

DATE: September 4, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-25077

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's history of alcohol abuse, involving two recent arrests for Driving Under the Influence of Alcohol, for which he remains on probation, and his continued use of alcohol, has not been mitigated by sufficient evidence of reform and rehabilitation. Applicant's failure to reveal the true extent of his financial indebtedness on his security clearance application has been mitigated. Clearance is denied

STATEMENT OF THE CASE

On March 27, 2003, 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, (as amended) issued a 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 April 9, 2003, and requested a hearing before a DOHA Administrative Judge. This case was transferred to the undersigned on July 8, 2003. A notice of hearing had been previously issued on June 25, 2003, scheduling the hearing for July 16, 2003. At the hearing the Government presented eighteen exhibits. The Applicant presented three exhibits and he testified on his own behalf. The official transcript (Tr.) was received on July 28, 2003.

FINDINGS OF FACT

The Applicant is 35 years old and has a high school diploma and some technical school. He is employed as an Information Management Clerk by a defense contractor and is seeking to retain a security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued 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.

On May 19, 2000, the Applicant was arrested for 1) Driving Under the Influence of Alcohol, 2) Driving with a Blood Alcohol Concentration of .08% or Higher, 3) Driving With a Suspended License, 4) No evidence of Financial Responsibility and 5) Reckless Driving (Wet). The Applicant testified that he and several of his coworkers went out after work to a local restaurant/bar to consume alcohol. The Applicant consumed two "Long Island" mixed drinks and did not feel intoxicated. Following this, the Applicant offered one of his coworkers a ride home. On the way back, the Applicant was stopped by the highway patrol for speeding. The officer smelled alcohol on the Applicant's breath, and a sobriety test was administered. The Applicant was subsequently arrested. On July 6, 2000, a bench warrant was issued due to the Applicant's failure to appear in court on the charges. Pursuant to a plea bargain, the Applicant pled No Contest to count 5. The other charges were dismissed. The Applicant was sentenced to 18 months probation, fined \$350.00, ordered to continue with Level 1 First Offender Drinking Driver's Program, and his driver's license was restricted until December 2000. The Applicant stated that he has completed all of the courts sentencing requirements.

The Applicant's second arrest occurred on August 5, 2001, while still on probation for his first offense. The Applicant explained that he had been consuming alcohol at a bachelor's party with friends. The person he thought was going to drive him home for some reason did not. The Applicant took the chance to drive himself, and was again pulled over for speeding. He was charged with 1) Driving Under the Influence and 2) Driving with a Blood Alcohol Concentration of .08% or Higher. He pled guilty to Reckless Driving (Wet) and was fined \$500.00, sentenced to two years of probation and ordered to complete the DUI school. The Applicant remains on probation for this offense, and it is unclear when it will expire.

The Applicant testified that since these two arrests that resulted in "Wet Reckless" convictions, if he is going to consume alcohol somewhere, he will arrange to get a hotel room. He no longer drinks and drives. He usually consumes alcohol in a social setting.

The Applicant does not feel that he has a problem with alcohol. On average, he states that he presently drinks two beers a week, only on the weekends.

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Applicant completed a Questionnaire for National Security Positions (Standard Form 86) dated January 12, 2001. Question 36, of the application asked the Applicant if in the last seven years, has a lien been placed against his property for failing to pay taxes or other debts. The Applicant answered, "No". This was a false answer. The Applicant failed to list the Federal tax lien that had been filed against him in September 2000, in the amount of \$5,429.00. (See, Government Exhibit 1). The Applicant explained that at the time he filled out the questionnaire he was unaware of any tax lien filed against him. He states that at the time, he had already made payment arrangements with the Internal Revenue Service, and had no knowledge of a tax lien. (Tr. pp. 29-30). This debt has since been paid in full.

Question 38 of the same questionnaire, asked the Applicant whether in the last seven years had he ever been over 180 days delinquent on any debts. The Applicant answered "Yes" and listed two delinquent credit card debts, each with an amount owing of \$1,000.00, that were both satisfied in August 2000. (See, Government Exhibit 1). The Applicant explained that he listed only those debts that to his knowledge were still outstanding. (Tr. pp. 29-30).

Question 39 of the same questionnaire, asked the Applicant if he was currently over 90 days delinquent on any debts. The Applicant answered "No". (See, Government Exhibit 1). This was a false answer. The Government alleges that the Applicant was in fact at least 90 days delinquent with at least ten separate creditors listed in the SOR as set forth in allegations 2b(1), 2b(2), 2b(3), 2b(4), 2b(5), 2b(6), 2b(7), 2b(8), 2b(9) and 2b(10). The Applicant admitted that the debts existed, but not that he falsified his security application. At the time he filled out the questionnaire, he had not run a

credit report, and was not aware of the full extent of his financial delinquencies. He had been paying off his indebtedness and believed that he was not 90 days delinquent with any of his creditors. Evidence in the record reveals that he has paid off almost all of the outstanding creditors listed in the SOR. (Tr. pp. 31-32). He is contesting one of the debts and one he is not sure of. (Tr. p. 28-29).

With respect to the Federal lien filed against the Applicant, I find it reasonable to conclude that he may not have known about it, since he had already set up a payment plan, and was complying with the payment arrangement. In addition, the Applicant testified that he has had financial problems for the past six to seven years that was caused by difficulty in finding employment, working temporary jobs and spending more money than he was earning. In January 2001, he decided to straighten out his finances. He obtained a loan from his mother for \$6,000.00 and paid off most of his debts. (Tr. Pp. 30-34). He testified credibly that he thought he had paid off most of his outstanding debts off with the loan from his mother. Accordingly, I find that the Applicant did not intentionally attempt to conceal information from the Government concerning his delinquent financial history. Accordingly, this allegation is found for the Applicant.

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:

Guideline G (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.

Condition that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

Condition that could raise a security concern:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Condition that could mitigate security concerns:

None.

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 predicted 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. 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 a history of alcohol abuse and dishonesty, which demonstrate 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 evidence that the Applicant has engaged in alcohol abuse, (Guideline G). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

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.

The Applicant credibly testified that he tried to provide accurate information in his security clearance application with respect to his financial history. Given the fact that he had recently paid off most of the debts listed in the SOR, and had set up a payment schedule to pay his back taxes, his recollection of what remained outstanding or whether he had a tax lien against him could have been unclear or confusing. I do not find that he intentionally concealed his delinquent indebtedness or his tax lien from the Government, under the particular facts of this case. Accordingly, Guideline E (Personal Conduct) is found for the Applicant.

The evidence shows, however, that the Applicant has been arrested twice within the last four years for Driving Under the Influence of Alcohol, first in 2000, and again a year later in 2001. He was convicted of wet reckless on both of these occasions. He remains on probation for his most recent arrest. Despite these arrests, the expenses associated with the

arrests, and the problems it has caused him, he continues to use alcohol. He states that if he drinks now, he simply gets a hotel room for the night instead of driving home. Based upon his recent pattern of alcohol abuse, that has changed only by his decision not to drink and drive, I am unable to find that he has sufficiently rehabilitated himself in this area of concern. Accordingly, Guideline G (Alcohol Consumption) is 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 2 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.

Paragraph 2: For the Applicant.

Subpara. 2.a.: For the Applicant.

Subpara. 2.b.: For 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