

DATE: March 10, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00628

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a long history of alcohol-related incidents, starting when he was 17 years old. Despite his acceptance of his diagnosis as alcohol dependent, and his attendance at several alcohol treatment programs and Alcoholics Anonymous, Applicant continues to consume alcohol. One of his convictions for driving while intoxicated resulted in a sentence that included confinement for two years. He is ineligible for a security clearance under 10 U.S.C. § 986. He is also unable and unwilling to pay his debts that resulted, in part, from his excessive consumption of alcohol. 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 28 August 2003, DOHA issued a Statement of Reasons (SOR) [\(U\)](#) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption), Guideline F (Financial Considerations), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 19 September 2003 and elected to have a hearing before an administrative judge. The case was originally assigned to another administrative judge, but was transferred to me on 13 January 2004. On 10 February 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 19 February 2004.

FINDINGS OF FACT

Applicant is a 36-year-old electrician for a defense contractor.

Applicant started to drink alcohol when he was 17 years old. During his senior year in high school and freshman year in college, Jack Daniels whiskey was his "best friend." Ex.7 at 9. In October 1987, when he was 19 years old, Applicant was arrested for being a minor in possession of alcohol. Ex.2 at 2. In August 1988, on his way home from a party,

Applicant was stopped by a policeman for driving his vehicle across the center stripe of the highway. He was given a Breathalyzer that revealed his blood-alcohol content (BAC) was .24%. Applicant pled guilty to, and was convicted of, driving while intoxicated (DWI) and sentenced to 730 days in jail, suspended with probation for 24 months. As terms of the probation, Applicant was ordered to attend a court-sponsored alcohol education program and submit to urinalysis one time per month during the 24 month probation period. Applicant successfully completed both the course and the probation. Ex. 9.

Applicant served in the U.S. Navy from March 1991 until April 1997. Ex. 1 at 5. In August 1994, Applicant was arrested for driving under the influence of alcohol (DUI). As a result, the Navy placed Applicant in its Level II alcohol treatment program for six months.

In May 1996, Applicant was arrested for DWI. His BAC was .13. He subsequently pled guilty and was convicted. His sentence included a jail term of 60 days, of which 45 were suspended. He received nonjudicial punishment (NJP) in the Navy for the same offense and was ordered to attend the Level III alcohol treatment program. Applicant separated from the Navy before a place in the treatment program was available.

In February 1997, the state filed a charge that Applicant had violated his probation. He was incarcerated for 30 more days of his suspended sentence from the 1996 conviction. Shortly thereafter, the State restricted his license.

From September to November 1997, Applicant received outpatient treatment at a certified alcohol counseling program for a condition diagnosed as alcohol dependence. Ex. 8 at 1.

Applicant was arrested for DWI in February 1999. The charge was later dismissed.

Applicant entered a certified alcohol treatment counseling program in September 1997. He was diagnosed as alcohol dependent. The counselor noted Applicant "identified himself as an alcoholic from the onset of his evaluation." Ex. 8 at 1. Applicant recognized that abstinence was the only way he could control his alcohol dependence. Once he completed the program and entered aftercare, he "slacked off on his AA (Alcoholics Anonymous) commitment and his general attitude was becoming indifferent." Ex. 8 at 2. After a traffic violation in December 1997, his attitude improved.

He continues to consume alcohol. He drank the night before the hearing, but claimed he had not been drunk in months. Tr. 18.

Applicant "failed to meet [his] financial obligations due to [his] excessive drinking and spending the money on alcohol." Ex. 2 at 5. Tr. 25. Applicant's monthly obligations exceed his monthly income. Ex. 2 at 8. The following chart summarizes the SOR allegations and the status of his delinquent debts.

¶	Nature and Amount	Status	Record
2.a.	Foreclosure on home, \$29,000	Refuses to pay	Tr. 27
2.b.	Acct delinq since 9/96, \$511	Claims he paid; no evidence	Tr. 27
2.c.	Acct delinq since 11/96, \$1,744	Claims he paid; no evidence	Tr. 27
2.d.	Acct delinq since 10/01, \$464	Claims he paid; no evidence	Tr. 27

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 to the point of intoxication from 1984 to 2001 (¶ 1.a.), was arrested for being a minor in possession of alcohol (¶ 1.b.), was arrested four times for DUI (¶¶ 1.c., 1.d., 1.f., 1.1.), ordered to attend alcohol treatment (¶ 1.e.), received NJP for the DUI offense alleged in ¶ 1.f. (¶ 1.g), violated probation and served 30 days in jail (¶ 1.h.), had alcohol restrictions placed on his driver's license (¶¶ 1.i., 1.k.), was treated for alcohol dependence (¶ 1.j.), and continues to consume alcohol (¶ 1.m.). 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.

Applicant admits each of the SOR allegations, except ¶¶ 1.i. and 1.k.-concerning the placement of alcohol restrictions on his driver's license. The evidence amply demonstrates Applicant is alcohol dependent-as diagnosed by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program. DC E2.A7.1.2.4. Applicant has had several alcohol-related incidents away from work, such as his DWIs. DC E2.A7.1.2.1. Despite his past history and his diagnosis of alcohol dependence, Applicant continues to consume alcohol-even to the point of intoxication within months of the hearing. DC E2.A7.1.2.6. None of the mitigating conditions under this guideline apply to Applicant. I find against Applicant on all subparagraphs, except ¶¶ 1.i. and 1.k. The evidence is insufficient to find against him on these subparagraphs.

Guideline F-Financial Considerations

In the SOR, DOHA alleged Applicant had delinquent debts totaling over \$32,000 (¶ 2.a.-2.d.) and his monthly expenses exceed his monthly income. An applicant who is financially overextended is at risk of having to engage in illegal acts to generate funds. Directive ¶ E2.A6.1.1.

The Government established by substantial evidence and Applicant's admissions that he has a history of not meeting his financial obligations (DC E2.A6.1.2.1.) and is unable or unwilling to satisfy his debts (DC E2.A6.1.3.1.). His financial problems are linked to his excessive consumption of alcohol. DC E2.A6.1.2.5. Applicant claims he paid all of the debts, except the foreclosure, but failed to provide any supporting documentation. He refuses to pay the remaining debt on his foreclosed mortgage. None of the mitigating conditions listed under the guideline apply. Therefore, I find against Applicant.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant is disqualified from holding a security clearance under 10 U.S.C. § 986 because of his sentence to two years in jail for his 1988 conviction for DUI. (¶ 3.a.). Absent a waiver from the Secretary of Defense, the Department of Defense may not grant or continue a security clearance for any applicant who has been sentenced by a U.S. court to confinement for more than one year. 10 U.S.C. § 986. Applicant is subject to 10 U.S.C. § 986 by virtue of being sentenced to two years in confinement as a result of the conviction for DUI in 1996. That statute applies even though Applicant did not serve any time in prison for that offense. ISCR Case No. 01-13566 at 5 (App. Bd. Apr. 15, 2003). Under the circumstances, I am required to find against Applicant on ¶ 3.a. As my adverse security decision in Applicant's case is not based solely on the applicability of 10 U.S.C. § 986, it is inappropriate for me to make a recommendation as to whether Applicant's case should be considered for waiver. ISCR Case No. 02-00500 at 6 (App. Bd. Jan. 16, 2004) (citing DOHA Operating Instruction 64 ¶ 3.e.).

FORMAL FINDINGS

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

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph 1.a.: Against 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

Subparagraph 1.i.: For Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: For Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Paragraph 2. Guideline F: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Subparagraph 2.d.: Against Applicant

Subparagraph 2.e.: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: 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.

James A. Young

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.