

DATE: October 12, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-23377

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was twice arrested for alcohol related offenses. In 1992 and 1998, he was treated for alcohol dependence and in 2004, he was evaluated and his profile matched that of an individual with a substance abuse or dependence disorder. He currently drinks a six pack of beer each night. Applicant's financial problems no longer raise security concerns. However, the record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his alcohol consumption. Clearance is denied.

STATEMENT OF THE CASE

On November 4, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Security concerns were alleged under Guideline G (Alcohol Consumption), and Guideline F (Financial Considerations). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On December 14, 2004, Applicant answered the SOR and requested a hearing. On February 16, 2005, I was assigned the case. On March 11, 2005, a Notice of Hearing was issued scheduling the hearing which was held on March 29, 2005. The record was kept open to allow Applicant to submit additional documents. Several documents were received and admitted into the record. On April 7, 2005, DOHA received a copy of the transcript (Tr.).

FINDINGS OF FACT

Applicant is a 50-year-old reliability engineer trouble shooter who has worked for a defense contractor since 1980, and is seeking to obtain a security clearance. In 2004, he received a special recognition award for his duty performance (App Ex C), has received other awards for duty performance awards, and is a successful contributor at work (App Ex E).

In August 1992, Applicant received alcohol dependence detoxification and rehabilitation treatment after having been diagnosed as alcohol dependent. He was overseas and drinking a six pack to a case of beer per night. He attended alcohol counseling to save his marriage. In March 1994, Applicant and his wife separated. They divorced in May 1996. In July 1996, he married again. In May 2001, he divorced.

In August 1997, Applicant was involved in an argument with his wife. He ran into a tree with his truck. He was charged with Driving While Intoxicated (DWI) and aggravated assault with a deadly weapon, a second degree felony for attempting to run over his mother-in-law. After pleading guilty to the charges he was placed in 150 days confinement, fined \$500, ordered to pay \$233 in court costs, and placed on 24 months probation.

In February 1998, Applicant was involved in an argument with his wife. He was charged with assault causing bodily injury to family members. He was intoxicated at the time of the incident. The charges were dropped because his wife did not want to pursue prosecution. In September 1998, he was admitted to a hospital for alcohol dependence detoxification and rehabilitation therapy. He was diagnosed as alcohol dependent. The reason for consultation was Applicant's admission that he suffered from alcoholism (Gov Ex 6 p 4). During his 1998 treatment, Applicant indicated his brother had died of alcoholic cirrhosis and that his grandfather was an alcoholic. At the hearing, Applicant recanted these statements. He said it was incorrect that his grandfather was an alcoholic (Tr. 59) and stated his brother died of a pancreas or spleen problem (Tr. 60). In October 1998, treatment ended. He attended treatment to save his marriage. During 1998 and 1999, he attended Alcoholics Anonymous. He stopped attending meetings because he started drinking beer again.

From 1996 until June 2003, Applicant consumed six 12 ounce beers every night (Gov Ex 2 p.7). In August 2004, he was evaluated by a staff member at a county council on alcoholism and drug abuse. He matched the profile of an individual with substance abuse or dependence disorder. Applicant acknowledged that others may view him as having an alcohol abuse problem, but he does not view himself as having an alcohol abuse problem (Gov Ex 2 p.7).

Applicant asserts he has reduced his alcohol consumption and currently drinks a six pack of beer every night (Tr. 36). He drinks only beer and does not frequent night clubs. Since 2001, he has attended church regularly.

In August 2001, Applicant filed for Chapter 13, wage earners' plan bankruptcy protection. The plan required him to pay the trustee \$298 per month. As of arch 2005, Applicant had paid the trustee more than \$15,000 (App Ex F). As of June 2003, Applicant's monthly expenses exceeded his income by \$82 (Gov Ex 2). At the time of the hearing, his income exceeded expenses. His yearly salary is \$77,091 (App Ex D) The fair market value of his house is \$65,000 on which he has a \$55,000 mortgage. Applicant borrowed \$21,000 from his company retirement plan and is repaying it at a rate of \$115 per month. In addition to the borrowed amount from the plan, he has \$37,700 in his retirement plan (App Ex F).

The \$419 debt (SOR 1.d) is the result of using a debit card. The card allowed funds to be taken from Applicant's account. He does not understand how he can owe more than was in his account. He does not intend to pay this debt. Applicant has a \$600 dental bill (SOR 2.c) that he intends to pay when he is able.

The SOR lists five debts totaling approximately \$62,000. The current status of those debts follows:

	Creditor	Amount	Current Status
2.c	dental care for stepchildren	\$600	Unpaid.
2.d	debit card	\$419	Does not intend to pay.
2.e	debt	\$981	Included in his Chapter 13 bankruptcy.
2.f	debt	\$3,811	Included in his Chapter 13 bankruptcy.
2.g	mortgage	\$56,340	Listed in his Chapter 13 bankruptcy. Payment is being made separately.
	Total debt listed in SOR	\$62,151	

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security

clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline G (Alcohol Consumption) and Guideline F (Financial Considerations).

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(2\)](#)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Guideline G (Alcohol Consumption). A history of excessive alcohol consumption raises a security concern because of the potential for deliberate or inadvertent mishandling of classified information due to intoxication. 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. (E2.A7.1.1.) The record evidence raises a security concern under this guideline.

In August 1997, Applicant was arrested and pleaded guilty to DWI and aggravated assault with a deadly weapon. He received 150 days confinement, 24 months probation, and had to pay court costs and a fine. In February 1998, he was arrested and charged with assault causing bodily injury to a family member. He was intoxicated at the time of the incident. The charges were dropped because his wife did not want to have the matter prosecuted. Disqualifying conditions (DC) 1 (E2.A7.1.2.1 *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 use*) and DC 5 (E2.A7.1.2.5 *Habitual or binge consumption of alcohol to the point of impaired judgment*) apply.

In 1992 and 1998, he was diagnosed as alcohol dependent and treated. Following each treatment he returned to drinking beer. From 1996 until June 2003, Applicant consumed six 12 ounce beers every night, which is his current rate of consumption. In August 2004, he was evaluated and matches the profile of an individual with a substance abuse or dependence disorder. Applicant's conduct was serious, recent, frequent, and establishes a pattern. He has not presented

persuasive evidence in rebuttal, explanation or mitigation sufficient to overcome the Government's case against him. There is no showing of positive changes in behavior supportive of sobriety, nor efforts to reform his behavior, change his friends, or lifestyle. Applicant has a long and extensive alcohol history. Because the Applicant meets the disqualifying conditions and none of the mitigating conditions, the alcohol consumption is resolved against the Applicant.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive E.2.A.6.1.1.

The Government has satisfied its initial burden of proof under Guideline F (Financial Considerations). The Applicant owed five debts totaling more than \$62,000. Disqualifying Conditions (DC) 1 (E2.A6.1.2.1 *A history of not meeting financial obligations*) and 3 (E2.A6.1.2.3 *Inability or unwillingness to satisfy debts*) apply.

In August 2001, Applicant entered into Chapter 13 wage earners' bankruptcy protection plan. He pays approximately \$300 per month into the fund. Since the program started he has paid more than \$15,000 to the trustee. Three of his debts (SOR paragraphs 2e, 2.f, and 2.g) are included in the plan. Mitigating Conditions (MC) 6 (E2.A6.1.3.6 *The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to these debts.

Applicant has two other debts totaling approximately \$1,000, which he has not paid and are not included in his wage earner's plan. A \$400 debt is the result of a debit card. Applicant does not understand how use of a debit card could result in a debt when its use is limited to the funds available in the account. He does not intend to pay this debt. He owes a \$600 dental bill which he intends to pay when he has sufficient funds. Applicant has \$10,000 equity in his home and approximately \$38,000 in his company retirement program. His yearly income is \$77,000. The two debts totaling \$1,000 do not establish Applicant is financially overextended or is at risk of having to engage in illegal acts to generate funds. I find for Applicant as to financial considerations.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline G (Alcohol Consumption): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Paragraph 2 Guideline F (Financial Considerations): FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: For the Applicant

Subparagraph 2.c: For the Applicant

Subparagraph 2.d: For the Applicant

Subparagraph 2.e: For the Applicant

Subparagraph 2.f: For the Applicant

Subparagraph 2.g: 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 Applicant. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.

2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.