

KEYWORD: Alcohol

DIGEST: Applicant's excessive alcohol abuse which was used to medicate his depression, resulted in a DUI in October 2002, followed by alcohol rehabilitation treatment and a relapse in December 2003, has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

CASENO: 02-24512.h1

DATE: 01/25/2005

DATE: January 25, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24512

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

SYNOPSIS

Applicant's excessive alcohol abuse which was used to medicate his depression, resulted in a DUI in October 2002, followed by alcohol rehabilitation treatment and a relapse in December 2003, has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On August 3, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued the attached Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 9, 2004, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 1, 2004. A notice of hearing was issued on November 10, 2004, scheduling the hearing for November 22, 2004. The hearing was rescheduled for December 6, 2004. At the hearing the Government presented eight exhibits. The Applicant called three witnesses and presented seven exhibits. He also testified on his own behalf. The official transcript (Tr.) was received on December 20, 2004.

FINDINGS OF FACT

The Applicant is 57 years old. He is employed by a defense contractor as an Application Engineer, and he seeks a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in

the SOR:

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant got married in 1964 at the young age of eighteen. He and his wife had a daughter in 1965. He and his wife divorced in 1967. He obtained sole custody of his daughter, whom he and his mother have raised. Following his divorce, the Applicant fell into a state of depression. He did not seek psychiatric care until sometime in the 1989 or 1990. At that time, the Applicant was prescribed medication for his condition and was diagnosed with depression. As time went on, however, his depression grew progressively worse.

In June 1994, the Applicant got remarried. Due to his increased feelings of depression and the fact that he was not responsive to his medication, the Applicant began to self-medicate by consuming increased amounts of alcohol. He and his wife were also experiencing severe marital problems. The Applicant testified that he was consuming about three or four drinks of hard liquor everyday after work. In August 2002, his depression had gotten so bad he admitted himself into a hospital for mental health treatment.

On October 8, 2002, the Applicant was arrested for (1) Driving with .08% or more Alcohol in blood and (2) Driving Under the Influence of Alcohol. The Applicant does not remember the particulars of the accident only that he had been consuming alcohol before driving. Referring to the police report of the incident the Applicant was driving erratically and had a high speed rollover car accident. He was unrestrained at the time, and sustained serious injuries to his head. The Applicant testified that as a result of the accident he now suffers some permanent brain damage. The Applicant stated that he has blank spots in his memory as to how the accident occurred. He does know that he was in a coma for about a week after the accident. The day after the accident, on October 9, 2002, the Applicant was diagnosed in part with Alcohol Withdrawal, Delirium Tremens. (*See Government Exhibit 6*).

The Applicant eventually pled nolo contendere to Count (1) and was sentenced to two days in custody. He was placed on five years probation, ordered to participate in an Alcohol Education Program for three months or longer, to attend a First Offender DUI program School and was fined \$1,871.00. His driver's license was restricted for 90 days. Count (2) was dismissed. The Applicant remains on probation for this offense until 2008. (*See Government Exhibit 2*).

The Applicant stated that he realized that he had a drinking problem and requested that he be treated for both his depression and for alcohol abuse. The hospital psychiatrist recommended alcohol rehabilitation. The Applicant received treatment for alcohol dependence from October 22, 2002 through November 1, 2002. He was evaluated on November 7, 2002 by the hospital's Addictive Medicine department and he also received treatment from November 2, 2002 to at least arch 2003. (*See Government Exhibits 4, 5, 6 and 7*).

The Applicant stated that after his accident, he completely abstained from using alcohol until his mother, who had been suffering for a long time from a chronic illness, died in December 2003. The Applicant explained that he consumed one mixed drink at that time. He has not consumed any alcohol since December 2003, and has no intentions of ever consuming it again.

Since December 2003, the Applicant has been attending Alcoholic Anonymous meetings on a regular basis and he has an AA sponsor. He has also received counseling from his church. He has a new wife who does not tolerate any drinking or illegal drug use. The Applicant believes that he now has the support mechanisms in place to help him remain sober.

Mitigation.

Several individuals testified on behalf of the Applicant. An engineer, who has worked with the Applicant, his pastor, and his new wife all attest to the Applicant's great strides in maintaining a sober life style. They consider him to be reliable, honest and trustworthy. He is also patriotic and loyal to the United States.

Several letters of recommendation submitted on behalf of the Applicant collectively attest to the fact that the Applicant has stopped consuming alcohol and that he is highly motivated to stay sober in the future. (*See Applicant's Exhibits D and E*).

The Applicant's laboratory results of August 2004, do not indicate any alcohol use or active liver disease. (*See Applicant's Exhibit A*).

A letter from the Applicant's psychiatrist states that the Applicant is receiving psychiatric care for the treatment of Major Depression and that the Applicant has been compliant with all treatment recommendations and his symptoms are adequately controlled with medications. (*See Applicant's Exhibit F*).

A performance evaluation of the Applicant dated May 16, 2003, indicates that the Applicant is a "successful contributor" at his place of employment. (*See Applicant's Exhibit G*).

POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Alcohol Consumption

Conditions that could raise a security concern:

1. alcohol-related incidents away from work, such as driving under the influence
4. habitual or binge consumption of alcohol to the point of impaired judgement.
5. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Conditions that could mitigate security concerns:

1. the alcohol related incidents do not indicate a pattern;
3. positive changes in behavior supportive of sobriety.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make

an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in repeated instances of alcohol abuse which demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has abused alcohol (Guideline G). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, and a failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an Applicant has demonstrated a lack of respect for the law in his private affairs, there then exists the possibility that he or she may demonstrate the same attitude towards security rules and regulations.

Upon careful review of the record, since the Applicant's accident in October 2002, he has worked hard to establish the necessary mechanism in which to maintain sobriety. It also appears that he is serious about this commitment. He has completed a treatment program for alcoholism, he has been regularly attending AA meetings, he is working the twelve steps of AA, and he has an AA sponsor. He is also very involved in his church. He has been completely sober for about thirteen months. Under ordinary circumstances, without the diagnosis of Major Depression, I would be convinced that the Applicant would not return to his old ways and self medicate with the use of alcohol. However, in this case, the Applicant suffers from Major Depression that has not been controlled for any sustained period without the Applicant's use of alcohol. I am not convinced that the Applicant will not return to self medication when confronted with the ordinary stresses of life, much less the extraordinary ones which will inevitably occur. More time is needed in rehabilitation to determine that the Applicant will not return to his old ways of alcohol abuse.

The Applicant's excessive use of alcohol in 2002 to medicate his depression resulted in an arrest and conviction for DUI, and a car accident that almost killed him. He remains on probation for this offense until 2008. The Applicant has also suffered some permanent brain damage as a result of his abusive drinking. In 2002, he was diagnosed by credentialed medical authority with alcohol abuse, he sought treatment for alcohol abuse, and he has tried to remain sober. In September 2003, just thirteen months ago, with the stress of his mother's death, he relapsed. He quickly returned to the sober lifestyle that he is trying to maintain. However, given the recency and extent of his alcohol abuse, I cannot find that he is not sufficiently trustworthy to handle classified information at this time. Disqualifying conditions *(1) alcohol-related incidents away from work, such as driving under the influence . . . (4) habitual or binge consumption of alcohol to the point of impaired judgement; and (5) Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program* apply. Mitigating conditions that are applicable but are outweighed by the facts of this particular case *(1) the alcohol related incidents do not indicate a pattern, and (3) positive changes in behavior supportive of sobriety*. Based on the totality of the evidence, I find that the Applicant's alcohol consumption establishes doubt about his judgment, reliability and trustworthiness. The Applicant is commended for his desire to stay sober and the changes he had made in his life to do so. However, more time is needed in rehabilitation to determine that the Applicant will not return to his old ways of alcohol abuse. Accordingly, Guideline G (Alcohol Consumption) are found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: 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 the Applicant.

Darlene Lokey Anderson

Administrative Judge