

DATE: March 29, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17261

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Catherine Engstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was convicted on three separate occasions of driving while impaired because of alcohol consumption. Applicant deliberately falsified his security clearance application by denying he had ever been convicted of any alcohol-related offenses. Applicant failed to mitigate the alcohol consumption, personal conduct, and criminal conduct 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 24 July 2003, DOHA issued a Statement of Reasons (SOR) ⁽¹⁾ detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 20 August 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 22 December 2003. On 23 February 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 2 March 2004.

FINDINGS OF FACT

Applicant is a 46-year-old firearms instructor for a defense contractor. He served 23 years in the U.S. Marine Corps, retiring at the grade of E-8. Ex. 1 at 1-3.

Applicant began drinking alcoholic beverages in approximately 1975, when he was a 19-year-old marine. Tr. 13. In 1977, Applicant was arrested for driving while intoxicated (DWI). He spent 14-16 hours in jail before being released. As a result of the DWI, applicant was fined \$300 and had his driver's license revoked for six months. Applicant noted this arrest on a security clearance application (SCA) he completed in August 1985 while he was in the Marine Corps. Ex. 3 at 2, 3.

In August 1994, applicant was arrested for driving under the influence of alcohol (DUI). He pled guilty to the charge, was fined, and was ordered to pay court costs. Applicant's driver's license was restricted and he was ordered to complete an alcohol safety awareness program that required him to attend 12 weekly sessions of out-patient counseling and to attend Alcoholics Anonymous (AA) meetings. One year later, after Applicant successfully completed the terms of his sentence, the restrictions were removed from his driver's license. Ex. 5 at 1.

On 31 December 1999, applicant was arrested for DUI on his way to a New year's eve party. In April 2000, he pled guilty to DUI, was fined, ordered to pay court costs, and issued a restricted driver's license for one year. The court also required Applicant to complete an alcohol safety awareness program that included 12 weekly sessions of counseling and attendance at AA meetings. The restrictions were removed from Applicant's driving privileges after he successfully completed the terms of his sentence. Ex. 5 at 2.

On 30 May 2001, Applicant completed another SCA in which he certified the contents were true, complete, and correct to the best of his knowledge and belief, and acknowledged that any knowing and willful false statements violated 18 U.S.C. § 1001. Question 24 of the SCA asked if Applicant had *ever* been charged with or convicted of any alcohol-related offenses. Applicant answered "no." Ex. 1 at 5.

After he was interviewed by a Defense Security Service (DSS) agent concerning his SCA, Applicant provided a signed, sworn statement, dated 15 March 2002, in which he admitted the 1994 and 1999 DUI arrests and convictions. Ex. 5. On 3 April 2003, DOHA issued interrogatories concerning Applicant's use of alcohol. Question 5 asked if Applicant had been arrested, charged, or held by any law enforcement agencies for any reason. On 11 April 2003, Applicant answered "yes" to question 5, but listed only the 1999 incident. Applicant claimed the "incident was an isolated and stupid mistake." Ex. 4 at 5. He admitted consuming alcoholic beverages a week prior, on 4 April 2003, but stated he did not intend to drink alcoholic beverages in the future. *Id.* at 3. Applicant apparently continued to consume alcoholic beverages until he received the SOR at the end of July 2003. Tr. 15, 24.

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 at times from 1977 to April 2003 (¶ 1.a.), was arrested and convicted of DUI in 1999 and 1994 (¶ 1.b., 1.c.), was arrested for DWI in 1977 (¶ 1.d.), and continues to consume alcohol (¶ 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 that Applicant was involved in three alcohol-related incidents of driving while his faculties were impaired by alcohol. DC E2.A6.1.2.1. Applicant claims not to have had consumed any alcoholic beverages since August 2003 when he received the SOR. He called it a "sanity check." Tr. 24. By discontinuing his use of alcohol, Applicant has made positive changes in his behavior supportive of sobriety. MC E2.A7.1.3.3. But 20 years, three alcohol-related incidents, having his driving privileges restricted three times, and completing alcohol counseling twice failed to convince him he had an alcohol problem. Apparently even being interviewed by a DSS agent and later having to complete interrogatories about his alcohol consumption did not get his attention. It took the SOR to get him to see the light. His decision to stop drinking is commendable. However, sufficient time for Applicant to establish a favorable track record of sobriety has not elapsed. I find against Applicant, except for ¶ 1.e.

Guideline E--Personal Conduct

DOHA alleged Applicant deliberately falsified relevant and material facts on his SCA by denying he had been arrested or convicted of any alcohol-related offenses (¶ 2.a.). Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that an applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence and Applicant's admissions that Applicant deliberately falsified relevant and material facts in his SCA by denying his arrests and convictions for alcohol-related offenses. DC E2.A5.1.2.2. After reviewing all of the evidence in this case, I conclude Applicant's testimony denying he intentionally omitted the alcohol-related arrests from his SCA is just not credible. It contradicts his Answer to the SOR. Furthermore, his failure to correctly account for all three incidents in his statement to the DSS agent (Ex. 5) and his interrogatories (Ex. 4), after he should have known how seriously the government took this issue, demonstrates Applicant's lack of reliability and credibility. I find against Applicant.

Guideline J--Criminal Conduct

DOHA alleged Applicant was arrested three times for driving while his faculties were impaired by alcohol (¶ 3.a.) and Applicant's deliberate falsification of his SCA constitutes a violation of 18 U.S.C. § 1001. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan* at 484 U.S. at 527. After considering all the evidence, I am convinced Applicant deliberately falsified his answer to question 24 on his SCA.

The Government established by substantial evidence and Applicant's admissions that he was convicted of multiple lesser offenses (driving while impaired) and committed a single serious offense (intentionally providing false information on his SCA). DC E2.A10.1.2.2. None of the listed mitigating conditions under the guideline apply. I find against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline G: 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.: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Paragraph 1. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against 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.