

DATE: October 26, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-20977

DECISION OF ADMINISTRATIVE JUDGE

PHILIP S. HOWE

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 44-year-old electronics technician employed by a defense contractor. Applicant started drinking alcohol in high school, and was in treatment in 1988 after which he was sober for six years. In 2000, after being arrested for having a pistol and an open container of alcohol in his vehicle, he entered treatment again, successfully completed it, had a year of sobriety, resumed social drinking, and now is abstinent and participating again in AA on a weekly basis. Applicant mitigated the alcohol consumption and criminal conduct security concerns. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On January 5, 2004, DOHA issued a Statement of Reasons ⁽¹⁾ (SOR) detailing the basis for its decision, the security concerns raised under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on January 30, 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on April 1, 2004. On May 5, 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. The Government and the Applicant submitted exhibits that were admitted into evidence. DOHA received the hearing transcript (Tr.) on June 2, 2004.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated here as findings of fact. After a complete and thorough review of the evidence in the record, and full consideration of that evidence, I make the following additional findings of fact:

Applicant is 44 years old, divorced, has three children, the oldest of whom is in college and the youngest is 13 years old. Applicant retired from the Air Force as an E-7 in 1999 after 20 years of honorable service, and now works for a defense contractor as an electronics technician. (Tr. 41, 51; Exhibits 1, C)

Applicant started drinking alcohol when he was a teenager. His drinking continued until 1988 when his commander enrolled him in an alcohol education program. Applicant remained abstinent from alcohol until 1994, when he resumed drinking socially. His drinking eventually caused marital stress and he was divorced in June 2001. Applicant's wife complained to the police about Applicant's drinking and actions on October 15, 2000. When the police located Applicant, they found an unloaded handgun and an opened pint of vodka in the front seat area of Applicant's vehicle. The police arrested him and took him to the state hospital for evaluation. The criminal charges were misdemeanors and Applicant later paid a fine of \$250 on the gun charge and \$50 for the open container charge. While at the state institution, Applicant's relationship with alcohol was evaluated, and also he had a general physical and psychological evaluation. Relevant to this proceeding, Applicant was diagnosed as having alcohol dependence and advised to participate in Alcoholics Anonymous (AA). Applicant was in the institution until November 16, 2000. He continued in after care until February 2001, and was sober until October 2001. At that time he resumed drinking on a social basis, usually one or two drinks at dinner. Applicant continued to read AA literature from 2000 until the present day. He participates in AA and has a sponsor. He stopped drinking in December 2003 when a 48-year-old friend of his died suddenly, and Applicant took stock of his life and the effect alcohol has had on him. (Tr. 22 to 39, 44, 49, 55 to 61, 64 to 65; Exhibits 2, 4 including 11 and 25, 5 to 8, D to G, P and Q)

Applicant deals with the triggers for his past drinking by avoiding drinking occasions, spending time with his children, avoiding his former wife who caused him great stress, avoiding his brother who drinks regularly, reducing stress at work, and building wood cabinets with his power tools. Applicant has an AA sponsor and participates weekly in AA. Applicant told his parents and siblings, and other family members, that he was not drinking anymore, and they have been supportive of his sobriety. Applicant has no criminal record in his home state, and no violations on his driving record. Applicant's latest alcohol evaluation by a licensed addiction counselor dated May 13, 2004, shows Applicant is alcohol dependent in remission, attending weekly AA meetings, and individual therapy with a licensed addiction counselor is recommended. (Tr. 38 to 47, 54, 67; Exhibits A, B, G, and R)

Applicant submitted six character letters, including one from his father, about Applicant's work ethic, past personal problems, and his dedication to his family and work. I find his explanation of his alcohol history, and his efforts at sobriety and rehabilitation, to be sincere and persuasive. I find his testimony on these issues credible. (Exhibits H to M)

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.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline that must be carefully considered in making the overall common sense determination required.

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. Those assessments include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or

recurrence (See Directive, Section E2.2.1. of Enclosure 2). Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single condition may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or other behavior specified in the Guidelines.

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). All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. 2001). Once the Government has established a *prima facie* case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that is clearly consistent with the national interest to grant or continue his security clearance. ISCR Case No. 01-20700 at 3 (App. Bd. 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Guideline G - Alcohol Consumption

The Concern: 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. E2.A7.1.1.

Conditions that could raise a security concern and may be disqualifying include:

- (1) Alcohol-related incidents away from work. E2.A7.1.2.1.
- (3) Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.
- (4) Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program. E2.A7.1.2.4.

Conditions that could mitigate security concerns include:

- (3) Positive changes in behavior supportive of sobriety. E2.A7.1.3.3.
- (4) Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program. E2.A7.1.3.4.

Guideline J - Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness. E2.A10.1.1.

Conditions that could raise a security concern and may be disqualifying include:

(1) Allegations or admissions of criminal conduct, regardless of whether the person was formally charged. E2.A10.1.2.1.

(2) A single serious crime or multiple lesser offenses. E2.A10.1.2.2.

Conditions that could mitigate security concerns include: E2.A10.1.3.

(1) The criminal behavior was not recent. E2.A10.1.3.1.

(2) The crime was an isolated incident. E2.A10.1.3.2.

(6) There is clear evidence of successful rehabilitation. E2.A10.1.3.6.

CONCLUSIONS

In the SOR, DOHA alleged Applicant has an alcohol problem. Applicant's history and admissions show he has an alcohol dependence problem. Applicant entered treatment twice, and the first time his sobriety lasted six years, and the next time one year, and currently he has been sober since December 2003. Before that time his drinking had reduced to a social level with his dinner. Disqualifying Conditions (DC) 1, DC 3, and DC 4 apply. There is no evidence Applicant's judgment was ever impaired, so I do not apply DC 5. There is no diagnosis of alcoholism, so I do not apply DC 6 to this case.

The Mitigating Conditions (MC) applicable are MC 3 because of Applicant's recognition of the triggers in his life to drinking and his frank and honest answers about how he deals positively with them, and his weekly participation in AA with a sponsor, and his current abstinence. Also, I apply MC 4 because Applicant has met all those guidelines, with the arguable exception of the 12 months sobriety. He has years of sobriety, participated positively in the 2000 and 2001 evaluation and aftercare programs, and is now abstinent again when his friend died suddenly at age 48, only four years older than Applicant. In the interim period from October 2001 to December 2003 Applicant reduced his drinking to one or two drinks with his dinner, and his divorce became final in June 2001 removing the biggest stressor from his life. Applicant also increased his cabinet-making woodworking hobby activity involving the use of power equipment, which he could not use safely if he were drinking alcohol. Applicant had 12 months sobriety while in the state institution and thereafter, and participated in AA. All of Applicant's actions and awareness give him to a 12 months sobriety equivalency, which time period is a guideline and not everyone's alcohol situation fits into a rigid set of time standards for sobriety. Exhibit R is a favorable prognosis, in my opinion, and Applicant is clearly working on his problem with alcohol. For these reasons I apply MC 4. I conclude this Guideline for Applicant.

Regarding the criminal conduct guideline, the Government conceded in closing argument that this guideline is not applicable (Tr. 75). I agree. Applicant was arrested four years ago during a very stressful time in his life. That situation has been ameliorated and will not reoccur. Applicant was charged with two misdemeanors, the only time in his life, and paid fines for each. DC 1 and DC 2 apply.

Regarding mitigation, these crimes were not recent, they were isolated incidents occurring simultaneously as part of the same incident, and there is clear evidence of successful rehabilitation. Applicant learned to deal with the stressors in his life, and has undertaken new activities to consume his time, including his cabinet-making. MC 1, MC 2, and MC 6 apply. I conclude this guideline for Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f.: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

In light of all of 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.

Philip S. Howe

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 (Directive).