

DATE: January 15, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-11286

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of alcohol-related incidents. Although he appears to have solved his problem with alcohol, he deliberately omitted from his security clearance application and alcohol interrogatories information about his alcohol-related incidents. Security clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On 26 June 2003, DOHA issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in a writing notarized on 11 August 2003 and elected to have his case decided on the record without a hearing. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the SOR. Applicant received the FORM on 23 October 2003 and submitted a response dated 19 November 2003. The case was assigned to me on 22 December 2003.

FINDINGS OF FACT

Applicant is a 41-year-old senior system engineer for a defense contractor. Applicant served on active duty in the U.S. Navy from 17 July 1980 until 11 August 2000, achieving the rank of petty officer first class (E-6).

On 2 April 1986, Applicant was arrested and charged with driving under the influence (DUI). He seemed very confused, apparently failed to understand the directions of the police officer concerning field sobriety tests, and resisted the officer when he tried to arrest him. Item 11 at 3-4. Applicant was convicted, placed on probation, ordered to perform community service, and fined. Item 12 at 4. Applicant's license was suspended indefinitely because he failed to attend driver improvement school as required by the court. *Id.* at 2. Applicant's probation was extended because he failed to

complete his sentence to community service within the allotted time period. *Id.* at 3.

On 9 October 1992, Applicant was punished under Article 15, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 815, for assault and being drunk and disorderly. The punishment consisted of reduction in rank for E-6 to E-5, restriction for 60 days, and forfeiture of pay. Item 8 at 1; Item 10 at 1. The punishment was later mitigated to forfeiture of pay. Item 10 at 2. On 9 April 1994, Applicant was apprehended and charged with drunken driving.

On 13 May 1994, Applicant was punished under Article 15, UCMJ, for operating a vehicle while impaired by alcohol. The punishment consisted of restriction to base for 30 days (suspended for six months) and forfeiture of pay. Ex. 14.

On 12 May 2000, on the way home from his retirement party, Applicant was leaving the parking lot when his vehicle scraped another. When the police arrived, he was arrested and charged with DUI alcohol (DUIA), hit and run, driving without a valid license, and falsely identifying himself to a peace officer. Item 13. He was convicted of the DUIA and sentenced to 180 days in jail, suspended, and was fined. The other charges were dismissed. From May 2000 until June 2000, Applicant voluntarily attended an outpatient alcohol treatment program.

Since leaving the Navy, Applicant has had no incidents with alcohol. His performance report from his employer shows that he exceeds expectations, and he was recommended for the company's presidential award.

On 21 August 2001, Applicant executed a security clearance application (SCA) in which he certified that his statements were "true, complete, and correct to the best of his knowledge and belief." Question 24 asked if he had ever been charged or convicted of any offenses related to alcohol or drugs. Applicant answered "yes," but listed only his 2000 conviction. Item 4 at 6. Question 24 asked if, in the previous seven years, Applicant had been subject to court-martial or other disciplinary actions under the Uniform Code of Military Justice, to include nonjudicial punishment. *Id.* Applicant answered "no."

On 13 February 2003, Applicant answered DOHA's interrogatories concerning his use of alcohol. Item 5. Question 5 asked if Applicant had been arrested, charged, or held by law enforcement authorities for any reason. If the answer was yes, Applicant was to "provide date(s), reason(s) or charge(s) and disposition or penalty imposed for each offense." Applicant answered "yes" and listed only the 2000 DUIA arrest and conviction.

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 was charged with DUIA, hit and run, driving without a driver's license, and falsely impersonating a police officer in 2000 (¶ 1.a.); charged with and convicted of drunk driving on a military installation in 1994 (¶ 1.b.); convicted of drunk and disorderly in 1992 (¶ 1.c.), charged with and convicted of driving under the influence in 1986 (¶ 1.d.); and attended an alcohol treatment program in 2000 (¶ 1.e.). 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 and Applicant's admissions each of the allegations in the SOR ¶ 1. (2) Applicant's alcohol-related incidents away from work raise a security concern that may disqualify him from obtaining a security clearance. DC E2.A7.1.2.1. Applicant's latest alcohol-related incident was almost four years ago and there is no indication of a recent problem. MC E2.A7.1.3.2. Although it took almost 20 years, Applicant now appears to understand that he has a drinking problem. After the 2000 incident, he sought counseling on his own. He left the counseling because of his separation from the Navy and subsequent move out of the area. However, he has a support network that is helping him cope. Applicant has made positive changes in his behavior supportive of sobriety. MC E2.A7.1.3.3. After considering the totality of the circumstances of this case, I am persuaded Applicant's alcohol problem is under control and does pose a risk to national security.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified his SCA by listing only one of his alcohol-related incidents in answering question 24 (¶ 2.a.) and by answering no to question 25 concerning whether he had been the subject of a court-martial or other disciplinary proceedings under the UCMJ in the previous seven years (¶ 2.c.); and he deliberately falsified interrogatories by listing only one of his alcohol-related offenses (¶ 2.b.). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence and Applicant's admissions that Applicant failed to provide "true, complete, and correct" answers to question 24 on his SCA and to the alcohol interrogatories. The deliberate omission or falsification of relevant and material facts from an SCA raises a security concern that may disqualify Applicant from holding a security clearance. DC E2.A5.1.2.2. Applicant asserts he did not provide information on his other alcohol-related offenses because he was unsure of the dates and did not want "unconfirmed information to be provided and then changed several times." Yet, Applicant never provided information revealing that he had been charged with alcohol-related offenses at other times and offer to find out what the dates were. He omitted the information from three documents spanning approximately 18 months -the SCA in August 2001, his statement to a Defense Security Service agent in January 2002, and his alcohol interrogatories in February 2003. I am convinced Applicant deliberately omitted information about his use of alcohol from these documents that were relevant and material to a determination of his security worthiness. None of the mitigating conditions under Guideline E, apply to Applicant's case. I find against Applicant on ¶¶ 2.a. and 2.b.

The Government did not establish Applicant's answer to question 25 was not "true, complete, and correct." Question 25 asked Applicant for his military disciplinary record for the previous seven years. The nonjudicial punishment Applicant received in April 1994 was more than seven years before he completed the SCA on 21 August 2001. I find for Applicant on ¶ 2.c.

FORMAL FINDINGS

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

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Paragraph 2. Guideline ?E AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: 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.

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. Nonjudicial punishment under Article 15, UCMJ, 10 U.S.C. § 815, is not a conviction. However, it is an adjudication of guilt.