

KEYWORD: Alcohol; Criminal Conduct

DIGEST: The Applicant has been an abusive drinker for most of his adult life. This has resulted in six arrests and convictions for Driving Under the Influence between 1980 and 2000. The Applicant still drinks and does not show any understanding of the problems alcohol has caused him. Insufficient mitigation is shown. Clearance is denied.

CASENO: 03-21781.h1

DATE: 02/08/2006

DATE: February 8, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-21781

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esquire, Department Counsel

FOR APPLICANT

Rudolph L. Lucente, Sr.

Personal Representative

SYNOPSIS

The Applicant has been an abusive drinker for most of his adult life. This has resulted in six arrests and convictions for Driving Under the Influence between 1980 and 2000. The Applicant still drinks and does not show any understanding of the problems alcohol has caused him. Insufficient mitigation is shown. Clearance is denied.

STATEMENT OF THE CASE

On September 21, 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 15, 2004, and requested a hearing. The case was originally assigned to another Administrative Judge on July 7, 2005. A Notice of Hearing was issued on September 12, 2005. The case was reassigned to the undersigned on September 13, 2005.

A hearing was held on October 7, 2005, at which the Government presented nine documentary exhibits. Testimony was

taken from the Applicant, who called one additional witness. He also submitted five hearing exhibits and one post-hearing exhibit. The transcript was received on October 18, 2005.

FINDINGS OF FACT

The Applicant is 56, married and has a high school diploma with additional training. He is employed by a defense contractor, and he seeks to obtain a DoD security clearance in connection with his employment in the defense sector.

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

Paragraph 1 (Guideline G - Alcohol abuse). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he uses intoxicants to excess.

The Applicant admitted all of the allegations under this Paragraph. Those admissions are hereby deemed findings of fact.

The Applicant has been an abusive drinker for most of his adult life. He began drinking in 1962 and last drank in July 2005.

Between 1980 and 2000, the Applicant was arrested for Driving Under the Influence six times. These arrests occurred in 1980 (SOR 1.b.), 1983 (SOR 1.c.), 1988 (SOR 1.d.), 1989 (SOR 1.e.), 1996 (SOR 1.f.), and 2000 (SOR 1.h.). The 1996 arrest occurred after the Applicant was involved in a serious motor vehicle collision. (Government Exhibit 3.) Several of the arrests resulted in the Applicant being sentenced to varying amounts of time in jail, culminating in 180 days in jail for the 2000 arrest. (See SOR 1.e., 1.f., and 1.h.) After the last arrest the Applicant resigned his position with the Federal Government.

In addition to being sentenced to jail, the 2000 conviction for Driving Under the Influence resulted in 12 months

probation, \$2,000 fine, the Applicant's automobile was impounded for 30 days and his driver's license was suspended for life in the state where the incident occurred (State A). (See SOR 1.h., Government Exhibits 5 and 6.) Because of that arrest and punishment, the Applicant cannot renew his driver's license in the state where he currently lives (State B). However, the Applicant continues to drive even though he does not currently have a driver's license. (Transcript at 46-50.)

The Applicant has received treatment for alcohol abuse three times. The last time was a six month program which ended in May 2001. The Applicant has been diagnosed as alcohol dependent. This diagnosis is based, in part, on the Applicant's history of "reported previous treatment attempts with limited periods of sobriety, current and previous employment related discord, recurrent legal problems related to use and self-reported tolerance." (Government Exhibit 8 at 8.) During, and after, each treatment there have been bouts of sobriety of varying lengths. Eventually, however, the Applicant goes back to drinking. In addition to a beer in June 2005, the Applicant had two or three drinks several times in 2004 while on travel for his job. (Transcript at 51-53.) The Applicant does not believe himself to be an alcoholic. "I don't feel like I'm going to be hooked or I'm going to be getting in any trouble. (Transcript at 64.)

Paragraph 2 (Guideline J - Criminal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in criminal acts.

The Applicant admitted all of the allegations under this Paragraph. Those admissions are hereby deemed findings of fact. The criminal acts set forth under SOR subparagraphs 1.b., 1.c., 1.d., 1.e., 1.f., and 1.h., and described above, will also be considered under this Guideline.

Mitigation.

The Applicant is an able and talented employee, who has made many contributions over the years to the defense industry. (Applicant's Exhibit E.) Current co-workers, who work with him on a daily basis, state many very laudatory things about the Applicant and his contributions at the workplace. (Applicant's Exhibits B, C and F.)

The president of the company the Applicant currently works for appeared at the hearing and testified on the Applicant's behalf. He states that the Applicant is an extremely valuable employee and that he has not seen any signs of the Applicant drinking on the job. (Transcript at 25-26, 37-38.) He further stated that the Applicant works long hours and is always ready to help in any situation. (Applicant's Exhibit D.)

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. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case will be found under CONCLUSIONS, below.

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 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 criminal conduct and alcohol abuse 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 granting 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 a history of using alcohol to excess and has six arrests and convictions for Driving Under the Influence of Alcohol (Guideline G); and that his arrests and convictions are criminal acts (Guideline J).

The 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. The evidence is clear that the Applicant has a long-standing drinking problem that he either cannot, or will not, admit. He has had six alcohol-related arrests and convictions, all for Driving Under the Influence of Alcohol. As the convictions have mounted, he has been sentenced to ever increasing punishment. He has also undergone several bouts of treatment, all to evidently little effect. While it is true that he has not had a conviction for driving under the influence since 2000, I am not convinced that he has learned not to drink and drive. What he does admit is that he continues to drink, even after being diagnosed as alcohol-dependent and advised not to drink alcohol. The evidence also showed that he continues to drink with co-workers while traveling with his company, knowing that this conduct has caused him trouble in the past.

I am particularly concerned by the Applicant's inability to totally abstain from alcohol use. He has not had an alcohol-related arrest for over five years. However, he still drinks and shows no desire to stop. In addition, he continues to drive, even though he does not have a current driver's license. This is clearly a pattern, and shows a man who does not think the rules apply to him.

I have considered the mitigating evidence which shows that he is an outstanding, well-respected and trustworthy employee. However, people who abuse alcohol to excess are unable to state that they can protect classified information 24 hours a day, seven days a week.

Under Guideline G (Alcohol abuse), I find the following disqualifying conditions apply to the facts of this case: (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 abuse*; (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 (5) *habitual or binge consumption of alcohol to the point of impaired judgment*. None of the Mitigating Conditions apply since the Applicant's history of drunk driving arrests shows a pattern (1), I do not believe there are positive changes in behavior supportive of sobriety (3), and while he does have a positive diagnosis (Government Exhibit 9), he has not abstained from alcohol use for at least 12 months nor does he attend Alcoholics Anonymous or other support groups. Paragraph 1 is found against the Applicant.

Turning to the Criminal Conduct allegations. The Applicant's six convictions bring him under the purview of Disqualifying Conditions (1) *allegations or admission of criminal conduct, regardless of whether the person was formally charged* and (2) *a single serious crime or multiple lesser offenses*.

The Applicant's six convictions for Driving Under the Influence are a pattern of offenses over a 20 year period. Since he continues to drink, and he continues to drive despite the fact he has a life-long suspension in State A and no driver's license in State B, I cannot find there is clear evidence of rehabilitation(6). His conduct is not isolated (2) and, under the particular facts of this case, I cannot find that it was not recent (1). Accordingly, I cannot find that any of the itigating Conditions under Guideline J are present. Paragraph 2 is also found against the Applicant.

The Applicant's contributions to the defense effort have been noted and considered. In addition, I have considered the positive recommendations of his co-workers. Under the particular circumstances of this case, this evidence does not overcome the adverse information that has been presented by the Government.

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

Subparagraphs 1.a. through 1.j.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 1.a.: 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.

Wilford H. Ross

Administrative Judge