

DATE: May 12, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-12317

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Jonathan Beyer, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In 2000, the Applicant was arrested for driving while intoxicated (DWI). He was diagnosed as "alcohol abuse" solely because of his DWI. He still consumes alcohol. No other treatment was recommended, other than the DWI school which he attended. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from the DWI arrest. Clearance is granted.

STATEMENT OF THE CASE

On October 25, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(U\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On December 13, 2002, the Applicant answered the SOR and requested a hearing. The case was assigned to me on January 27, 2003. A Notice of Hearing was issued on February 20, 2003, scheduling the hearing, which was held on March 12, 2003.

The Government's case consisted of four exhibits (Gov Ex). The Applicant relied on his own testimony and four exhibits (App Ex). Following the hearing, two additional documents were received, provisions having been made for their submission following the hearing. Department Counsel (DC) having no objection to their admission, the submissions were admitted as applicant's exhibit E. The transcript (Tr.) of the hearing was received on March 20, 2003.

The SOR alleges alcohol consumption (Guideline G). The Applicant admits he was arrested in December 2000, but denies he was diagnosed as "alcohol abuse" and denied he consumed alcohol daily.

FINDINGS OF FACT

The Applicant is 46-years-old, has worked for a defense contractor since August 1980, and is seeking to maintain a security clearance. The Applicant is a dedicated, trusted, respectable individual with integrity, a strong sense of values,

and extremely diligent in his responsibilities. (App Ex A, B, C) "He has the strong work ethics and attitude that ensures the customers' needs are always met and the constant requests to have him on the job reflect that appreciation." (App Ex D) He is friendly, hard working, professional, caring, considerate, conscientious, and reliable. The Applicant enjoys his work and constantly strives for perfection. (App Ex F)

The Applicant started drinking at age 17. In a sworn statement given in March 2001, he said has had a beer or two every night after work since 1980 . At the hearing, he stated he was not drinking every night, but had a beer every two, three, or four days and two beers on weekends. He last remembers being intoxicated 15 or 20 years ago.

In December 2000, the Applicant was at a bar drinking with his girlfriend. He consumed a couple of shots of liquor and four beers over a five or six hour period. He was arrested with a Blood Alcohol Content (BAC) of .10% and .11%. (Gov Ex 2) The Applicant attended two court appearances, only to have the matter continued. In June 2001, at his third court appearance, he was found not guilty because the prosecution failed to appear. (Gov Ex 3)

In February or March 2001, the Applicant attended a Department of Motor Vehicle (DMV) hearing. The Applicant's driver's license was revoked for 30 days. As part of applying for a temporary work permit the DMV required a substance abuse assessment. (Gov 4) The diagnostic impression listed "Alcohol Abuse" and ruled out alcohol dependence. The report also indicates "serious depression" in the Applicant's psychiatric status during the prior 30 days. The Applicant was going through a divorce and had been seeing a mental health therapist for marital counseling.

The recommended treatment listed in the substance abuse evaluation⁽²⁾ was intensive outpatient/partial hospitalization (IOP). However, in the compliance report from the IOP, the hand written notes of the Substance Mental Health Therapist (SMHT) did not indicate the Applicant had to attend IOP treatment sessions or the extended care program. The evaluation's recommendation conflicts directly with a letter (App Ex E) submitted by the same SMHT who had signed the initial evaluation. In her letter of March 2003, the SMHT states:

. . . I knew immediately that I would not be recommending alcohol treatment other than the DWI classes that he was already planning to attend . . . I did not recommend Intensive Outpatient (IO) program, but in the assessment it was stated as a recommendation. As I already stated, this was a mistake. (The Applicant) was not required to complete the IOP program. (He) completed exactly what was recommended to him. (App Ex E)

The therapist informed the Applicant she was not recommending alcohol treatment other than the DWI class he had planned to attend. The diagnosis of the substance abuse evaluation was "Alcohol Abuse." The SMHT stated such a diagnosis is always given whenever a person receives a DWI, because such an arrest indicates alcohol was abused with legal consequences .

From January 2001 to February/March 2001, the Applicant attended DWI school. He was glad he attended class. He learned it was a mistake to drink and drive and learned what could have happened. He understands if a person has anything to drink, they should not drive. He is now aware how his actions affect many people. He also understands it is up to the individual to correct the problem. Since his arrest two and one half years ago, he is more aware, more careful.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive as well. In that vein, the government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to an Applicant's lack of security worthiness.

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. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Alcohol Consumption (Guideline G) 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.

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, fighting, child or spouse abuse, or other criminal incidents related to alcohol use. (E2.A7.1.2.1.)

Conditions that could mitigate security concerns include:

1. The alcohol related incidents do not indicate a pattern. (E2.A7.1.3.1.)
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.)

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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.* 484 U.S. 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." Executive Order 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.

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*, at 531. All that is required is proof of facts and circumstances which 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline G, Alcohol Consumption. In December 2000, the Applicant was drunk and arrested for DWI. As such, Disqualifying Conditions (DC) 1-~~(3)~~ applies.

The record is insufficient to determine if the substance abuse evaluation was made by a licensed clinical social worker. The writer's credentials are "MA LSAI, LMHC, Substance/Mental Health Therapist." There is no evidence this equates to a licensed clinical social worker. Therefore, DC 4⁽⁴⁾ is inapplicable. It is not essential to determine the evaluator's qualifications because the diagnosis was an automatic, predetermined conclusion based on the arrest. The SMHT stated a diagnosis of alcohol abuse is always made where someone was arrested for DWI. By the SMHT's definition, any arrest involving alcohol means alcohol was abused with legal consequences.

Although the Government established a *prima facie* case against him, he has nevertheless, successfully mitigated those security concerns. Following his DWI arrest, he attended DWI school and learned it was a mistake to drink, learned the ramifications of drinking, and understand he should not drive if he has had anything to drink. He is now more careful and aware how his actions affect many people. The substance/mental health therapist did not recommend him for alcohol treatment other than the DWI class. The Applicant's attitude is a positive change supportive of sobriety. Mitigating Condition 3⁽⁵⁾ applies.

This arrest is the Applicant's only alcohol related incident. As such, this does not indicate a pattern. MC 1⁽⁶⁾ applies. The problems occurred more than two years ago and there is no indication of a recent problem. MC 2⁽⁷⁾ applies. The Applicant has strong recommendations from coworkers as to his integrity, sense of values, and responsibilities. With a single arrest, no recommendation for alcohol treatment, the diagnosis being made solely because of the arrest, and with sufficient mitigating factors, I find for the Applicant as to SOR subparagraphs 1.a, 1.b, and 1.c.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3., Paragraph 7., of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline G (Alcohol Consumption): FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

DECISION

In light of all 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 the Applicant.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992 as amended.
2. The Applicant did not receive a copy of the evaluation at the time it was made. He first saw it when DC sent him a copy in preparation for the hearing.
3. 1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse

abuse, or other criminal incidents related to alcohol use. (E2.A7.1.2.1.)

4. DC 4. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program. (E2.A7.1.2.4.)
 5. MC 3. Positive changes in behavior supportive of sobriety. (E2.A7.1.3.3.)
 6. MC 1. The alcohol related incidents do not indicate a pattern. (E2.A7.1.3.1.)
 7. MC 2. The problem occurred a number of years ago and there is no indication of a recent problem. (E2.A7.1.3.2.)