

DATE: December 4, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17467

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Marjorie Ann Davis, Personal Representative

SYNOPSIS

Fifty-three-year-old employee of a defense contractor has a history of excessive alcohol consumption and several alcohol-related incidents in the 1970s. In 1991 and 1996, Applicant was diagnosed as being alcohol dependent. After short periods of abstinence, Applicant resumed consuming alcohol in even greater quantities. Up until he stopped drinking shortly before the hearing, Applicant had been consuming up to one-fifth of a gallon of brandy each weekend. There is nothing in Applicant's history to suggest he will succeed in stopping his excessive consumption of alcohol without intervention and treatment which he is not seeking. 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 29 August 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 G (Alcohol Consumption), Guideline E (Personal Conduct), and Guideline F (Financial Considerations) of the Directive. Applicant answered the SOR in writing on 3 September 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 7 November 2003. On 24 November 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 3 December 2003.

FINDINGS OF FACT

Applicant is a 53-year-old sandblaster who has been employed by a defense contractor for over 32 years. He has held a security clearance for over 20 years. Tr. 32-35.

Applicant began drinking alcoholic beverages in his early 20s. He went from drinking 3-4 mixed drinks or beers a day to consuming one-fifth of liquor per week. He suffered alcoholic blackouts and could not recall what he had done the

previous night or how he got home. Tr. 37. His drinking affected his effectiveness on the job. Ex. 5 at 2. The warnings and three-day suspension for being absent from work he received from his employer were probably the result of his alcohol consumption. *Id.*

On 14 July 1974, Applicant was arrested for drunk driving. He was eventually convicted of the reduced charge of improper driving and fined \$150. Applicant was arrested for driving under the influence (DUI) on 9 January 1977 and convicted on 19 July 1977. He was fined \$50 and ordered to pay court costs. On October 12, 1977, he was arrested and charged with driving while intoxicated (DWI). The following day, he was arrested for reckless driving resulting in an accident. On 11 October 1978, the DWI charge was dismissed, but he was convicted of the reckless driving offense, fined \$50, and ordered to pay court costs.

In 1991, Applicant sought treatment at a community hospital chemical dependency unit. He was diagnosed as alcohol dependent. Applicant's drinking slowed thereafter and may have stopped for a short period. By 1996, Applicant's consumption of alcohol increased to the point where he became intoxicated nightly, was unable to sleep, experienced drastic mood swings, and was unable to function on a daily basis. He admits that his alcohol consumption was probably the root cause of his employer suspending him for three days due to his being absent from work. His wife and his mother became concerned and convinced him to check into a substance abuse unit at a local hospital. He was an in-patient for three days and was diagnosed as alcohol dependent by a physician. Exs. 4; 5. At his discharge, he agreed to "continue to attend the intensive out-patient program to work on chemical dependency issues on a long-term basis." Ex. 4 at 6. Applicant was abstinent for approximately one year. Applicant admits he was told he should not drink, but has declined to follow his doctor's advice. Tr. 40-41. Applicant resumed drinking and, until shortly before the hearing, he consumed approximately one-fifth of a gallon of brandy over the weekend-Friday and Saturday nights-over the objection of his wife. Ex. 2 at 2-3; Tr. 41. His use of alcoholic beverages makes him "talkative." Ex. 3 at 4.

Applicant completed his security clearance application (SCA) on 17 May 2001. Ex. 1. Question number 24 asked Applicant if he had ever been charged with or convicted of any offenses related to alcohol or drugs. Applicant answered "yes" and listed only a DUI in approximately 1970.

The following chart summarizes the status of the debts alleged in the SOR:

¶	Nature and Amount	Status	Record
3.a.	Delinq medical acct \$365	Unpaid	Tr. 47-48
3.b.	Delinq hospital acct \$4,422	Owes \$359 co-pay only	Tr. 45-47
3.c	Delinq pathologist's acct \$450	Paid	
3.d.	Delinq hospital acct \$50	Paid	

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 arrested on four occasions for driving after drinking (¶ 1.a.-1.d.); consumed large quantities of alcohol (¶ 1.e.); his alcoholism affected his work (¶ 1.f.); was diagnosed as alcohol dependent (¶ 1.g.); was advised to abstain from using alcohol by medical personnel (¶ 1.h.); abstained from alcohol for one year (¶ 1.i.); and currently drinks on weekends (¶ 1.j.). 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.*

Applicant has a history of alcohol-related incidents away from work, such as driving while under the influence. *DC E2.A7.1.2.1*. Applicant was diagnosed as alcohol-dependent by a credentialed medical professional (*DC E2.A7.1.2.3*) and continued to consume alcohol after the diagnosis and completion of a rehabilitation program (*DC E2.A7.1.2.6*). On the other hand, the alcohol-related incidents all occurred a number of years ago, he has not had any recent incidents that would call in question his ability to control his impulses, and there is no indication that his drinking is causing any problems. *MC E2.A7.1.3.2*. Applicant indicated he had recently stopped drinking which is a positive change supportive of sobriety.

Nevertheless, Applicant's alcohol dependency continues to be a security risk. Applicant failed two earlier programs designed to help him with his alcohol problem. After short periods of abstinence, Applicant twice returned to consuming even more alcohol than he did prior to his treatment. He becomes talkative when he drinks. Applicant failed to convince me it is clearly consistent with the national interest to grant him a clearance. If Applicant is able to sustain his abstinence, he may be an appropriate candidate for a security clearance at a later date. I find against Applicant on all subparagraphs except ¶ 1.i. The fact that Applicant abstained from alcohol for a year after he was released from the alcohol treatment facility is not a disqualifying condition; it is merely evidence.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant deliberately falsified his SCA by not admitting his alcohol-related arrests and convictions (¶ 2.a.). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. *Directive ¶ E2.A5.1.1.*

At the hearing, the department counsel announced that he would not seek disqualification of Applicant from holding a security clearance based on the falsification of his security clearance application. Contrary to the allegation contained in the SOR, Applicant answered that he had alcohol-related arrests in his past. Although he did not know the exact dates, and his answer appears to suggest that he was arrested only once, he did admit the arrests occurred in the 1970s. Applicant never attempted to hide his alcohol-related arrests having freely admitted as much in his SCA and in past statements to agents of the Defense Investigative Service and the Defense Security Service. *See Exs. 2, 5*. I find for Applicant.

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had delinquent debts (¶ 3.a.-3.d.). An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The department counsel conceded Applicant had mitigated the financial security concerns alleged in the SOR. Although Applicant has had a few delinquent debts, he has made good faith efforts to resolve them. MC E2.A6.1.3.6. In large measure Applicant's financial difficulties seem to have resulted from conditions that were largely beyond his control-his wife's deteriorating medical condition. MC E2.A6.1.3.3. He does not have a long history of delinquent debts or being unable to meet his financial obligations. Applicant contested the main debt alleged against him-a delinquent debt for medical care alleged in ¶ 3.b. Applicant's health insurer eventually paid the debt. Applicant is responsible for the \$359 co-pay and will pay the debt. Applicant is also contesting the only other remaining debt, for \$365.. Applicant has expressed his willingness to pay whatever he owes after he receives an itemized statement of the charges. I find for 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.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

Subparagraph 3.c.: For Applicant

Subparagraph 3.d.: 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. 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.