

DATE: December 29, 2003

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-19615

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Marc Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Since the beginning of 1990, Applicant has been arrested six times for driving under the influence of alcohol. After convictions in 1995 and 1999, the court ordered Applicant to attend alcohol awareness and safety classes. Although Applicant claimed he intends to stop drinking and has not had a drink in six weeks, he failed to establish a sufficient commitment to sobriety to mitigate the alcohol consumption 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 4 September 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) of the Directive. Applicant answered the SOR in writing, undated, and elected to have a hearing before an administrative judge. The case was assigned to me on 27 October 2003. On 4 December 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 19 December 2003.

FINDINGS OF FACT

Applicant is a 43-year-old lead warehouse specialist leader for a defense contractor in a Department of Defense facility. As part of his duties, he signs for incoming classified items and causes them to be delivered to the appropriate recipient.

Between 1990 and 1999, Applicant was arrested six times for driving under the influence of alcohol (DUI). He was arrested for DUI once before 1990, but the case was thrown out. Tr. 19. He was arrested four times for DUI in 1990. In 1995, Applicant was arrested and convicted of DUI after drinking five beers in an hour. He received a sentence that included 90 days in jail, all but two days of which was suspended. Applicant was also required to attend a state alcohol safety action program which he completed in September 1996. He attended group counseling twice a week for nine

months and had to attend 24 meetings of Alcoholics Anonymous.

In November 1999, Applicant was again arrested and convicted of DUI. He was again sent to the alcohol safety action program, which he completed in December 2000.

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

In the SOR, DOHA alleged Applicant has a history of alcohol-related criminal incidents, often consuming alcohol to the point of intoxication (¶ 1.a.); was arrested in May 1990 for driving under the influence (DUI) (¶ 1.b.); was arrested for DUI in June 1990 (¶ 1.c.); was arrested in September 1990 for DUI (¶ 1.d.); was arrested for DUI in November 1990 (¶ 1.e.); was convicted of DUI in October 1995 (¶ 1.f.); received a month of substance abuse training (¶ 1.g.); was arrested in November 1999, and subsequently convicted in February 2000, of DUI (¶ 1.h.); and continues to consume alcohol (¶ 1.i). 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 he has had a history of driving under the influence of alcohol. His six DUI offenses are alcohol-related incidents away from work. DC E2.A7.1.2.1. The evidence that, before one of his DUIs, he drank five beers in an hour, demonstrates that he engaged in binge consumption of alcohol to the point of impaired judgment. DC E2.A7.1.2.5.

Neither the Directive nor the Appeal Board has defined "binge consumption of alcohol." In ISCR Case No. 02-15358 (A.J. Feb. 20, 2003), the administrative judge concluded that the applicant was involved in binge drinking-he had been arrested for driving while intoxicated, once after consuming five mixed drinks at a restaurant and on another occasion

after having 10 mixed drinks in an evening while he was at home. On appeal, the Appeal Board held "[t]here is insufficient record evidence to support a finding that Applicant engaged in 'habitual or binge consumption of alcohol' within the meaning of Alcohol Consumption Disqualifying Condition 5 (Directive, Enclosure 2, E2.A7.1.2.5)." ISCR Case No. 02-15358 at 7 (App. Bd. Jul. 22, 2003). Nevertheless, I conclude Applicant was engaged in the "binge consumption of alcohol to the point of impaired judgment." "Binge drinking is defined as 'the consumption of five or more drinks in a row on at least one occasion.'" Dept. Health & Human Services and SAMHSA, National Clearinghouse for Alcohol and Drug Information, <http://www.health.org/govpubs/phd627/binge.aspx> (accessed December 29, 2003).

The fact that Applicant attended counseling programs concerning his abuse of alcohol (SOR ¶ 1.g.) is not a disqualifying condition in the absence of a diagnosis of a credentialed medical professional or an evaluation by a licensed clinical social worker of a recognized alcohol treatment program. *See* DC E2.A7.1.2.3 and E2.A7.1.2.4. The fact that Applicant continues to drink five to six beers on weekends (SOR ¶ 1.I) is also not a disqualifying condition in the absence of a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program. As there is no evidence of such a diagnosis or evaluation, I find for Applicant on SOR ¶¶ 1.g. and 1.i. However, Applicant's attendance at alcohol rehabilitation programs and his continuing to consume alcoholic beverages is relevant evidence on whether Applicant has sufficiently mitigated DOHA's security concerns.

Applicant failed to demonstrate that he has his alcohol problem under control. After six arrests for DUI and attendance at two alcohol rehabilitation programs, Applicant continues to drink despite his desire to quit. He has been intending to quit for the past year, but has been either unable or unwilling to do so. At his hearing, Applicant claimed he now drinks "very little," he intends to stop drinking, and had not had a drink in six weeks. Tr. 33-34. Positive changes in behavior supportive of sobriety is a mitigating condition. MC E2.A7.1.3.3. However, it is not clear from his testimony that he had quit drinking. Although total abstinence is not a necessary condition of obtaining a security clearance, *see* ISCR Case No. 96-0869, 1997 DOHA LEXIS 665 *10 (App. Bd. Sep. 11, 1997), based on the extent of Applicant's drinking problems and the relatively short period of abstinence, he failed to establish his commitment to sobriety. I find against Applicant on ¶¶ 1.a.-1.f. and 1.h.

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.: For Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: 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.