

DATE: July 28, 2005

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-22864

DECISION OF ADMINISTRATIVE JUDGE

DAVID S. BRUCE

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 53 years old and has been employed by defense contractors since 1987. He served in the U.S. Navy from 1969 to 1979, and held security clearances in 1970 and 1986. Applicant was arrested three times in the 1970s for alcohol related driving offenses. He successfully completed an alcohol recovery program offered by the Navy in 1977, and he discontinued drinking from 1979 to 1999. Applicant was convicted of two more alcohol driving offenses in 2001 and 2003, and he did not complete the alcohol treatment recommended for him in those cases. Applicant's driving privilege is presently revoked, and he admits he continues to consume alcohol in moderation on a regular basis. Applicant failed to mitigate the security concerns regarding Guideline G, alcohol consumption. Clearance is denied.

STATEMENT OF THE CASE

On November 22, 2004, The Defense Office of Hearings and Appeals (DOHA) pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Review Program*, dated January 2, 1992, as amended and modified (Directive), issued a Statement of Reasons (SOR) to Applicant in response to his application for a security clearance. The SOR detailed why DOHA could not preliminarily determine under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's request for a security clearance.

In a sworn statement dated December 23, 2004, Applicant responded to each of the allegations set forth in the SOR and further represented he did not wish to personally present his case at a hearing. ⁽¹⁾ Department Counsel submitted the government's File of Relevant Materials (FORM) on April 7, 2005, which contained nine itemized documents. The complete file was received by Applicant on April 15, 2005. Applicant was given an opportunity to file objections and submit materials in refutation, extenuation, or mitigation. No further response was submitted by Applicant and the file was assigned to me on May 31, 2005.

FINDINGS OF FACT

Applicant has admitted the factual allegations of subparagraphs 1.b., and 1.d. through 1.h. of the SOR. Those admissions are incorporated herein by reference. As to subparagraph 1.a., Applicant denied he consumed alcohol at all between 1979 and 1999. Applicant denies a portion of subparagraph 1.c. of the SOR.

After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is 53 years old, and has been employed as an electronics technician for a defense contractor since September 2001. He was steadily employed with another defense contractor performing similar work in three different geographic locations since October 1987. ⁽²⁾ Applicant served honorably in the U.S. Navy from 1969 to 1979, and also in the active Navy Reserve from 1980 to 1984. ⁽³⁾ He was previously granted defense department secret and top secret security clearances in 1970 and 1986. ⁽⁴⁾

Applicant has been married and divorced two times, the most recent divorce having taken place in 2001. He has one son, age 29.

Applicant began drinking alcohol in 1972 when he was in the Navy. While Applicant maintains his drinking pattern was moderate, Applicant was arrested three times for alcohol related driving offenses during the next seven years. Applicant successfully completed a treatment program provided by the Navy in 1977, and, to his credit, Applicant states he stopped drinking altogether in 1979 for the next twenty years. ⁽⁵⁾

Applicant resumed drinking in 1999, inspired by separation and financial problems he was experiencing at the time, which then developed into a pattern of becoming intoxicated about two times per week. Applicant admits having two "blackouts" after his drinking resumed, but never felt he had a problem with alcohol because he never had any alcohol related incidents at work. ⁽⁶⁾

Applicant presently maintains he has cut back on his drinking due to having committed two more DWI offenses since 1999. He no longer drinks hard liquor, but still drinks about two 6-packs of beer per week, and now gets intoxicated only about once a month. By his own description, he usually has to drink nine beers or so in 2-3 hours to achieve intoxication. By his own assessment, Applicant does not feel he has a present problem with alcohol, but admits it could become a problem if he let it. ⁽⁷⁾

With respect to his specific driving offenses, Applicant was arrested in January 1975, and charged with Driving While Intoxicated. His blood alcohol concentration measured .17 at the time of his arrest. He was found guilty of the offense, spent two days in jail, paid a fine, spent nearly a year on probation, and lost his driving privilege for six months. ⁽⁸⁾

Applicant was arrested again in July 1977, and charged with Driving Under the Influence, Refusal to take a Breath Test and Reckless Driving. He pled guilty to the reckless driving charge and the other two charges were dismissed. In October 1977, Applicant entered an alcohol recovery program sponsored by the Navy and he participated in a 4-6 week program which included an education component, individual counseling and group therapy, and A.A. meetings. ⁽⁹⁾

Applicant was arrested a third time in April 1979, and charged with Driving While Intoxicated and Reckless Driving. He was found guilty of reckless driving and paid a fine. ⁽¹⁰⁾

After having maintained sobriety from 1979 to 1999, Applicant was arrested again in August 2001, and charged with Driving While Impaired and Civil Revocation of his Driver's License. ⁽¹¹⁾ His blood alcohol content measured .18 at the time of his arrest. He pled guilty to both charges and was given a sixty day suspended jail sentence. He was also placed on court ordered special probation for twelve months. As a condition of probation, Applicant was to obtain a substance abuse assessment and complete all alcohol counseling and treatment recommended as a result of the assessment. ⁽¹²⁾

Applicant paid \$240.00 in fines and costs, and lost his driving privilege for thirty days. ⁽¹³⁾ Based upon appropriate screening and testing performed as part of the assessment, and upon information obtained from Applicant during his clinical interview, it was determined that a substance abuse handicap existed for Applicant, and recommended he receive 90 hours of out-patient substance abuse treatment and alcohol therapy. Applicant was provided a list of licensed

state agencies in his area that could provide the recommended treatment. (14) Applicant never completed the 90 hours of out-patient therapy recommended by a Certified Clinical Addictions Specialist with the Chemical Dependence Training Evaluation and Guidance (CDTEG) alcohol treatment program located in Applicant's home state.

Applicant was arrested the last time in March 2003, and charged with Driving While Impaired and Driving While License Revoked. As a result of the charges, Applicant was sentenced to one year in jail with all but 30 days suspended, was placed on probation for a period of one year, and paid fines and costs of \$945.00. Applicant's driver's license continued in revoked status, and Applicant was required to submit to another substance abuse assessment as a part of the disposition of the case. Applicant is required to successfully complete all further recommended treatment in accordance with the new assessment to ever be considered in the future for reinstatement of his driving privilege. (15) At the time of his arrest in March 2003, Applicant knew his license was revoked for having failed to complete the recommended alcohol treatment resulting from his 2001 probation, and knew he could not be considered for reinstatement unless he completed the necessary treatment. (16) Applicant never completed the second alcohol abuse assessment procedure called for in 2003, nor has he completed any other alcohol treatment or counseling program thereafter.

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth the criteria which must be evaluated when determining security clearance eligibility. The adjudicative guidelines specifically distinguish between those factors that are considered in denying or revoking an employee's request for access to classified information (Disqualifying Conditions), and those factors that are considered in granting an employee's request for access to classified information (Mitigating Conditions). By acknowledging that individual circumstances of each case are always different, the guidelines provide substantive standards to assist an administrative judge in reaching fair and impartial common sense decisions.

The adjudicative process requires thorough consideration and review of all available, reliable

information about the applicant, past and present, favorable and unfavorable, to arrive at meritorious decisions. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the conduct of the applicant and the circumstances in any case, the factors an administrative judge should consider pursuant to the concept are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of the 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.

Protecting national security is the paramount concern in reaching a decision in any case, and is dependent upon the primary standard that issuance of a clearance must be clearly consistent with the interests of national security.

Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not just the *actual* risk of disclosure of such information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information in any aspect of his or her life. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information. (17) The decision to deny a security clearance request to an individual is not necessarily a determination of the loyalty of the applicant. (18) It is merely an indication the applicant has not met the strict guidelines established by the Department of Defense for issuing a clearance.

In accordance with the Directive, the government bears the burden of proof in the adjudicative process to first establish conditions which indicate it is not clearly consistent with the

national interest to grant or continue an applicant's access to classified information. (19) When the government meets this burden, the corresponding heavy burden of rebuttal then falls on the applicant to present evidence in refutation,

explanation, extenuation or mitigation sufficient to overcome the position of the government, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance. ⁽²⁰⁾

Upon consideration of all the evidence submitted in this matter, the following adjudicative guideline is appropriate for evaluation with regard to the facts of this case:

Guideline G - Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of an unauthorized disclosure of classified information due to carelessness.

The Guideline G disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case are set forth and discussed in the Conclusions section below.

CONCLUSIONS

I have thoroughly considered all the facts in evidence in this case and the legal standards required by the Directive. The government has established a *prima facie* case for disqualification under Guideline G - Alcohol Consumption.

Considering all the evidence, Alcohol Consumption Disqualifying Conditions (AC DC) E2.A7.1.2.1. (*Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use*), AC DC E2. A7.1.2.4. (*Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*), and AC DC E2.A7.1.2.5. (*Habitual or binge consumption of alcohol to the point of impaired judgment*), apply in this case.

Applicant admits conduct that constitutes alcohol-related incidents away from work. Since Applicant resumed drinking in 1999, he has been convicted of two alcohol related driving offenses, as well as Driving on a Revoked License, which revocation was predicated upon a prior alcohol related driving offense. Applicant admits he still consumes alcohol on a regular basis, and he has failed to successfully complete any alcohol rehabilitation program since he resumed drinking. Applicant's continuing behavior in this regard remains unpredictable, highlighted by being convicted of a subsequent drunk driving offense while his license was revoked as a result of a previous alcohol offense in a less than a two year period.

As part of the disposition of the 2001 conviction, Applicant was clinically assessed as having a substance abuse problem with alcohol, and it was recommended he participate in 90 hours of alcohol out-patient treatment and therapy. He never completed, or even started, the program. Upon his conviction for the last offense in 2003, he has now displayed even more questionable judgment by essentially ignoring the mandates of the court a second time by refusing to even have an alcohol reassessment performed, and continuing to drink. Applicant's conduct in the regard constitutes a blatant disregard and lack of respect for the rules and requirements of his probation, exemplifying the considerable extent of his alcohol dependency.

I have considered all the Alcohol Consumption Mitigating Conditions (AC MC) with respect to Guideline G, and conclude that none apply in this case. Since Applicant resumed drinking in 1999, he has continued to drink and drive, he has continued to refuse to meaningfully participate in any alcohol rehabilitation program, and he has continued to deny he has a very substantive substance abuse problem with alcohol. Even though there was a point in Applicant's life when he remained sober for 20 years, the dynamic events since 1999 have demonstrated that Applicant's alcohol abuse has become serious again and is on-going. Applicant has failed to take advantage of the professional intervention that has been made available to him many times in the past, and he has failed to exhibit any appreciable understanding of the effects of addictive alcohol abuse. Applicant's unfortunate involvement with alcohol raises concerns regarding his willingness and ability to restrain from excessive use of alcohol during stressful times in the future, and to protect classified information. Applicant failed to mitigate the security concerns regarding his alcohol consumption.

I have further considered all the record evidence in this case with respect to the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security. I am persuaded by the totality of the evidence in this case that it is not clearly consistent with the national interest to grant Applicant a security clearance. For the reasons stated, Applicant has failed to mitigate the security concerns caused by Applicant's alcohol consumption.

Accordingly, Guideline G is decided against Applicant.

FORMAL FINDINGS

In accordance with Section E3.1.25 of Enclosure 3 of the Directive, the following are the formal findings as to each allegation in the SOR:

Paragraph 1. Alcohol Consumption (Guideline G) AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

DECISION

In light of all 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

David S. Bruce

Administrative Judge

1. Item 2 (Applicant's response to SOR dated December 23, 2004). The document actually indicates a notary date of December 23, 2005, as to when Applicant executed the document, evidently in error.
2. Item 4 (Applicant's Security Clearance Application dated January 23, 2002), at 2-3.
3. *Id.*, at 6.
4. *Id.*, at 8.
5. Item 5 (Applicant's written statement dated July 28, 2003, to DSS Investigator), at 2-3.
6. *Id.*
7. *Id.*, at 3.
8. Item 2 (Applicant's Response to SOR), at 1.
9. *Id.*, at 1.
10. *Id.*
11. Item 8 (State District Court records dated May 20, 2003), at 1-8.

12. Item 2, *supra* note 5, at 1.

13. *Id.*

14. Item 7 (Chemical Dependence Training Evaluation and Guidance (CDTEG) pre-trial DWI substance abuse assessment materials dated August 23, 2001), at 1.

15. Item 6 (Applicant's statement of October 14, 2003), at 2.

16. *Id.*

17. Directive, Enclosure 2, Para. E2.2.2.

18. Executive Order 10865, § 7.

19. ISCR Case No. 96-0277 (July 11, 1997) at 2.

20. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Para. E3.1.15.