

DATE: March 5, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-12874

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 33-year-old man who has been employed by a government contractor as an executive assistant since July 2000. He was convicted of driving while intoxicated in May 1993 and November 1995, and another minor offense that may have been alcohol related in March 2000. He completed an alcohol program in June 1996, was considered not to be chemically dependent on alcohol, and received a favorable prognosis at discharge. Applicant has mitigated the security concerns that arise from his alcohol consumption. Clearance is granted.

STATEMENT OF THE CASE

On August 8, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline G (alcohol consumption). Applicant submitted a response to the SOR, dated August 27, 2002, and requested a clearance decision based on the written record without a hearing. In his response to the SOR, Applicant admitted all SOR allegations.

Department Counsel prepared a File of Relevant Material (FORM) on November 19, 2003, that was mailed to Applicant on November 20, 2003. Applicant submitted a response to the FORM dated December 29, 2003, that was forwarded to Department Counsel on December 30, 2003. Department Counsel did not object to Applicant's response. The case was assigned to me January 15, 2004.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 33 years old, single, and has never been married. He is a high school graduate, and has been employed as an executive assistant by a defense contractor since July 2000. Applicant served on active duty with the United States Navy from October 1989 to November 1999, attained the rate of Yeoman Second Class, paygrade E-5, and received an honorable discharge. He submitted evaluations covering most of his active duty that indicate he was an excellent yeoman and was highly regarded by his superiors. However, for unexplained reasons, he did not submit evaluations for the last two years of his service. He was unemployed during the period between his release from active duty and being hired by his present employer.

In May 1993, shortly after returning from an overseas assignment with the Navy, Applicant accompanied a shipmate to the shipmate's hometown for a couple of days liberty. While there, Applicant went to a lounge with his shipmate and some friends and consumed alcohol. While driving home from the lounge, Applicant was arrested for Driving While Intoxicated (DWI). He was convicted of DWI and sentenced to pay a fine, perform 24 hours community service work, and had his driving privileges suspended in the state of the offense. Applicant was 22 years old at the time.

In November 1995, Applicant attended a bachelor party after working that day from 4:00 A.M. to 6:00 P.M. He consumed alcohol from approximately 8:00 P.M. to shortly after midnight and fell asleep at the wheel while driving home. He struck a roadside barrier and was arrested for DWI. Applicant registered 0.11 and 0.13 on breathalyzer tests that were administered. He was placed on 18 months probation, fined, and required to complete an alcohol abuse program in which he was enrolled. Applicant was 24 years old at the time of this offense.

Applicant was last arrested in March 2000, and convicted of drunkenness. He had left the city of his residence in the evening to travel to a distant state for the purpose of attending a wedding. He arrived at his destination during the early morning hours, attended the wedding, visited with relatives and friends, and then went out with friends. Believing he was too tired to drive safely, Applicant pulled into the driveway of a house and slept in his vehicle. The homeowner contacted the police at about 7:00 A.M. and Applicant was charged with drunkenness. Although he denies being intoxicated, Applicant posted and forfeited a bail rather than remain in jail or travel back to contest the charge.

Applicant was referred to an alcohol and drug recovery program by the attorney who represented him in connection with the November 1995 DWI arrest. An intake evaluation was performed on February 8, 1996 that concluded Applicant did not appear chemically dependent on alcohol. The evaluator did, however, recommend that Applicant attend six weeks of education group followed by eight weeks of therapeutic group to prevent any progression toward dependence. Applicant successfully completed the recommended group sessions on June 24, 1996. He tested negative on all alcohol screens that were administered during the program. Continued abstinence from alcohol was recommended at discharge.

Applicant began drinking alcohol when he was a freshman in high school. Through high school and while in the Navy he appears to have consumed alcohol on a fairly regular basis, and at times to excess. Notably, the evaluations he submitted indicate that he did not drink to an extent that had any adverse impact on his Navy career. Of course, because he did not submit reports for the last two years of his service, neither a positive nor negative inference can be drawn for those years. Applicant has now purchased a house, resides with whom he describes as his "significant other," and credibly asserts, that following two years of abstinence after his 1995 arrest, he now drinks only on a social basis.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, with its respective DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁴⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

Under Guideline G, alcohol consumption is a security concern because 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. Those who abuse alcohol are more likely than others to engage in high risk, thoughtless, and sometimes violent behavior. Recurrent use of alcohol to the point of intoxication may affect an individual's ability to exercise the care, judgment, and discretion necessary to protect classified information.

Applicant was convicted of alcohol-related driving offenses that occurred in 1993 and 1995. He was also charged with drunkenness and forfeited his bail rather than contest the charge in 2000 for an offense in which he maintains he was not intoxicated. Disqualifying Condition (DC) 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* applies in this case.

Applicant obtained an alcohol abuse evaluation in 1996 and was diagnosed as not being alcohol dependent. He successfully completed a recommended course of treatment at that time designed to prevent any progressions toward alcohol. His drinking does not appear to have had any adverse impact on his work performance, either in the Navy or in civilian life. He has now been employed in a responsible position with a government contractor for 3 ½ years, has purchased a house, and appears to have assumed a mature and stable lifestyle. Mitigating Conditions (MC) 1: *The alcohol related incidents do not indicate a pattern*; 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 apply* in this case. Guideline G is decided for Applicant.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find that Applicant has overcome the case against him and satisfied his ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance.

FORMAL FINDINGS

SOR ¶ 1-Guideline G: For the Applicant

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: 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 Applicant. Clearance is granted.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.