

DATE: March 15, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-13019

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

FOR APPLICANT

John C. Moore, Jr., Personal Representative

SYNOPSIS

Applicant, who is now 45 years old, began using alcohol and marijuana as an adolescent.

His drug use as a young man included hashish, cocaine, LSD, methamphetamines, and speed. By the time he was in his 30s, he was addicted to heroin. He was a daily user of heroin for three years. He entered a drug treatment program in 1993 and between 1993 and 2001 he abstained from alcohol and all illegal drug use. In 2001, he purchased and used heroin while possessing an interim security clearance. Applicant's illegal involvement with drugs raises serious security concerns. 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 May 28, 2003, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline H (Drug Involvement) and Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on June 26, 2003, and elected to have a hearing before an administrative judge. The case was assigned to me on September 10, 2003. On October 6, 2003, 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 transcript (Tr.) of the proceeding on October 15, 2003.

FINDINGS OF FACT

The SOR contains 25 allegations of disqualifying conduct. Twenty allegations relate to conduct under Guideline H, Drug Involvement. Five allegations relate to conduct under Guideline G, Alcohol Consumption. Applicant admitted the 19 factual allegations in subparagraphs 1.a. through 1.h. and 1.j. through 1.t. of the SOR involving his illegal use of drugs under Guideline H. He denied allegation 1.i because it incorrectly identified the facility where he obtained

treatment for his substance abuse. Applicant admitted the five factual allegations in subparagraphs 2.a. through 2.e. of the SOR involving excessive alcohol consumption under Guideline G. Applicant's admissions are incorporated as findings of fact.

Applicant was born in 1958 and is now 45 years old. He holds a bachelor of science degree in computer science and has been employed as a distribution and network engineer by a government contractor since 2000. His friends, colleagues, and supervisors submitted letters praising his personal qualities and professionalism. (Ex. B through Ex. G.)

Applicant began abusing alcohol as a teenager. From about 1973 to 1991, he consumed alcohol weekly to daily. In June 1977, he was charged with driving while intoxicated. He was convicted of reckless driving and fined. In July 1984 and in June 1987, Applicant was charged with driving while intoxicated. On both occasions he was fined. Applicant has experienced countless blackouts resulting from his alcohol abuse. In 1993, after treatment in an alcohol and drug abuse program, Applicant stopped drinking completely. He drank alcohol on one occasion in 2001 when he was abusing heroin, although he says he did not drink to intoxication. He has not drunk alcohol since 2001 and says he does not intend to drink alcohol in the future.

Applicant has a long history of drug abuse. He began using marijuana in approximately 1970, at the age 12 or 13. Throughout his adolescence and young manhood, he used several illegal drugs habitually. From about 1973 to 1991, he used marijuana weekly to three times a day. In June 1974, he was charged with possession of marijuana and was placed on probation. In September 1977, he was charged with possession of marijuana, convicted, and placed on probation. In September 1978 and in January 1980, he was charged with possession of marijuana. On both occasions he was fined. From about 1973 to 1990, he used hashish monthly to weekly. From 1973 and 1978 he used LSD approximately 9 to 11 times. From 1976 to 1991, he used cocaine monthly to daily. From about 1982 and 1986 he used methamphetamines monthly. In about 1983, he contracted Hepatitis C from his intravenous drug use.

Applicant's drug use continued. From about 1987 and 1990, he used speed weekly to daily. From 1989 to 1993, he used heroin daily. In April 1993, Applicant voluntarily underwent treatment for his addiction at an alcohol and drug treatment center. He successfully completed the drug treatment program in May 1994. He did not use drugs again until 2001.

In the winter of 2000/2001 Applicant acquired an upper respiratory infection, for which his physician prescribed a narcotic cough syrup in January 2001. Applicant informed the physician of his previous addictions, and the physician told him to take the cough syrup as prescribed. Applicant did not take the prescription as prescribed. He doubled up on the doses and felt affects similar to those he experienced when using heroin. He became aware that he was abusing the narcotic cough syrup. He asked his physician to renew the prescription, and she did so. When the renewal authorization expired, Applicant sought out another physician and requested two additional prescription authorizations for narcotic cough syrup. The second physician prescribed narcotic cough syrup twice for Applicant. In March and April 2001, Applicant purchased and used heroin at least twice. He was charged with heroin possession in April 2001. In June 2001 he was convicted, sentenced to one year probation, and fined \$50.00. Applicant was admitted to a drug treatment center, and during his intake interview at the center, he admitted that he was a heroin addict. He was diagnosed by a medical health professional in May 2001 as opiate dependent and suffering from opiate abuse.

On March 1, 2000, Applicant completed and certified a security clearance application (SF-86). He was granted an interim security clearance on or about March 15, 2000. His abuse of the narcotic cough syrup and his purchase and use of heroin at least twice occurred while he held an interim security clearance. He did not think it was necessary to tell his employer about his drug use and abuse while holding an interim security clearance.

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 and mitigating conditions 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 H, Drug Involvement

In the SOR, DOHA alleged under Guideline H that Applicant purchased and used heroin at least twice in 2001 while holding an interim security clearance (¶¶ 1.a. and 1.b.); that he was arrested in 2001 and charged with possession of heroin and subsequently convicted, sentenced to one year of probation, and fined (¶ 1.c.); that in 2001, after his arrest and conviction for possession of heroin, he attended a drug treatment program (¶ 1.d.); that he stated he was a heroin addict when he was admitted to the drug treatment program (¶ 1.e.); and that he was diagnosed as suffering from opium dependence and opiate abuse in May 2001. (¶ 1.f.). The SOR further alleges that in January 2001 Applicant abused prescription cough syrup (¶ 1.g.); that from 1989 to 1993, he used heroin daily (¶ 1.h.); that he received treatment for drug abuse and self-diagnosed heroin addiction from February 1993 to May 1994 (¶ 1.i.); that he used marijuana, cocaine, hashish, LSD, methamphetamines, and speed at various times and habitually over a period of years beginning in 1973 until 1991 (¶¶ 1.j., 1.k., 1.l., 1.m., 1.n., and 1.o.); that he contracted Hepatitis C in 1983 from intravenous drug use (¶ 1.p.); that he was charged and fined for possession of marijuana in 1980 and 1978 (¶¶ 1.q., and 1.r.); and that he was charged and placed on probation for possession of marijuana in 1977 and 1974 (¶¶ 1.s. and 1.t.).

The Government's concern with Guideline H conduct is that it raises questions regarding an individual's willingness to protect classified information. Drug abuse or dependence may impair social or occupational functioning, thereby increasing the risk of an unauthorized disclosure of classified information. ¶ E2.A8.1.1.1.

Drugs are defined under Guideline H as mood and behavior-altering substances, including drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, and inhalants and other similar substances. ¶¶ E2.A8.1.1.2., E2.A8.1.1.2.1., E2.A8.1.1.2.2. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. ¶ E2.A8.1.1.3.

Through Applicant's own admissions, the Government established a *prima facie* case that he used and purchased illegal drugs. Applicant has admitted Guideline H drug involvement specified in the SOR and identified as disqualifying under ¶¶ E2.A8.1.2.1. and E2.A8.1.2.2 of Guideline H. He has been diagnosed by a credentialed medical professional as an abuser of drugs and drug dependent, and he has been evaluated for this dependence by a staff member of a recognized drug treatment program. Thus, disqualifying conditions E2.A8.1.2.3. and E2.A8.1.2.4. also apply.

The record shows that Applicant's most recent drug involvement occurred in 2001, and his probationary period

following his conviction for heroin use ended in 2002. Thus, his drug involvement was recent and mitigating condition E2.A8.1.3.1 does not apply. Applicant's use of heroin after being granted an interim security clearance raises serious questions under E2.A8.1.1 regarding his willingness or ability to protect classified information.

It is also clear from the record that Applicant's involvement with drugs was neither isolated nor aberrational, for it occurred over a period of almost 30 years, from adolescence to his early 40s. Thus, mitigating condition E2.A8.1.3.2. does not apply. While Applicant asserts a sincere resolve not to become involved with drugs in the future, and his medical evaluations suggest he possesses strong motivation to overcome his addiction, it is too soon to tell whether he will be able to set aside patterns of behavior that he has pursued for most of his life. Thus, in evaluating the record as a whole pursuant to the whole person concept, I conclude that mitigating conditions E2.A8.1.3.3 and E2.A8.1.3.4. do not apply at this time. Accordingly, the SOR allegations relating to Guideline H conduct are concluded against the Applicant.

Guideline G, Alcohol Consumption

In the SOR, DOHA alleged under Guideline G that Applicant was charged with driving while intoxicated in 1984 and 1987 and fined (¶¶ 2.a. and 2.b.); that he was charged with driving while intoxicated in 1977 and was convicted of reckless driving and fined (¶ 2.c.); that he had experienced countless blackouts as the result of consuming alcohol to excess (¶ 2.d.); and that from 1973 to 1991, he consumed alcohol weekly to daily.(¶ 2.e.).

The Government's concern with Guideline G conduct is that excessive alcohol consumption increases the risk of unauthorized disclosure of classified information due to carelessness and often leads to the exercise of questionable judgment, unreliability, and a failure to control impulses. E2.A7.1.1.

Through Applicant's own admissions, the Government established a *prima facie* case that he consumed alcohol to excess. Applicant admitted Guideline G alcohol consumption and alcohol-related behavior specified in the SOR and identified as disqualifying under ¶¶ E2.A7.1.2.1. and E2.A7.1.2.5.

The record shows that Applicant was charged three times with driving under the influence of alcohol, in 1977, 1984, and 1987. The first arrest occurred 27 years ago, the second arrest occurred 20 years ago, and the third arrest occurred 17 years ago. While the alcohol-related incidents indicate a pattern, Applicant's problems with driving under the influence of alcohol occurred a number of years ago, and there is no indication of a recent problem. Thus, while mitigating condition E2.A7.1.3.1 does not apply, mitigating condition E2.A7.1.3.2. does apply. Accordingly, the finding is for Applicant on SOR allegations 2.a., 2.b., and 2.c.

Applicant admitted alcohol use daily to weekly from 1973 to 1991, and he experienced an unspecified number of blackouts from his excessive use of alcohol during that period. He stopped using alcohol in 1993. Applicant's blackouts occurred a number of years ago and there is no indication of a recent problem that would cause them to recur. Thus, mitigating factor E2.A7.1.3.2. applies to the allegation of blackouts, and the finding is for Applicant as to SOR allegation 2.d.

From 1973 to 1991, Applicant consumed alcohol weekly to daily. Applicant participated in a substance abuse program in 1993 and abstained from alcohol and drug use for eight years thereafter. He has not used alcohol since 2001 and he did not drink to intoxication the one time he used alcohol in 2001. However, his use of alcohol, after an eight-year period of abstinence, occurred when he used heroin in 2001, suggesting perhaps a connection between the two dependencies. Applicant appears to be working diligently to avoid another relapse, and at his hearing he emphatically stated that he did not intend to drink alcohol in the future. From May to August 2001, he participated in a drug relapse prevention program, and, since then, he has been actively pursuing his own rehabilitation through Narcotics

Anonymous.⁽³⁾ After reviewing the totality of the evidence in light of the whole person standard as identified at ¶ 6.3 of the Directive, I find that mitigating conditions E2.A7.1.3.1, E2.A7.1.3.2, and E2.A7.1.3.3 apply to SOR allegation ¶ 2.e. Accordingly, SOR allegation ¶ 2.e. is concluded for the Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline H: 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

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n.: Against Applicant

Subparagraph 1.o.: Against Applicant

Subparagraph 1.p.: Against Applicant

Subparagraph 1.q.: Against Applicant

Subparagraph 1.r.: Against Applicant

Subparagraph 1.s.: Against Applicant

Subparagraph 1.t.: Against Applicant

Paragraph 2. Guideline G: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: 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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Applicant's diagnosis in the outpatient relapse prevention program did not specify excessive use of alcohol as a separate condition. Rather, alcohol was identified as one of several drugs that Applicant had used, and his psychiatric evaluation identified a diagnosis of opiate abuse and dependence. (Ex. 4, at 37-38.)