

DATE: January 14, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31457

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has two widely-spaced driving under the influence (DUI) arrests, one in 1985 when he was 22 years old, and one in 2001 at 38 years of age. Applicant has made positive changes in his life which support sobriety, including Alcoholics Anonymous (AA) participation. Applicant mitigated the security concerns. Clearance is granted.

STATEMENT OF THE CASE

On August 11, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel 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 under the personnel security Guideline J (Criminal Conduct) and Guideline G (Alcohol Consumption) 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. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether clearance should be granted, continued, denied, or revoked.

In a signed and sworn statement, dated September 11, 2003, Applicant responded to the SOR allegations. He requested a hearing. This case was originally assigned to Administrative Judge Barry Sax in the Western Hearing Office on October 29, 2003. The case was reassigned to me on November 15, 2003, due to caseload considerations.

A Notice of Hearing was issued on November 15, 2003 setting the hearing for December 3, 2003. On that date, I convened the hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government presented five exhibits by stipulation with Applicant, which then were admitted into evidence. The Government questioned the Applicant. Applicant appeared and testified, and offered six exhibits all of which were admitted into evidence. I received the transcript (Tr.) of the hearing on December 30, 2003.

FINDINGS OF FACT

He admitted the allegations in subparagraphs 1.a. and 1.b. Those admissions are incorporated herein as findings of fact. Applicant did not specifically answer the allegations in Paragraph 2 of the SOR. They referred back to the same two allegations in Paragraph 1 and his admissions shall apply to the same allegations in Paragraph 2. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 40 years old. He is unmarried. He has a college degree in engineering technology. He is studying for a master's degree online in technology management. He works for a defense contractor, and has had a security clearance for 13 years. He worked previously for another defense contractor. (Tr. 14, 16 to 18; Applicant's Exhibits D and F)

Applicant has two arrests for driving under the influence of alcohol (DUI). The first arrest was in 1985 at the age of 22. He received a \$100 fine, \$80 court costs, and 90 days suspended jail sentence, and two years probation. He completed the unsupervised probation. (Exhibit 5; Applicant's Exhibit A; Tr. 18, 19)

Applicant worked for a defense contractor and spent seven years on a Pacific Ocean island which was 2 miles by 3 miles. He did not have a car on the island, but drove government vehicles or rode bicycles around the island. (Tr. 19, 21, 27, 28)

After his return to the U.S. mainland in April 2000 Applicant worked for his present employer. On June 10, 2001, Applicant was arrested for DUI with a blood alcohol content of .22 percent. The legal limit is .08 in Applicant's state of residence. Applicant represented himself at the hearing on the DUI charge, and pled nolo contendere. Applicant paid a fine of \$1,402, and \$145 in court costs. He was placed on probation for five years, which will terminate in 2006. The condition of his probation was to refrain from further violations of the law. Applicant was also ordered to participate in an alcohol education program, the first offender DUI program, not to drink and drive, to submit to a blood test at the request of any peace or probation officer, and have his license restricted for 90 days. Applicant did attend the TAASK driving school as ordered, and successfully completed it. Applicant remains on probation and in compliance with its terms. (Exhibit 1 at 5; Exhibit 2; Exhibit 3; Exhibit 5; Exhibits A, B, D; Tr. 22, 23, 29, 31, 32, 35)

Applicant recognizes that alcoholism is a disease, and has not been diagnosed by a credentialed medical professional as having any level of alcohol problem, but he has not been sent for a diagnosis or gone voluntarily. He considers himself an alcoholic, and participates in Alcoholics Anonymous (AA). He did not drink for almost two years after his 2001 DUI arrest. In 2003 he had some drinks with friends, and his new sobriety date is April 25, 2003. Applicant is a runner, plays guitar, and participates in his church activities. He submitted two favorable recommendations from supervisors at his place of employment. Applicant recently had his blood tested at his company, and it showed no health problems, such as liver or alcohol-related problems. (Applicant's Exhibits C and E; Tr. 23-26, 28, 35, 36)

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 judgement, 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 predicted upon the applicant meeting the security guidelines contained in the Directive.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 to the Directive sets forth adjudicative guidelines that must be carefully considered according to the pertinent Guideline in making the overall common sense determination required.

Each adjudicative decision must also include an assessment of:

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation;
- (3) how recent and frequent the behavior was;
- (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 pertinent 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 (See Directive, Section E2.2.1. of Enclosure 2).

Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance.: ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

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

Guideline J - Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. E2.A10.1.1.

Conditions that could raise a security concern and may be disqualifying include:

- (1) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged. E2.A10.1.2.1.
- (2) A single serious crime or multiple lesser offenses. E2.A10.1.2.2.

Conditions that could mitigate security concerns include: E2.A10.1.3.

(1) The criminal behavior was not recent. E2.A10.1.3.1.

(6) There is clear evidence of successful rehabilitation. E2.A10.1.3.6.

Guideline G - Alcohol Consumption

The Concern: 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. E2.A7.1.1.

Conditions that could raise a security concern and may be disqualifying include:

(1) Alcohol-related incidents away from work, such as driving while under the influence. E2.A7.1.2.1.

Conditions that could mitigate security concerns include:

(2) The problem occurred a number of years ago and there is no indication of a recent problem. E2.A7.1.3.2.

(3) Positive changes in behavior supportive of sobriety. E2.A7.1.3.3.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination required, I draw only those inferences and conclusions which have a reasonable and logical basis in the evidence of record. Likewise, I have drawn no inferences based on mere speculation or conjecture.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Paragraph 1 and Guideline J, two Disqualifying Conditions (DC) in the guideline apply: DC 1 (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*) and DC 2 (*a single serious crime or multiple lesser offenses*). In 1985 and 2001 Applicant was arrested and/or convicted of two DUI offenses.

Applicant's last offense was more than two and one-half years ago, so it was not recent. Applicant participates voluntarily in AA, recognizes the disease of alcoholism, pursues other interests, including studying for a master's degree, to divert his energies and attentions from socializing with friends and other people where alcohol may be present. He has changed his environment to avoid the temptations of alcohol. Applicant has established and is working a rehabilitation program for himself. His character references from his place of employment demonstrate the quality of his work and that he made full disclosure of his 2001 DUI arrest to his supervisors. The Mitigating Conditions (MC) 1 and 6 apply to Applicant's case. I find for Applicant on the Guideline J allegations.

Regarding Paragraph 2 and Guideline G, DC 1 (*alcohol-related incidents, such as DUI*) applies. Applicant admits his two DUI arrests.

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*) could apply. Applicant has made positive changes in his life after these incidents. Those changes support his continued sobriety. The last incident occurred more than 30 months ago, and no repeat incident has occurred. I find for Applicant on these Guideline G allegations.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline J: For Applicant

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Paragraph 2 Guideline G: For Applicant

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

DECISION

In light of all the circumstances and facts presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Philip S. Howe

Administrative Judge