

DATE: August 26, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-24422

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Richard A. Stevens, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant filed for bankruptcy protection on numerous occasions, presently has more than \$25,000.00 in delinquent debt, has numerous alcohol-related incidents in his background, and failed to disclose most of this information in a security clearance application he submitted in February 2000. Clearance is denied.

STATEMENT OF THE CASE

On December 17, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F (financial considerations), Guideline G (alcohol consumption), Guideline E (personal conduct), and Guideline J (criminal conduct). Applicant submitted an undated response to the SOR and requested a clearance decision based on the written record without a hearing. Applicant admitted all SOR allegations except subparagraphs 1.a. through 1.c., 1.i., 2.a., 3.a. through 3.d., and 4.a.

Department Counsel prepared a File of Relevant Material (FORM) on May 9, 2005, that was mailed to Applicant May 10, 2005, and received by him on May 23, 2005. Applicant did not object to anything contained in the FORM or submit additional information for consideration within the 30-day period provided to him. The case was assigned to me July 18, 2005.

PROCEDURAL MATTERS

Department Counsel moved to amend the SOR to delete subparagraph 1.i., alleging it was a duplication of the allegation contained in subparagraph 1.h., and to amend the date alleged in subparagraph 2.i. to September 8, 1984, vice September 8, 1985. There being no objection to the motion by Applicant, the motion is granted.

FINDINGS OF FACT

Applicant's admissions to the various SOR allegations are incorporated herein. Additionally, after a thorough review of the record, I make the

following findings of fact:

Applicant is a 62-year-old man who has been employed by a defense contractor as a security specialist since July 1982. He served in the U.S. Navy Reserve from June 1960 until July 1961, and attained the rank of Seaman (paygrade E-3). He enlisted in the U.S. Army in July 1961, served on active duty until July 1964, and attained the rank of Private First Class (paygrade E-3). He attended college and obtained an associate's degree in 1982. He has been married since July 1967, and has four adult children.

Applicant submitted a single letter of recommendation signed by both the manager, industrial security/site emergency coordinator and the director, security/ethics/facility security officer of his employer. These individuals indicate that Applicant is a competent, reliable, loyal, and a dedicated employee. They are aware of the financial and alcohol allegations contained in the SOR, but state those problems never affected Applicant's work performance. They have never detected any sign that alcohol consumption has affected his work performance, and they have never smelled alcohol on his breath or detected signs he was under the influence of alcohol.

Applicant filed for bankruptcy protection in 1969, 1974, 1976, 1988, and 1996. He obtained discharges in each of those actions, except the 1974 filing which was dismissed for an unknown reason. He presently has outstanding one judgment, one past-due account, six accounts charged off as bad debts, six collection accounts, and one deficiency following repossession on an automobile. The total owing on these accounts is \$25,612.00. Applicant provided a number of explanations why these delinquent accounts were incurred; claiming that many of them resulted from his cosigning on loans for his children or were directly incurred by his children on accounts in his name. He attributes the auto repossession to his voluntary surrender of the vehicle because of problems he had with the used vehicle he purchased and his inability to obtain relief under the state "Lemon Law." He failed to provide any information on any plan to resolve any of the debts.

Applicant was charged with either Driving While Intoxicated (DWI) or Driving Under the Influence of Alcohol (DUI) in 1964, 1974, 1976, 1984, 1985, and 1999. He was convicted of each of those offenses or a negotiated reduced charge to the offense. He received nonjudicial punishment under Article 15, Uniform Code of Military Justice, in 1962 for being intoxicated while on duty. He committed a domestic battery and resisted a police officer in January 1997 after consuming alcohol. He committed a criminal damage to property in October 1998 by damaging vehicle tires on cars of people he had gotten into an argument within a bar where he had been drinking. He was convicted of the domestic battery and criminal damage to property charges.

Applicant received alcohol treatment from December 4-27, 1974, July 22 until October 6, 1997, and intensive outpatient treatment from December 11, 1999 until February 17, 2000. He has not consumed alcohol since 1999, and now attends alcoholics anonymous (AA) meetings two to three times a week.

Applicant submitted a security clearance application (SF 86) in February 2000 in which he failed to list his alcohol-related offenses except the 1999 DUI, and the alcohol-related treatment he received in 1997 and 1990-2000. He also failed to disclose any of his many delinquent accounts. His first explanation for not disclosing the information is that he told the agent who interviewed him following his submission of the SF 86 about them and it is the agent's fault because he didn't do his job properly and correct the SF 86. His other explanations range from being unintelligible to not having a copy of his credit report when he was interviewed by the agent following his submission of the SF 86.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance 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 ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline F, pertaining to financial considerations, Guideline G, pertaining to alcohol consumption, Guideline E, pertaining to personal conduct, and Guideline J, pertaining to criminal conduct, with their respective DC and MC, are most relevant in this case.

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.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁽⁴⁾ although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be

resolved in favor of protecting national security. [\(11\)](#)

CONCLUSIONS

Under Guideline F, a security concern exists when a person has significant unpaid debts. An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

Applicant has repeatedly found it necessary to seek bankruptcy protection, most recently in 1996. He now has more than \$25,000.00 in delinquent accounts with no plan to resolve any of them. Disqualifying Conditions (DC) 1: *A history of not meeting financial obligations*; and DC 3: *Inability or unwillingness to satisfy debts* apply. I have considered all mitigating conditions, and none apply. Guideline F is decided against Applicant.

Under Guideline G, alcohol consumption is a security concern because 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. Those who abuse alcohol are more likely than others to engage in high risk, thoughtless, and sometimes violent behavior. Recurrent use of alcohol to the point of intoxication may affect an individual's ability to exercise the care, judgment, and discretion necessary to protect classified information.

Applicant was convicted on six occasions of either DUI, DWI, or a negotiated reduced charge to one of those offenses between 1964 and 1999. He committed additional alcohol-related offenses in 1962, 1997, and 1998. On three occasions he has undergone alcohol treatment. DC 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: *Habitual or binge consumption of alcohol to the point of impaired judgment* apply in this case. [\(12\)](#)

Applicant has not consumed alcohol since his last DUI arrest in 1999 that was followed by intensive inpatient treatment. He now attends AA meetings regularly. Mitigating Conditions (MC) 2: *The problem occurred a number of years ago and there is no indication of a recent problem*; and DC 3: *Positive changes in behavior supportive of sobriety* apply. Applicant's long-term abstinence, and active and continuing involvement in AA are sufficient to overcome the alcohol consumption concerns that existed. Guideline G is decided for Applicant.

Personal conduct under Guideline E is always a security concern because it asks the central question if a person's past conduct justifies confidence the person can be trusted to properly safeguard classified information.

Applicant provided numerous false answers in the SF 86 he submitted. His attempted explanations neither provide an explanation nor do anything to mitigate his conduct. DC 2: *The deliberate omission, concealment, or falsification of relevant and material facts from any personal security questionnaire, personal history statement, or similar form used to conduct investigation, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities* applies. I have considered all mitigating conditions under Guideline E and none apply. Guideline E is decided against Applicant.

Criminal conduct under Guideline J is a security concern because a history or pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. Willingness to abide by rules is an essential qualification for eligibility for access to the nation's secrets. A history of illegal behavior indicates an individual may be inclined to break rules.

Applicant certified the answers he provided in the SF 86 were true, complete, and correct to the best of his knowledge. He also acknowledged that a knowing and willful false statement potentially subjected him to the criminal sanctions imposed by 18 U.S.C. § 1001. Despite that warning he knowingly and willfully provided false answers in the SF86. DC1: *Allegations or admissions of criminal conduct, regardless of whether the person was formally charged* applies.

Although Applicant committed many other alcohol-related criminal acts over the years, there is no indication he committed any criminal act after his falsification of the SF 86. Further, it should be noted that the SF 86 was signed on February 9, 2000, while Applicant was actively engaged in the intensive outpatient alcohol treatment that has now resulted in his complete abstinence from alcohol and regular attendance at AA meetings. Accordingly, I find MC 1: *The criminal behavior was recent* and MC 6: *There is clear evidence of successful rehabilitation* apply. Under the rather unique factors present in this case, I find the mitigating conditions are sufficient to overcome the criminal conduct security concern alleged. Guideline J is decided for Applicant.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find Applicant has failed to overcome the case against him and satisfy his ultimate burden of persuasion to demonstrate that it is clearly consistent with the national interest to grant or continue his access to classified information.

FORMAL FINDINGS

SOR ¶ 1-Guideline F: Against Applicant

Subparagraphs a-h: Against Applicant

Subparagraph i: Withdrawn

Subparagraphs j-t: Against Applicant

SOR ¶ 2-Guideline G: For Applicant

Subparagraphs a-n: For Applicant

SOR ¶ 3-Guideline E: Against Applicant

Subparagraphs a-d: Against Applicant

SOR ¶ 2-Guideline j: For Applicant

Subparagraph a: For 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.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. Although Applicant admitted he continued to consume alcohol after receiving treatment and being diagnosed as being alcohol addicted, the record lacks sufficient information on the status of the individual making that diagnosis to allow finding DC 3, 4, or 6 apply.