

DATE: June 28, 2004

In re:

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SSN: -----

Applicant for Security Clearance

CR Case No. 02-31974

**DECISION OF ADMINISTRATIVE JUDGE**

**JAMES A. YOUNG**

**APPEARANCES**

**FOR GOVERNMENT**

Francisco J. Mendez, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant successfully mitigated alcohol consumption and criminal conduct security concerns raised by one assault incident and two driving with his ability impaired by alcohol incidents. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 8 December 2003, DOHA issued a Statement of Reasons<sup>(1)</sup> (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 7 January 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 22 March 2004. On 14 April 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 27 April 2004.

At the Government's request, and without objection from Applicant, I amended the allegation in SOR ¶ 2.a. as follows:

- a. That information set forth in subparagraph ~~1.a. and~~ 1.b. and 1.c., above, which constitutes criminal activity.

**FINDINGS OF FACT**

Applicant is a 30-year-old associate technology engineer for a defense contractor. He held a security clearance when he served in the U.S. Air Force from 1995-99. That clearance was transferred to his civilian employment. In January 2001, Applicant completed a security clearance application (SCA) for a periodic update of his clearance. His supervisor and the security officer find Applicant to be an honest, dedicated, and reliable employee.

Applicant admits that, in the past, he consumed alcoholic beverages to excess on a few social occasions. In December 1996, Applicant was arrested for failing to obey a traffic signal; driving without a license, insurance, and vehicle

registration; driving under the influence of alcohol (DUI); and driving with impaired ability (DWAI). His blood-alcohol content on that occasion was .10. He pled guilty to DWAI; the other offenses were dismissed. He had a driver's licence, insurance, and his vehicle was registered-he just did not have proof of such in the vehicle when he was stopped. He was given a deferred sentence, <sup>(2)</sup> fined, ordered to perform community service and attend alcohol education awareness classes, and placed on unsupervised probation for 12 months.

On 13 May 1998, Applicant had a heated argument with his girlfriend, who was living with him. They started to shove each other. Meanwhile, someone called the police. When the police arrived, the girlfriend showed them red marks on her arms. The police cited Applicant for third degree assault. Applicant's girlfriend asked that the charges against Applicant be dropped, but the prosecutors refused to do so. Applicant was convicted of the offense as he was ordered to attend 36 weeks of domestic violence education classes, fined, and placed on one year of supervised probation. The girlfriend, with whom he is no longer involved, remains friends with Applicant and accepts responsibility with Applicant for the dispute. Ex. B. The couple was still together at the time Applicant filed his SCA in January 2001. Ex. 1 at 3. Applicant successfully completed the terms of his probation.

On 18 June 2001, Applicant drove a vehicle under the influence of alcohol. Answer at 2. Applicant was arrested after he spent all day playing softball and drinking alcoholic beverages. His blood-alcohol level was .124. <sup>(3)</sup> Ex. 2. In October 2002, he pled guilty to DWAI. He was sentenced to 15 days in jail, fined, ordered to attend a level II alcohol education program, and ordered to perform 100 hours of community service. His deferred sentencing hearing is scheduled for January 2005.

## 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 that 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, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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.

## CONCLUSIONS

## **Guideline G-Alcohol Consumption**

In the SOR, DOHA alleged Applicant consumed alcohol to the point of intoxication from 1991 to the present (¶ 1.a.), was convicted of DWAI for an incident in June 2001 (¶ 1.b.), and was convicted of DWAI for an incident in December 1996 (¶ 1.c.). 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.

The Government established by substantial evidence the allegations in SOR ¶¶ 1.b. and 1.c. Applicant has a history of alcohol-related incidents away from work-two DWAI's. Although Applicant also had a history of consuming alcohol to the point of intoxication, he has modified that behavior since his last DWAI in 2001. Applicant's alcohol-related problems appear to be in his past. The problem occurred a number of years ago-the last incident was over three years ago. C E2.A7.1.3.2. The level II alcohol education program required him to consult with a counselor. This provided him better insight into his use and previous abuse of alcohol. And Applicant made positive changes in his behavior supportive of sobriety-he does not drink when he has to drive a vehicle, he limits his consumption to one to two drinks, and does not consume alcohol except on special occasions. Applicant realizes another incident will likely result in his losing his security clearance. MC E2.A7.1.3.3. After considering all the circumstances, I am convinced Applicant has his drinking under control and does represent a security threat. I find for Applicant on ¶ 1.

## **Guideline J-Criminal Conduct**

In the SOR, DOHA alleged Applicant has a history of criminal activity involving the two DWAI's and a conviction for third degree assault in 1998. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations in the amended ¶ 2 of the SOR. Applicant admitted criminal conduct-multiple lesser offenses. DC E2.A10.1.2.1, E2.A10.1.2.2. But there is clear evidence of successful rehabilitation. MC E2.A10.1.3.6. Applicant has matured. He is now 30 years old, settled down, married, and has a child. He no longer drinks alcohol to excess. There is little likelihood of recurrence of Applicant's criminal conduct. I am convinced he does not represent a security risk. I find for Applicant on ¶ 2.

## **FORMAL FINDINGS**

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

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Paragraph 1. Guideline J: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

## **DECISION**

In light of all of the circumstances 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.

**James A. Young**

**Administrative Judge**

1. Pursuant to Exec. Or. 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.
2. No evidence was presented as to the length of the deferred sentence.
3. In a test performed on the specimen on 17 July 2002, over a year later, the results were .100. Ex. A.