

DATE: November 19, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-20026

ECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a history of alcohol abuse that resulted in an alcohol-related arrest and his entering an in-house alcohol treatment program, in which he was diagnosed as being alcohol dependent. Applicant consumed alcohol after leaving the program, and his last stated use was in April 2004. Additionally, Applicant's credibility is extremely suspect, as he has not been truthful or candid with information that he has furnished to the United States Government. litigation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On July 2, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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 Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed a notarized response, dated August 1, 2004, to the allegations set forth in the SOR, and requested a hearing before a DOHA Administrative Judge.

This case was assigned to this Administrative Judge on October 12, 2004, to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on October 19, 2004, and the hearing was conducted on November 3, 2004.

At the hearing, Department Counsel offered nine documentary exhibits (Government's Exhibits 1-9) and no witnesses were called. Applicant offered three documentary exhibit (Applicant's Exhibits A-C) and offered his own testimony. The transcript (Tr) was received on November 15, 2004.

FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Directive. At the beginning of the hearing, at the request of Department Counsel, the SOR was amended so that 1.a., 2.a., and 2.b. of the original SOR were eliminated. The amended SOR was then renumbered. It now contains four allegations, 1.a., through 1.d., under Guideline G, and four allegations, 2.a. through 2.d., under Guideline E. In his Response to the SOR (RSOR), Applicant admitted all of the amended SOR allegations. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents, and testimony of Applicant and the other witnesses, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 45 years old. He is employed as an Estimating Analyst by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. He is divorced and has four children. He received a Bachelor of Arts degree in business administration in 1983.

Paragraph 1 (Guideline G - Alcohol Consumption).

The Government alleges in this paragraph that Applicant is ineligible for clearance because he abuses alcohol to excess.

Applicant first consumed alcohol when he was 17 years of age. He continued to imbibe alcohol, and he characterized himself as a "heavy drinker . . . with a high tolerance for alcohol" (Exhibit 2).

In 1983 Applicant was arrested and charged with Driving Under the Influence of Alcohol (DUI) . He pled guilty, and he was required to pay a fine and attend classes regarding the use of alcohol (RSOR) (Exhibit 1). Applicant testified that while this was his only arrest for DUI, he did drive a vehicle on other occasions after he had consumed alcohol to excess (TR at 47).

In 2002, because of divorce and other family problems that he was undergoing, his alcohol consumption became a far, more serious problem. He attempted to abstain from alcohol by himself, and when he was unsuccessful, he enrolled in an outpatient detoxification program from November 18 to November 21, 2002. He then enrolled in an inpatient program from December 1, 2002 through December 29, 2002. He was diagnosed as being alcohol dependent and advised that he must abstain from alcohol and cannabis for the rest of his life (RSOR) (Exhibits 2, 7, and 8).

Applicant abstained from alcohol consumption after his enrollment until August 2003, when, despite the counseling that he received and the diagnosis to abstain from all alcohol consumption, he once again began consuming alcohol on a regular basis. He testified that he last consumed alcohol on April 15, 2004. He is now attending Alcoholics Anonymous (AA) meetings regularly, but he has yet to receive a sponsor, which a significant part of the AA program (TR at 59-63).

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he furnished untruthful information to the Government. Applicant completed a signed, sworn Security Clearance Application (SCA) on July 18, 2000. Question #26 asks whether Applicant was "arrested for, charged with or convicted of any offense not listed elsewhere?" Applicant answered "No." However, Applicant was arrested on July 15, 1997, and charged with Assault /4th Degree for an incident in which he struck his wife with a rolled up newspaper. While the charge was ultimately dismissed, Applicant should have listed this arrest in response to Question #26 (RSOR) (Exhibits 1 and 5).

Question #27 of the SCA asked if, in the previous seven years, Applicant had use illegal drugs, including marijuana, etc. Applicant answered "No". Applicant did not list his usage of marijuana, which he had used sporadically from the time he was in high school until as recently as the year 2000. (TR at 47-48) (Exhibit 1).

Question #28 of the SCA asked if Applicant had EVER used illegal drugs while possessing a security clearance? Applicant answered "No". Applicant did not list his usage of marijuana, which he had used, as discussed above, and he

did not list his use of cocaine, which occurred during the period that he was in his twenties, and when he possessed a security clearance (TR at 48-51) (Exhibits 1 and 2).

His answer to the questions in the SCA and the medical records from the facilities where he received his alcohol treatment (Exhibits 1, 7, and 8) generated Interrogatories. In a signed, sworn response to the Interrogatories, dated March 15, 2004, Applicant indicated that the only drug he had ever used was cannabis during the period from 1985 to 1988. As alleged and admitted above, Applicant used marijuana as recently as 2000, and he also used cocaine during the time period when he was in his twenties.

Applicant clearly was not honest with the information that he furnished to the Government. Applicant conceded that he knew that he was not truthful regarding his marijuana and cocaine usage, but he believed it would hurt his chances of retaining a clearance if he was truthful in the information that he provided to the Government (TR at 64).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case.

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the

seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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

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 Applicant has used alcohol to excess (Guideline G), and that he has exhibited poor judgement and untrustworthy behavior under Guideline E. Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him.

(Guideline G -Alcohol Consumption)

Applicant's alcohol consumption has resulted in one alcohol related arrest and conviction in 1983. Based on his testimony, it is clear that this was not the only incident of excessive drinking.

Applicant has consumed alcohol to excess for many years, and even after going through a month long in-house counseling program, which strongly advised him to abstain completely from alcohol, he again consumed alcohol until as recently as April 15, 2005.

The Government established, by substantial evidence, that Applicant was involved in alcohol-related incidents away from work, such as driving under the influence, which is Disqualifying Condition (DC) (E2.A7.1.2.1.), and that he engaged in habitual or binge consumption of alcohol to the point of impaired judgment, DC (E2.A7.1.2.5.). DC (E2.A7.1.2.4.) also applies because of the evaluation of Applicant as alcohol dependent, made by a license clinical social worker. Applicant has a demonstrated history of drinking to excess, and he presents no credible evidence to support a conclusion that he has reformed his habit. His last stated consumption of alcohol on April 15, 2004, is far too recent to conclude that he has resolved his alcohol addiction. No Mitigating Condition (MC) applies. Paragraph 1 is found against Applicant.**(Guideline E -Personal Conduct)**

With respect to Guideline E, the evidence establishes that Applicant furnished to the Government less than complete, honest answers, regarding his 1997 Assault /4th Degree arrest and his marijuana and cocaine usage in a SCA and Interrogatories.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation's secrets. When such an individual intentionally falsifies material facts or fails to furnish relevant information to a Government investigator, it is extremely difficult to conclude that he nevertheless possesses the judgment, and honesty necessary for an individual given a clearance. In this case, there has been no reasonable explanation for Applicant's failure to inform the Government about 1997 arrest and drug usage. I conclude that Applicant knowingly and willingly failed to give complete, honest answers to the Government.

In reviewing the DCs under Guideline E, I conclude that DC (E2.A5.1.2.5.) applies because of Applicant's pattern of dishonesty and rule violations, including the fact that he was not candid and truthful in information that he provided in the SCA or the Interrogatories. Applicant's conduct, considered as a whole, including his alcohol consumption and his dishonesty exhibits questionable judgement, unreliability, and a lack of candor. I resolve Paragraph 2, Guideline E

against Applicant

FORMAL FINDINGS

Paragraph 1. Guideline B: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant Subparagraph 1.d.: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant Subparagraph 2.d.: Against 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.

Martin H. Mogul

Administrative Judge