

DATE: February 25, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23175

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Jim Darnell, Esq.

SYNOPSIS

Applicant has a history of alcohol-related incidents away from work, including one incident of driving while intoxicated, two incidents of being in possession of an open container, two incidents of drinking in public. Applicant has not had an alcohol-related incident in over two and one-half years and has made positive changes in his behavior supportive of sobriety. 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 28 July 2003, DOHA issued a Statement of Reasons (SOR) ⁽¹⁾ detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on 13 August 2003 and elected to have a hearing before an administrative judge. Another administrative judge was originally assigned the case. He scheduled a hearing for 7 January 2004. At the request of Applicant's attorney, the hearing was postponed. The case was reassigned to me on 31 December 2003. On 3 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 12 February 2004.

Without objection from Applicant, I granted Department Counsel's motion to amend SOR ¶ 1.c. by replacing the word "store" with "establishment."

FINDINGS OF FACT

Applicant was born in May 1968. In June 1991, shortly after his 23rd birthday, Applicant was cited by police for having an open beer container in an automobile. He was riding with a friend. Applicant paid the \$51 citation fine. Ex. 3; Answer. In June 1996, Applicant was again charged with having an open container of beer in a motor vehicle. He paid the \$52 citation fine. *Id.*

In April 1998, Applicant was arrested outside a bar for being involved in an affray. Applicant had been speaking to his cousins inside the bar. The former boyfriend of one of his cousins started to harass them. When it appeared Applicant and the former boyfriend might come to blows, a bouncer forced them to leave. Applicant went after the boyfriend once they were outside. Bouncers from the bar immediately broke up the fight and called the police. Applicant pled guilty to being involved in a public affray and paid a fine of \$50.

In May 1998, Applicant was arrested for driving while intoxicated (DWI). The results of the Breathalyzer showed his blood contained .14 or .15 percent alcohol. Applicant pled guilty, was fined, and ordered to attend DWI school, which he successfully completed in August 1998.

Applicant is a softball player. In the past, he spent six nights a week playing softball and hanging out at the softball fields watching other games. While at the softball fields, he was cited twice for drinking in public, once in July 1999 and again in June 2001. Applicant paid a fine for the 1999 offense and received a delayed adjudication on the 2001 offense.

Although he has not been drinking much lately, and he has not been intoxicated, because of the concerns raised by the SOR, Applicant has enrolled in an alcohol abuse counseling program. Tr. 82. He intends to quit drinking. He is involved in a relationship with a woman who has two children. He is hoping the relationship will lead to marriage. He has become a parent to the children and spends most of his time with that family. Applicant reduced his participation in softball. He enrolled in college to better himself and to provide a better life for his "family." He performs his duties at work well and is a respected employee.

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 continues to consume alcohol (§ 1.e.) despite having been charged with the alcohol-related offenses of carrying an open container (§§ 1.a., 1.b.), a public affray (§ 1.c.), DWI (§ 1.d.), drinking in public (§§ 1.e., 1.f.). 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. Directive § E2.A7.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations set forth in the SOR. Applicant has had several alcohol-related incidents away from work. DC E2.A7.1.2. There is no evidence Applicant is alcohol dependent. While it appears that only the DWI was caused by excessive alcohol consumption, the other incidents demonstrate questionable judgment.

Nevertheless, Applicant has turned his life around in the past two and one-half years since his last alcohol-related incident. He has reduced the frequency and the amount he drinks. He spends his time helping raise and educate his girlfriend's children and has enrolled himself in college courses. His concern for the alcohol issues that were raised in the SOR and cast a pall over his future has caused him to enter an alcohol counseling program to confirm that he does not have an alcohol problem. There is no indication of a recent problem with alcohol (MC E2.A7.1.3.2) and Applicant has made positive changes in behavior supportive of sobriety (MC E2.A7.1.3.3). After carefully evaluating all of the evidence, I am convinced Applicant has successfully mitigated the alcohol consumption security concerns.

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

Subparagraph 1.g.: 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.

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.