

DATE: August 22, 2005

In Re:

SSN:-----

Applicant for Security Clearance

ISCR Case No. 02-28152

DECISION OF ADMINISTRATIVE JUDGE

MARY E. HENRY

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 51-year-old systems engineer, has been drinking for more than thirty years and to excess for more than ten years. Despite at least two inpatient admissions and outpatient treatment for alcohol abuse and alcohol dependence, he continues to drink alcohol on a regular basis and to excess. Applicant has not mitigated the security concerns arising under Guideline G. Clearance is denied.

STATEMENT OF THE CASE

On February 25, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On March 18, 2004, Applicant submitted a notarized response to the allegations. He elected to have his case decided on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and provided Applicant with a complete copy. ⁽¹⁾ Applicant had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit additional material. This case was assigned to me on July 27, 2005.

FINDINGS OF FACT

Applicant admitted all the allegations pertaining to alcohol consumption under Guideline G (subparagraphs 1.a through 1.e of the SOR). ⁽²⁾ Those admissions are incorporated here as findings of fact. After a complete review of the evidence

in the record and upon due consideration, I make the following additional findings of fact:

Applicant, who is 51 years old, has worked for the last twenty years for a defense contractor.⁽³⁾ His current position is as a systems engineer. He also served seven and one-half years in the United States Air Force prior to his current employment.⁽⁴⁾ He completed a security form (SF 86) in August 2001.⁽⁵⁾

Applicant is married to his second wife, although they are separated.⁽⁶⁾ They have three children, now ages 17, 15, and 13.⁽⁷⁾

Applicant began drinking socially at age 18, and did so for a number of years.⁽⁸⁾ Over time, his alcohol consumption increased. By the early 1990s, he drank between one half pint and a pint of hard liquor plus two beers each day.⁽⁹⁾ In late September 2000, he decided to stop drinking.⁽¹⁰⁾ Shortly thereafter, he suffered a seizure and was admitted to a health center on October 1, 2000 for alcohol abuse.⁽¹¹⁾ Three days later, the health center discharged him after he had completed its inpatient detox program.⁽¹²⁾ He immediately enrolled in, participated in, and completed a full time day outpatient alcohol program, which discharged him with a strong recommendation for ongoing followup through Alcoholics Anonymous.⁽¹³⁾ His treating physician diagnosed "alcohol abuse, severe, continuous" in the October 2000 discharge notes.⁽¹⁴⁾

The record evidence reflects that he remained sober from October 2000 until the summer of 2001, when he resumed drinking.⁽¹⁵⁾ He again consumed one pint of hard liquor plus a quart of beer a day.⁽¹⁶⁾ In February 2002, Applicant voluntarily admitted himself to a health center for treatment of his continuing alcohol problem.⁽¹⁷⁾ He completed the inpatient three-day detox program a second time.⁽¹⁸⁾ His treating physician diagnosed "alcohol dependence continuous" and "alcohol withdrawal" in the February 2002 discharge summary.⁽¹⁹⁾ After leaving the inpatient program, Applicant continued to drink smaller quantities of hard liquor, less than one pint a week.⁽²⁰⁾ While he has stated an intent to stop drinking,⁽²¹⁾ the record contains no evidence that he has stopped drinking or that he is currently in an outpatient treatment program for his alcohol consumption problem. He was arrested and charged with driving while intoxicated ("DWI") in October 2003.⁽²²⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the adjudicative process provision in Paragraph E2.2, Enclosure 2 of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Included in the guidelines are disqualifying conditions and mitigating conditions applicable to each specific guideline. In addition, each security clearance decision must be based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically, these are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. 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.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²³⁾ The government has the burden of proving controverted facts.⁽²⁴⁾ The burden of proof is something less than a preponderance of the evidence.⁽²⁵⁾ Once the government has met its burden, the burden shifts to the applicant to present evidence of refutation, extenuation, or mitigation to overcome the

case against him.⁽²⁶⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁷⁾

No one has a right to a security clearance⁽²⁸⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²⁹⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting such classified information.⁽³⁰⁾ Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in not sense be a determination as to the loyalty of the applicant concerned." The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty, allegiance and patriotism of an applicant.⁽³¹⁾ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Alcohol Consumption - Guideline G: 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.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

The government has established its case under Guideline G. Based on all the evidence, Alcohol Consumption Disqualifying Conditions E2.A7.1.2.3 (*Diagnosis by a credentialed medical professional (e.g. physician clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*), E2.A7.1.2.5 (*Habitual or binge consumption of alcohol to the point of impaired judgment*) and E2.A7.1.2.6 (*Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*) apply in this case. Applicant has been drinking since age 18. His level of alcohol consumption has significantly increased over the years to the point where he has been hospitalized twice for treatment. His treating physician diagnosed him with alcohol abuse and alcohol dependency. Despite both inpatient and outpatient treatment programs, he continues to drink excessively.

I considered all the Alcohol Consumption Mitigating Conditions and conclude that none apply. Applicant continues to drink on a regular basis. He has participated in two inpatient detox programs and at least one outpatient alcohol treatment program without achieving continued sobriety. Although he remained sober for a brief period of time after his initial treatment in October 2000, he quickly resumed his previous high levels of alcohol consumption.

Applicant has professed an intent to stop drinking. He voluntarily sought assistance with his alcohol problem by checking himself into an inpatient alcohol treatment program. Even though he successfully completed the inpatient detox program, he did not stop drinking. Rather, he acknowledged that he still drinks regularly, but in less quantity. His continued drinking resulted in an arrest and DWI charge in October 2003. His continued use of alcohol to excess raises security concerns about his ability to exercise appropriate judgment and due diligence in regard to classified information and possible disclosure of protected information.

Finally, I also considered "the whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. His ongoing, regular and often excessive consumption of alcohol for many years raises serious

concerns about his ability to exercise the necessary judgment and care to protect classified information. He has recognized the need to stop drinking on two occasions and took the initial steps to stop drinking. Unfortunately, he has not succeeded in achieving his goal of sobriety for any sustained period of time. His inability to resolve his drinking problem precludes me from making a favorable security clearance determination. I conclude that Applicant has not mitigated or overcome the government's case under Guideline G.

Accordingly, for the reasons stated, I find that it is not clearly consistent with the national interest to grant a security clearance to the Applicant.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph , Guideline G (Alcohol Consumption): Against APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant a security clearance for Applicant. Clearance is denied.

Mary E. Henry

Administrative Judge

1. The File of Relevant Material sent to Applicant on May 19, 2005 for review and response included Items 1 through 10.
2. Item 4 (Response to SOR dated March 18, 2004) at 1.
3. Item 5 (Security Clearance Application dated August 9, 2001) at 2.
4. *Id.*
5. *Id.*
6. *Id.* at 2-3; Item 6 (Statement dated April 16, 2002) at 3.
7. Item 4, *supra* note 2, at 3.
8. Item 6, *supra* note 6, at 1.
9. *Id.* at 3; Item 7 (Discharge summary from health center dated October 4, 2000) at 2.
10. *Id.*; Item 6, *supra* note 6 at 2

11. Item 7, *supra* note 9, at 1.
12. Item 8 (Discharge summary health center dated October 22, 2000) at 2.
13. *Id.*
14. *Id.*
15. Item 9 (Discharge summary health center dated February 11, 2002) at 2.
16. *Id.*
17. Item 6, *supra* note 6, at 3.
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. Item 11 (Adverse Information Report dated June 2, 2004) at 1.
23. ISCR Case No. 96-0277 (July 11, 1997) at 2.
24. ISCR Case No. 97-0016 (App. Bd., December 31, 1997) at 3; Directive, Enclosure 3, ¶ E3.1.14.
25. *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).
26. ISCR Case No. 94-1075 (App. Bd., August 10, 1995) at 3-4; Directive, Enclosure 3, ¶ E3.1.15.
27. ISCR Case No. 93-1390 (App. Bd. Decision and Reversal Order, January 27, 1995) at 7-8; Directive, Enclosure 3, ¶ E3.1.15.
28. *Egan*, 484 U.S. at 531.
29. *Id.*
30. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
31. Executive Order No. 10865 § 7.