, Guideline J, criminal conduct, and Guideline F, financial considerations. Applicant submitted an answer to the SOR on April 14, 2003, requested a hearing, and admitted every allegation in the SOR.

The case was assigned to another administrative judge on May 29, 2003 and reassigned to me on May 30, 2003 because of caseload concerns. A notice of hearing was issued scheduling the hearing for June 24, 2003. The hearing was conducted as scheduled. The government submitted twenty-five documentary exhibits at the hearing that were marked as Government Exhibits (GE) 1-25 and admitted into the record without an objection.⁽²⁾ The Applicant testified at the hearing and submitted six exhibits that were marked as Applicant's Exhibits (AE) 1-6, and admitted into the record without an objection. The transcript was received on July 2, 2003.

FINDINGS OF FACT

Applicant's admissions to the allegations contained in the SOR 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 32-year-old single man who was hired by a defense contractor into an apprentice training program on March 22, 1999. He submitted five letters from instructors and other persons who he has worked with or for at his place of employment that attest to the outstanding academic record he established and his reputation for being dependable and having an outstanding work record. At least two of the individuals who submitted a character reference letter on Applicant's behalf were aware he had some personal issues and had sought assistance from the employee assistance program. Applicant also attended junior college from August 2001 to June 9, 2002.

Applicant was arrested and convicted on two occasions in 1991, and on two additional occasions in 1997, for offenses involving either public intoxication or unlawful possession of alcohol. He was arrested on March 2, 1989 and charged with DWI. His blood alcohol concentration (BAC) at the time of that arrest was .14. He was convicted of this offense, ordered to pay a fine and had his driver's license suspended for six months.

He was arrested on November 12, 1994 and charged with DUI. His blood alcohol concentration (BAC) at the time of that arrest was .19. He was convicted of that offense on April 19, 1995, fined \$200.00, and had his driver's license suspended for 12 months. While this DUI was pending, Applicant was arrested for the offense of driving under suspension (DUS). While he admits driving a vehicle at the time, he denies that he knew his driving privileges had been suspended. Applicant was convicted of this offense and ordered to pay a fine.

Applicant was found by a court to be a habitual offender on August 8, 1995 based upon his DWI, DUI, and DUS convictions. While the SOR alleges, and Applicant admits this resulted in his driving privileges being revoked for a period of ten years, the court order that was entered states that Applicant ". . . is hereby prohibited *until further order of this Court*, or other appropriate Court, from operating a motor vehicle on the highways. . . ." His driving privileges were reinstated on December 5, 2002.

Applicant was arrested on July 10, 1989 and charged with assaulting his mother. That charge was dismissed at the mother's request. He was convicted of uttering a bad check in 1991 and ordered to pay a fine and make restitution. On August 19, 1993, a charge of trespass that had been filed against Applicant for an incident that occurred on July 31, 1993 was nolle prossed. Applicant was again arrested and charged with trespass on June 2, 1996. This offense occurred after Applicant observed his girlfriend's automobile in the driveway of another man's house and attempted to gain entry in an apparent attempt to confront them. He was convicted of this offense on June 20, 1996, sentenced to 30 days in jail, 27 days of the sentence being suspended, and fined \$100.00.

Applicant started drinking alcohol when he was approximately 14-years-old, which would have been about 1985. His consumption of alcohol increased from about six beers per week at that time, to the point where he was consuming approximately 24 beers per week from the ages of 21 to 26. At least partially realizing the problems alcohol was causing in his life, Applicant reduced his consumption to about twelve beers per month. In June 2001, Applicant initiated a request for help with his alcohol problem through his employer's assistance program. He entered a 3-day detoxification program on June 21, 2001, and was thereafter referred to an intensive outpatient program that he attended for three hours an evening, two evenings a week, for fourteen weeks. Following his successful completion of these programs, he began attending AA meetings. He continues to attend from three to six AA meetings a week. He now has a sponsor in the AA program, and has not consumed any alcohol since entering the detoxification program in June 2001.

Applicant has a long history of financial irresponsibility. There are accounts listed in the SOR, totaling \$2,128.00,⁽³⁾ that, although not alleged as such in the SOR, have been placed for collection. There are three additional accounts listed in the SOR, totaling \$2,234.00, on which judgments have been entered against Applicant that have not been satisfied. Finally, there are two accounts listed in the SOR, totaling \$2,493.64, on which judgments were entered against Applicant and only satisfied by means of wage garnishments. Applicant has had disposal income he could have applied toward settling these accounts since at least May 11, 2001 when he submitted a personal financial statement disclosing net monthly remaining income, after payment of all living expenses, of \$773.00.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chiefs 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 J, pertaining to criminal conduct, with its respective DC and MC, is 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.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁶⁾, although the government is required to present substantial evidence to meet its burden of

proof.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ 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.⁽⁹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

No one has a right to a security clearance⁽¹¹⁾ and "the clearly consistent standard indicates that

security clearance determinations should err, if they must, on the side of denials."⁽¹²⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹³⁾

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.

Applicant began abusing alcohol when he was 14-years-old and started drinking a six-pack of beer on a weekly basis. As he got older, his drinking problem increased to the point where he was consuming a case of beer a week and was arrested on six occasions for alcohol related offenses, including a DUI and a DWI. Disqualifying Conditions (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.

Applicant began to realize he had a drinking problem following his last alcohol related arrest in 1997, and significantly reduced the amount of alcohol he was consuming. In June 2001, he accepted the fact that reduced consumption was an insufficient remedy because the use of alcohol was still causing him problems in his personal life. He sought assistance from his employer's assistance program and successfully completed a detoxification program and an intensive outpatient program. Following completion of those programs, Applicant began attending AA meetings on a frequent and regular basis, and has acquired an AA sponsor. He has not had a drink of alcohol since commencing the treatment programs, and, as evidenced by the character reference letters he submitted, there is every reason to believe he will remain abstinent in the future.

Mitigating Conditions (MC) 2: *The problem occurred a number of years ago and there is no indication of a recent problem*; and MC 3: *Positive changes in behavior supportive of sobriety* applies. Considering all the evidenced presented on this security concern, I find that the Mitigating Conditions substantially outweigh the Disqualifying Conditions and that Applicant is able to mitigate this security concern. Guideline G is decided for Applicant.

Under Guideline J, criminal conduct is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the Nation's secrets. A history of illegal behavior indicates an individual may be inclined to break, disregard, or fail to comply with regulations, practices, or procedures concerning safeguarding and handling classified information.

The government has established its case against Applicant under Guideline J. The evidence establishes that Applicant was arrested on numerous occasions between his first arrest on July 10, 1989 and his last arrest on October 17, 1997. Included in those arrests are a DUI, a DWI, three public intoxications and two trespass offenses. DC 1: *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*; and DC 2: *A single serious crime or multiple lesser offenses* apply in this case.

It has been nearly six years since Applicant was last arrested. Since that time he has completed the alcohol programs noted above and has maintained sobriety for more than two years. He has worked for the same employer for more than 4 years, and has earned a reputation of being a good and trusted employee. MC 1: *The criminal behavior was not recent*; and MC 6: *There is clear evidence of successful rehabilitation* apply in this case.

After considering the evidence of record in this case, and weighing the disqualifying conditions against the mitigating conditions, I find that Applicant has mitigated the security concerns caused by his criminal conduct. He has overcome the case against him and satisfied his ultimate burden of persuasion. Guideline J is decided for Applicant.

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant has significant unpaid debts that have either been referred for collection or resulted in the entry of judgments against him. He acknowledges that the cause of his adverse financial position is his irresponsibility and unwillingness to accept responsibility for his actions. He was put on notice that his debt situation was a security concern in December 2002 when he received interrogatories asking for information concerning those debts in the course of his security application investigation. If, for some reason, he did not grasp the significance of his debt situation at that time, it could not have been more clearly brought home to him than it was by issuance of the SOR on April 3, 2003. Despite receiving these warnings, and with the financial ability to make at least some payment toward satisfying the delinquent accounts, he has made no effort to do so. The only evidence introduced showing any payment on the accounts is contained in AE 6, which consists of receipts, the last in time being dated November 8, 2002, well prior to the warnings noted above.

Based on all the evidence presented in this case, I find that DC 1: *A history of not meeting financial obligations*: and DC 3: *Inability or unwillingness to satisfy debts* apply in this case. I cannot find that any Mitigating Condition applies in this case. Accordingly, Applicant has failed to mitigate the security concern caused by his financial considerations and Guideline F 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 that 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: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

Subparagraph h: For the Applicant

SOR ¶ 1-Guideline J: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

Subparagraph h: For the Applicant

Subparagraph i: For the Applicant

Subparagraph j: For the Applicant

Subparagraph k: For the Applicant

Subparagraph l: For the Applicant

SOR ¶ 1-Guideline F: 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

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Subparagraph k: 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.

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. The Government submitted a twenty-sixth exhibit that was withdrawn by Department Counsel when he was questioned about its relevancy at the time it was offered. The exhibit was subsequently tendered by Applicant during his case and admitted as Applicant's Exhibit 6.
3. The amounts alleged in the SOR total \$2,263.00, however it appears from a review of GE 19, 20 & 21 that the \$135.00 amount alleged in subparagraph 3c was also included in the total amount alleged in subparagraph 3e.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
11. *Egan*, 484 U.S. at 528, 531.

12. Id at 531.

13. *Egan*, Executive Order 10865, and the Directive.