

DATE: June 3, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23380

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of arrests for driving while under the influence of alcohol. He was diagnosed by a physician as alcohol dependent and completed an alcohol rehabilitation treatment program. His discharge summary from the rehabilitation treatment program recommended he participate in aftercare comprised of an external support system such as Alcoholics Anonymous. While Applicant claims to be abstinent since 2002, he has not followed the recommendations for his aftercare and attends Alcoholics Anonymous only on occasion, claiming he cannot participate regularly because of transportation problems. Applicant is unable to mitigate the security concerns associated with his alcohol dependence. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 10, 2004, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision—security concerns raised under Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on January 6, 2005, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on March 9, 2005. The FORM contained documents identified as Items 1 through 11. By letter dated March 10, 2005, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. On April 12, 2005, Applicant filed a one-page response to the FORM. Department Counsel did not object to Applicant's submission. On May 26, 2005, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains eight allegations of disqualifying conduct charged under Guideline G (Alcohol Consumption) of the Directive. In his answer to the SOR, Applicant admitted seven of the allegations. In response to allegation 1.a. of the SOR, he denied drinking to the point of intoxication from approximately 1970 to 2002 and asserted he drank to

intoxication from 1990 to 2002. (Item 2.) Neither party requested amendment of the SOR. Applicant's signed, sworn statement to a special agent of the Defense Investigative Service on May 9, 2003 indicates he was a moderate social drinker from 1970 to approximately 1993. (Item 5, at 1.) Applicant's admissions are incorporated as findings of fact.

Applicant is 52 years old. Since 1991, he has been employed as a engineering technologist III by a defense contractor. (Item 3.) Applicant and his wife separated in 1995 and were divorced sometime after 2002. Applicant's son lives with him and submitted a letter for the record attesting to his father's sobriety for the past 3 ½ years. (Item 2, at 3.) Applicant socializes with his brother and sister-in-law, who do not drink alcohol, and his daughter and her husband, who are moderate drinkers. He identifies them as his external support system. (Item 2, at 2.)

Applicant admits a history of alcohol-related arrests and alcohol dependence dating back to approximately 1990. He was charged with and pleaded guilty to Driving while Intoxicated (DWI) in April 1994, in March 1995, and in June 1998. After each conviction, he attended a court-ordered education program for those who drove under the influence of alcohol. In January 2002, he was arrested again and charged with DWI. He pleaded guilty and was fined approximately \$1,002, plus costs. His driver's license was revoked for 10 years. Police reports of his arrests in 1998 and 2002 indicate Applicant was heavily intoxicated, unable to stand or perform psycho-physical tests, and unable to speak coherently. (Item 7; Item 8, at 4-5.)

After Applicant and his wife separated in 1995, he reduced his consumption of alcohol for three years. In 1998, he resumed drinking heavily again. (Item 2, at 1.)

After his 2002 DWI, Applicant received inpatient treatment for approximately two weeks at an addiction treatment center, where he was diagnosed as alcohol dependent by a physician. (Item 11.) His counselor rated his overall progress during treatment as "fair." (Item 11, at 2.) On March 5, 2002, he entered an intensive outpatient alcohol rehabilitation program, from which he was discharged on October 29, 2002., with a prognosis of "fair." The discharge summary for Applicant recommended he "continue working with an external support system, NA [Narcotics Anonymous] or AA [Alcoholics Anonymous] as well as with his sponsor." (Item 10.)

Applicant does not work to support his recovery with an external support system. He attends meetings of Alcoholics Anonymous occasionally. Because his license to drive has been revoked for 10 years, he must be driven to meetings by family or friends or use a public transportation system. Applicant asserts he is unable to obtain transportation to attend regular meetings of Alcoholics Anonymous.

Applicant asserts he has not had a drink of alcohol in 3 ½ years and has no intention to use alcohol in the future. (Response to FORM, at 1.)

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

Guideline G - Alcohol Consumption

In the SOR, DOHA alleged Applicant consumed alcohol at times to excess and to the point of intoxication from approximately 1970 to at least January 2002 (¶ 1.a.); that he was arrested April 2, 1994 and charged with (1) driving while intoxicated and (2) careless driving, that he pleaded guilty to both counts, was fined, ordered to attend 12 hours of educational training in an intoxicated drivers' resource center program, and his driver's license was suspended for six months (¶ 1.b.); that he was arrested March 5, 1995 and charged with (1) driving while intoxicated and (2) open container, that he pleaded guilty to Count 1, was fined, ordered to perform 30 days of community service, ordered to attend 48 hours of educational training in the intoxicated drivers' resource center program, and his driver's license was suspended for two years, and that he was found guilty, fined, and ordered to pay court costs for Count 2 (¶ 1.c.); that he was arrested June 22, 1998 and charged with (1) driving while intoxicated, (2) careless driving, and (3) disregard of marked lanes, that he had a blood alcohol level of .19%, that he pleaded guilty to Counts 1 and 3, was ordered to attend 12 hours of educational training in an intoxicated drivers' resource center program, and Count 2 was dismissed (¶ 1.d.); that he was arrested January 13, 2002 and charged with (1) driving while intoxicated, (2) careless driving, and (3) no seatbelt, that he had a blood alcohol level of .21% and .20%, that he pleaded guilty to Count 1, was fined, and his driver's license was revoked for 10 years, and Counts 2 and 3 were dismissed (¶ 1.e.); that he received inpatient treatment for two weeks in February and March 2002 for a condition diagnosed as alcohol dependence (¶ 1.f.); that he entered an outpatient alcohol rehabilitation program in March 2002 and was discharged from the program in October 2002 with the recommendation he work with an external support system (¶ 1.g.); and that he attended Alcoholics Anonymous meetings from about January 2002 to at least May 2003 (¶ 1.h.).

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 due to carelessness. *Directive ¶ E2.A7.1.1*.

Conditions that could raise a security concern in this case and that could be disqualifying include 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 use (*E2.A7.1.2.1*); diagnosis by a credentialed medical professional (*e.g.* physician, clinical psychologist, or psychiatrist) of alcohol dependence (*E2.A7.1.2.3*); and habitual or binge consumption of alcohol to the point of impaired judgment (*E2.A7.1.2.5*).

With respect to the Guideline G conduct alleged in the SOR, the Government has established its case. Applicant admits four convictions for driving under the influence of alcohol, disqualifying conduct under *E2.A7.1.2.1*. He admits to being diagnosed for alcohol dependence, disqualifying conduct under *E2.A7.1.2.3*. Applicant's consumption of alcohol was habitual and reflected intensive and excessive use, or binge drinking, especially in response to stress. Such conduct raises security concerns under disqualifying condition *E2.A7.1.2.5*.

Applicant admits to being alcohol dependent. He points out that he has been sober since 2002 and has no intention to use alcohol in the future. However, he has no program in place to help him stay sober. He attends A. A. meetings occasionally. He has a history of lapses into alcohol abuse that endanger himself and others, a problem that resulted in the revocation of his driver's license in 2002 for a period of 10 years.

We turn to a discussion of conditions that could mitigate the security concerns related to Applicant's conduct. Applicant admits four convictions for driving an automobile while under the influence of alcohol. These events span a period from 1994 to 2002, and the individual episodes are separated by one year, three years, and four years, thus suggesting a pattern of conduct. Applicant is a mature man in his 50s. He was 41 years old when the first DWI occurred, and he was 49 when the most recent one occurred. Applicant's problems with alcohol reflect a pattern and have occurred recently in his life. While he asserts he has not used alcohol in 3 ½ years, it is too soon to tell if Applicant's problems with alcohol are over. Accordingly, I conclude mitigating conditions E2.A7.1.3.1 and E2.A7.1.3.2. are inapplicable.

Applicant asserts a strong desire to overcome his alcohol dependence, and his intention is laudable. However, he has not elected to pursue the external support system recommended in the discharge summary given to him when he completed his alcohol rehabilitation program. Despite a prognosis of "fair," following a diagnosis of alcohol dependence, he does not participate frequently in meetings of Alcoholics Anonymous or a similar organization, and thus mitigating condition E2.A7.1.3.4 does not apply. Additionally, I conclude Applicant's overall conduct demonstrates some positive changes in behavior supportive of sobriety, making mitigating condition E2.A7.1.3.3. applicable in part.

The allegation in the SOR at ¶ 1.a. is concluded for Applicant because the record shows the allegation was incorrectly drafted. The SOR allegations at ¶¶ 1.b. through 1.h. are concluded against the Applicant.

In my evaluation of the record, I have carefully considered each piece of evidence in the context of the totality of evidence and under all of the Directive guidelines that were generally applicable or might be applicable under the facts of the case. Under the whole person concept, I conclude that Applicant has not successfully demonstrated that it is clearly consistent with the national interest to grant him a security clearance.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1.: Guideline G: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

DECISION

In light of all of 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. Clearance is denied.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.

2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.