

DATE: January 12, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31474

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history over at least a decade of daily consumption of alcohol in sufficient

quantities that his judgment was impaired. Applicant entered alcohol rehabilitation three times, was diagnosed as an alcohol abuser, admits he is an alcoholic, yet continued drinking alcohol until four months ago. He is not involved in any established or recognized sobriety maintenance program. Applicant filed bankruptcy because his finances deteriorated due to his alcohol abuse. He failed to disclose the use of an alias on his security clearance questionnaire, and avoided discussion of it when first questioned by an investigator. Applicant could not mitigate the alcohol consumption concerns under Guideline G or the personal conduct concerns under Guideline E. Clearance is denied.

STATEMENT OF THE CASE

On August 26, 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 G (Alcohol Consumption), and Guideline E (Personal Conduct) 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 Answer, dated September 22, 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 2, 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 eight exhibits which were admitted into evidence. Applicant appeared and testified. I received the transcript (Tr.) of the hearing on December 18, 2003.

FINDINGS OF FACT

He admitted the allegations in subparagraphs 1.a., 1.b., 1.d., 1.e., 1.f., 1.f., and 2.c.. Those admissions are incorporated herein as findings of fact. Applicant denied the SOR allegations in subparagraphs 1.c., 2.a., and 2.b. 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 50 years old. He is married, with two children, ages 24 and 18 years of age. He has been employed by a defense contractor. Applicant has had a security clearance for at least 25 years. (Tr. 34; Exhibit 1 at 1 to 3)

Applicant was diagnosed as alcohol dependent by a physician working in an alcohol treatment program. Applicant is an alcoholic by his own admission. Applicant was admitted, on his own initiative, to alcohol treatment and rehabilitation programs three times between August 1998 and May 1999. Each admission resulted in diminishing remediation, to such an extent that the final admission was only for one day because Applicant became agitated and was discharged against the advice of the medical professionals. Applicant did participate in Alcoholics Anonymous for about three years, until 2002, after his first admission. He stopped participating because the religious basis of AA made him uncomfortable. In the past four months Applicant, through the use of his own will power, has stopped drinking alcohol. Applicant is helped in his current abstinence by Paxil, a prescription drug, which he finds suppresses his desire for alcohol. Applicant thinks he can control his drinking by his will power, but cannot commit to never drinking alcohol again. (Tr. 14, 22 to 24, 26, 30, 31, 47 to 54, 60, 62, 70; Exhibit 2 at 2 to 6; Exhibit 5 at 1; Exhibit 7; Exhibit 8)

Applicant started drinking in high school, from which he graduated in 1972. He drank socially until the early 1990s when his mother became very ill. While his mother was ill and dying, and then after she died, Applicant drank heavily. His alcohol consumption did not impair his work performance. He consumed alcohol daily for nine years, until the four months preceding the hearing. During the time he was drinking, he would drink three or four beers, or a half pint of whiskey. Furthermore, during that same nine years, Applicant would drink "my whiskey and Coke" while driving home from work, an hour and a quarter journey, because he could not make it home without having one or more drinks. Applicant had certain reactions during this time period motivated by his alcohol abuse, including alcoholic shakes, blackouts when he could not remember what happened in a time period, and trips to Las Vegas to drink. (Tr. 19 to 21, 28, 34, 43, 44, 51; Exhibit 2 at 4 to 7; Exhibit 6 at 2; Exhibit 7)

Applicant's income suffered while he was drinking daily. He would not work overtime at the plant because he wanted to drink instead. His debts accumulated and income dropped to such an extent that Applicant had to file bankruptcy in March 1999. At the present time his finances have improved to such an extent that he has a new truck and savings of \$8,000. (Tr. 21, 28, 29, 33; Exhibit 2 at 7; Exhibit 3; Exhibit 6 at 2)

Applicant used an alias, his middle name as his first name, while doing work in the early 1990s for a federal agency. His work involved weekend time and vacation time to advise this agency on modifications to aircraft it purchased in previous years from Applicant's employer. Applicant did not disclose this work to his employer at the time done, nor until the investigation on his security clearance application (SCA). Applicant did not disclose his alias on his SCA in response to Question 2. Applicant hid his work and used an alias with the intent of hiding his work from his employer. Applicant testified that his disclosure during the investigation was of little interest to his employer, where he as worked for 25 years, but there is no independent verification of that assertion. Applicant terminated the first interview when the questioning reached that issue, and three months later consented to a resumption of the interview and answered the questions about this issue. Applicant was paid \$25 per hour for his advice, and did not report the income on his annual tax returns, allegedly on the advice of this federal agency. (Tr. 11, 12, 16, 35, 37, 38, 40, 55; Exhibit 1 at 1; Exhibit 2 at 2 to 4; Exhibit 6)

When Applicant was interviewed by the Defense Security Service investigator in 2000, he was under the influence of alcohol. He consumed a "few drinks" before the interview, and drove to and from it. (Tr. 17, 27; Exhibit 2 at 2)

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 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.
- (3) Diagnosis by a credentialed medical professional (e.g., clinical psychologist) of alcohol dependence. E2.A7.1.2.3
- (5) Habitual or binge consumption of alcohol to the point of impaired judgment. E2.A7.1.2.5
- (6) Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program. E2.A7.1.2.6

Conditions that could mitigate security concerns include:

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

Guideline E - Personal Conduct:

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility: E2.A5.1.1

Refusal to undergo or cooperate with required security processing, including medical and psychological testing; or E2.A5.1.1.1.

Refusal to complete required security forms, releases, or provide full, frank and truthful answers to lawful questions of investigators, security officials or other official representatives in connection with a personnel security or trustworthiness determination. E2.A5.1.1.2.

Conditions that could raise a security concern and may be disqualifying include: E2.A5.1.2.

- (2) The deliberate omission, concealment, falsification or misrepresentation 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; E2.A5.1.2.2.
- (4) Personal conduct or concealment of information that increases an individual's

vulnerability to coercion, exploitation, or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail; E2.A5.1.2.4.

(5) A pattern of dishonesty or rule violations; E2.A5.1.2.5

(C) Conditions that could mitigate security concerns include:

None

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. I reached conclusions which have a reasonable and logical basis in the evidence of record.

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:

Addressing the alcohol involvement under Guideline G, Applicant admits he drove while consuming alcohol even though he has never been arrested for DUI offenses while Applicant has a diagnosis by a credentialed medical professional of alcohol abuse (DC 3 - *diagnosis by a credentialed medical professional, which includes a clinical psychologist, of alcohol dependence*). Applicant drank daily for at least ten years at least three to four beers, or a half pint of whiskey, often while driving home from work, and during that time period his financial condition deteriorated to the extent that he had to file bankruptcy, which situation was caused by his habitual and daily drinking. Applicant also appeared for questioning by an investigator after having consumed sufficient alcohol to be impaired in his judgment. Despite his impaired finances, Applicant would not work overtime because of his need to drink. The lack of overtime aggravated his financial condition, so he eventually filed for bankruptcy. (DC5 - *habitual consumption of alcohol to the point of impaired judgment*). Applicant continued to drink alcohol after he participated in three alcohol rehabilitation programs, and after he had a diagnosis of alcohol abuse. He continued to drink after he admitted to himself he was an alcoholic (DC 6 - *consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*). The Government has clearly established its case.

Only Mitigating Condition (MC) 3 (*positive changes in behavior supportive of sobriety*) might apply. While Applicant deserves some credit for his four month abstention from alcohol, it is only minimal credit in view of his lengthy and deep involvement with alcohol abuse. He has not had enough time sober as part of an established sobriety maintenance program to justify the application of this MC. Accordingly, I conclude against Applicant on Guideline G.

Considering Paragraph 2 and Guideline E, I conclude the Government established its case. Applicant did not disclose fully his alias as requested in Question 2 of the SCA and to the investigator who asked him about the alias in June 2000 (DC 2 - *the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire or similar form used to conduct investigations or determine security clearance eligibility or trustworthiness*). The use of an alias, failure to disclose the work involved in the use of that alias, and the failure to disclose it absent the official investigation, exposes Applicant to coercion, exploitation, or duress (DC 4 - *personal conduct which increases an individual's vulnerability to coercion, exploitation, or duress*). Applicant's hidden activities regarding his employer over several months, and the failure to declare any income on his tax returns, demonstrates a pattern of dishonesty and rule violations (DC 5 - *a pattern of dishonesty or rule violations*).

There are no mitigating conditions which I apply to these facts. I conclude against the Applicant on Guideline E.

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 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: Against Applicant

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

DECISION

In light of all the circumstances and facts 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.

Philip S. Howe

Administrative Judge