

DATE: March 21, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31031

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant drank to excess from approximately 1975 until May 2002 and was discharged from the U.S. Air Force as an alcohol abuse rehabilitation failure. He also was convicted of operating a motor vehicle while intoxicated and arrested for an alcohol-related domestic disturbance. He continues to consume alcohol and has offered no explanation or mitigating evidence. He incorrectly listed his arrest for the domestic disturbance under the wrong question on his security clearance application (SF 86). Security concerns based on falsification of the SF 86 are mitigated, but the concerns based on alcohol consumption are not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On July 14, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive). The SOR alleges security concerns under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct). Applicant answered the SOR in writing on August 9, 2004, and elected to have the case decided on the written record in lieu of a hearing. Applicant admitted the allegations under Guideline G in the SOR ¶ 1.a. (excessive alcohol consumption from 1975 to May 2002), 1.d. (a general discharge from the Air Force as an alcohol abuse rehabilitation failure), 1.e. (conviction of operating a vehicle while intoxicated), 1.f. (alcohol-related domestic violence), and 1.g. (continued use of alcohol after diagnosis of alcohol abuse). He denied the allegations in ¶ 1.b. that he was treated for probable alcohol abuse with impaired functioning and pathologic use, entered an alcohol rehabilitation program, interfered with a civilian police operation while intoxicated, and failed to satisfactorily complete the alcohol rehabilitation program. He denied the allegation in ¶ 1.c. that he was arrested for public intoxication. Finally, he denied the allegation under Guideline E in the SOR ¶ 2.a. that he falsified his security clearance application.

Department Counsel submitted the Government's written case on November 30, 2004. A complete copy of the file of

relevant material (FORM) was provided to Applicant on December 3, 2004, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on December 10, 2004, but he did not respond. The case was assigned to me on February 2, 2005.

FINDINGS OF FACT

Based on the entire record, I make the following findings of fact:

Applicant is a 44-year-old HVAC (heating, ventilation, and air conditioning) technician, employed by a defense contractor. He was worked for his present employer since March 2002. He has never held a security clearance.

Applicant first consumed alcohol on one occasion when he was 14 years old. He did not drink again until his last two years of high school, when he began consuming up to 12 beers at monthly parties. After he graduated from high school, he regularly consumed three or four beers at weekend parties and occasionally drank up to six beers, which caused him to become drunk, with staggered walk and slurred speech.

Applicant served in the U.S. Air Force from June 1985 until March 1987. While in the Air Force, he was treated in September 1986 at a military medical facility for alcohol abuse, identified as a problem drinker, and placed in an alcohol rehabilitation program. Although the FORM contains correspondence regarding Applicant's placement in the rehabilitation program, it does not reflect the specific diagnosis of "probable alcohol abuse with impaired functioning and pathologic use" alleged in the SOR, nor does it reflect the identity or medical credentials of the person who made the diagnosis.

In January 1987, Applicant interfered with civilian police officers attempting to make a drug arrest, and he was charged with public intoxication. In the same month, he was removed from the rehabilitation program for unwillingness to cooperate, and in March 1987 he received a general discharge from the Air Force as an alcohol abuse rehabilitation failure.

In August 1991, Applicant was convicted of operating a motor vehicle while intoxicated. He was sentenced to a \$500.00 fine and 10 days in jail, and his driver's license was suspended for one year.

In May 2001, Applicant was arrested and charged with domestic violence and harassment. He had consumed 12 or more beers before being arrested. He pleaded guilty to harassment and was sentenced to 90 days in jail and a fine. The sentence was deferred for 24 months, conditioned on attending an alcohol education program and a 36-week domestic violence program. Applicant admitted continuing to consume alcohol after being identified as a problem drinker.

Applicant executed a SF 86 March on 15, 2002. He answered "no" to question 26, asking whether in the last seven years he had been arrested for, charged with, or convicted of any offenses not listed under questions 21 (felonies), 22 (firearms/explosives offenses), 23 (pending charges), 24 (alcohol/drug offenses), or 25 (courts-martial or disciplinary actions). He did not disclose his arrest for domestic violence and harassment under question 26, but he did disclose it under question 30, asking about alcohol-related treatment or counseling.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

Enclosure 2 of the Directive sets forth personal security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002); *see* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

Guideline G (Alcohol Consumption)

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. Directive ¶ E2.A7.1.1. A disqualifying condition (DC 1) may arise from alcohol-related incidents away from work, such as driving under the influence. Directive ¶ E2.A7.1.2.1. Although Applicant denied being arrested for public intoxication (SOR ¶ 1.c.), it is established by the military police report (FORM Item #6). Applicant's arrest for public intoxication and his admission of the allegations in SOR ¶¶ 1.e. (driving while intoxicated) and 1.f. (alcohol-related domestic violence) establish DC 1.

A disqualifying condition may arise from habitual or binge drinking to the point of impaired judgment (DC 5). Directive ¶ E2.A7.1.2.5. Applicant's admission he consumed alcohol to excess, up to 12 beers per day on weekends (SOR ¶ 1.a.) establishes DC 5.

Disqualifying conditions also may arise from a diagnosis of alcohol abuse or alcohol dependence by a credentialed medical professional (DC 3) or licensed clinical social worker in a recognized alcohol treatment program (DC 4), or consumption of alcohol subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program (DC 6). Directive ¶¶ E2.A7.1.2.3.; E2.A7.1.2.4.; E2.A7.1.2.6. Applicant admitted he continued to use alcohol notwithstanding treatment for probable alcohol abuse (SOR ¶ 1.g.), but he did not admit being diagnosed by a credentialed medical professional or licensed clinical social worker. There are no documents in the FORM showing the identity or credentials of the person who diagnosed Applicant. The documents regarding Applicant's discharge from the Air Force refer only to a "drinking problem."

Applicant denied the allegations in SOR ¶ 1.b. However, his failure to complete the alcohol rehabilitation program is established by the Substance Abuse Control Program Rehabilitation Committee Review (FORM Item #7). His interference with the drug arrest while intoxicated is established by the military police report (FORM Item #6). Based on the evidence, I conclude the allegations in the SOR ¶ 1.b. pertaining to his interference with police operations and his failure to complete the rehabilitation program are established, but the allegation pertaining to a diagnosis of "probable alcohol abuse" is not established. Because of the absence of evidence regarding the identity and credentials of the person who diagnosed Applicant, DC 3, DC 4, and DC 6 are not established.

Applicant has offered no explanations for his conduct. The evidence establishes no mitigating conditions. Accordingly, I conclude the security concern arising from his alcohol consumption is not mitigated.

Guideline E (Personal Conduct)

Under Guideline E, conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the person may not properly safeguard classified information. Directive ¶ E2.A5.1.1. DC 2 applies where there has been a deliberate omission or falsification of relevant and material facts from any personal security questionnaire. Directive ¶ E2.A5.1.2.2. Applicant denied deliberately omitting relevant and material information. He disclosed the domestic disturbance under question 30 instead of question 27. Department Counsel concedes Applicant's disclosure under question 30 mitigated the conduct alleged in the SOR ¶ 2.a. I conclude DC 2 is not established.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline G: 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

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For 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 or continue a security clearance for Applicant. Clearance is denied.

LeRoy F. Foreman

Administrative Judge