

DATE: March 21, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00741

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

David P. Price, Esq.

SYNOPSIS

Applicant is an electronic maintenance technician employed by a defense contractor after retiring from active military duty. He had a security clearance while on active duty. Applicant had four arrests and convictions for driving while intoxicated from 1989 to 2002. His driving privileges have been suspended. He has one conviction in 2000, for driving on a suspended license. He admitted to drinking to excess on occasions from 1975 to 2002. Applicant was jailed as part of a sentence for driving while intoxicated and completed an alcohol treatment program in 2002. Since 2002, Applicant changed his drinking habits and has only had one beer on two separate occasions since that time. He has a strong family support system. He has mitigated security concerns about his alcohol consumption and his criminal conduct. Clearance is granted.

STATEMENT OF THE CASE

On March 8, 2004, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to not grant a security clearance to Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). Applicant acknowledged receipt of the SOR on March 15, 2004. The SOR alleges security concerns under Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct) of the Directive.

Applicant answered the SOR in writing on March 25, 2004. He did not provide complete information and was requested by DOHA on May 3, 2004, to complete his response. He provided a complete response on May 12, 2004, admitting all the allegations under Guidelines G and J and requesting a hearing before an administrative judge. The request for a hearing was received by DOHA on May 18, 2004. Department Counsel was prepared to proceed with the case on September 9, 2004, and the case was assigned to another administrative judge on September 15, 2004. A notice of hearing was issued on October 21, 2004 for a hearing scheduled for November 10, 2004. Applicant's requested for a continuance of the hearing scheduled for November 10, 2004 was granted. The case was reassigned to me on December

9, 2004. A notice of hearing was issued on January 14, 2005 and the hearing was held on February 3, 2005. Seven government exhibits, five Applicant exhibits, and the testimony of Applicant and two Applicant witnesses were received during the hearing. The transcript was received on February 14, 2005.

FINDINGS OF FACT

Applicant is a 47-year-old electronic maintenance communications technician for a defense contractor. He retired from active military duty after serving 20 years in communications and electronics maintenance. He was granted a security clearance while on active duty.⁽¹⁾ He admitted he drank alcohol to excess from 1975 to 2002. He admitted he had been arrested and convicted four times from 1989 to 2002 for driving offenses involving alcohol to include driving while intoxicated. He admitted he had been arrested and convicted for driving with a suspended driver's license. He admitted to attending alcohol treatment programs as a result of his alcohol related driving convictions. He admitted to being arrested on false imprisonment and kidnaping charges that were not prosecuted.⁽²⁾

Applicant started drinking alcohol at age 18, the legally permissible age to drink alcohol in the state he was living.⁽³⁾ He was arrested and convicted in 1988 while he was on active military duty for drinking in public. Again while still on active duty, Applicant was arrested and convicted in 1989 for driving while intoxicated and was fined, received a suspended jail sentence, and placed on probation. His driver's license was also suspended. He was again arrested and convicted in March 2000, for driving under the influence, and was fined and received a suspended jail sentence. His driver's license was again suspended. He was convicted in September 2000, for driving under the influence and on a suspended license. He was sentenced to a fine, a short jail sentence and his driver's license was again suspended. As a result of this conviction, he attended a court ordered alcohol treatment program. Applicant was arrested in April 2002, for again driving under the influence and on a suspended driver's license. He was sentenced to serve 60 days in jail, placed on probation after his jail sentence, to pay a fine, and his driver's license was suspended indefinitely. Again, Applicant attended a court ordered alcohol treatment program.⁽⁴⁾

Applicant was married in October 1980 and has three children. He and his family lived in a number of locations while Applicant was on active military duty. Applicant and his spouse had marital problems after Applicant retired from active military duty in 1996. They separated in 1999, and were finally divorced in December 2001. When Applicant and his wife separated, Applicant moved from the home. Applicant was drinking alcohol heavily during this time.⁽⁵⁾ He purchased a home near his family in September 2001, and his oldest daughter moved in with him. His wife also was engaged to another man and this upset Applicant. Applicant visited bars and drank at home. His appearance was slovenly and he was not neat at home. During this time, he was distant from his family and disregarded them. He continued to drink heavily until his arrest for driving under the influence in April 2002.⁽⁶⁾

Applicant's 60 day jail sentence in 2002 caused a change in his attitude and behavior. During his 60 day jail sentence, Applicant's daughter paid his bills but because he was not working, he was barely solvent. After being released from jail in June 2002, he attended court ordered alcohol counseling. Applicant became more concerned with family matters, took care of his home, and ensured his personal appearance was appropriate. He started improving his house and added special feature.⁽⁷⁾ Since Applicant's license was suspended, his daughter drove him to work.⁽⁸⁾ Applicant and his wife started seeing each other again and were remarried in December 2004.⁽⁹⁾ He has paid all of his recurring expenses on time and has managed to save also \$20,000. Since his remarriage in December 2004, his wife now drives him to work since his driver's license is still suspended. He has a good support system from his family, i.e. his wife, married daughter and grandson, and his other two children at home.⁽¹⁰⁾ His supervisor is aware of his past drinking problems but considers him a good, honest, hard worker who does not have work related problems.⁽¹¹⁾

Applicant's drinking habits also changed as a result of his time in jail from April to June 2002 and court ordered alcohol counseling. He stopped drinking. From June 2002 until February 2005, Applicant drank only one beer on two occasions and had a sip of champagne at his remarriage in December 2004.⁽¹²⁾ Applicant completed a court ordered private sector alcohol treatment program after his third driving while intoxicated conviction in 2000 with a fair to fairly good prognosis.⁽¹³⁾ Applicant completed a court ordered military operated alcohol treatment program after completing his jail sentence in June 2002. At the start of this program, Applicant was evaluated by licensed clinical social workers with an admissions diagnosis of alcohol dependence. A discharge diagnosis was not made.⁽¹⁴⁾ Applicant also attended some Alcohol Anonymous meetings but does not now participating in any such programs.⁽¹⁵⁾ Applicant was recently examined by a licensed clinical social worker in a recognized alcohol treatment program with a favorable result and prognosis.⁽¹⁶⁾

Applicant's sister was murdered and nephew severely wounded by intruders in May 2001. Applicant and his brothers went to the area to attend to the sister's family and their mother. They also wanted to assist police in apprehending the individuals responsible for the attack. One of Applicant's brothers hired an individual to help apprehend the assailants. While Applicant was at the airport picking up his daughter, the brothers and the other man abducted an individual they thought was the assailant, tied him up, and put him in the back of a car. The brothers located Applicant at the mother's house and told him they had an individual in their car. Applicant and his brothers drove around for awhile discussing what to do and

decided to turn the individual into the police. Applicant, his two brothers, and the other individual were arrested and charge with kidnaping and false imprisonment. His brothers and the other person were convicted of false imprisonment and sentenced. Applicant was not prosecuted since applicant was not present when the individual was apprehended.⁽¹⁷⁾

POLICIES

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."⁽¹⁸⁾ 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 judgement, 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."⁽¹⁹⁾ Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶ 6.3.1 through ¶ 6.3.6

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."⁽²⁰⁾ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person.⁽²¹⁾ An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of recurrence.⁽²²⁾

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.⁽²³⁾ 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽²⁴⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽²⁵⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²⁶⁾ "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability."⁽²⁷⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽²⁸⁾

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline G - Alcohol Consumption: A security concern exists 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 information due to carelessness.

Guideline J - Criminal Conduct: A security concern exists because a history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying, as well as, those which would mitigate security concerns, pertaining to the adjudicative guidelines, are set forth and discussed in the conclusions section below.

CONCLUSIONS

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR:

The government has established its case under Guideline G. Applicant's convictions for driving under the influence of alcohol, public drinking, and attendance at alcohol treatment programs brings the matter under Alcohol Consumption Disqualifying Condition E2.A7.1.2.1 (*alcohol-related incidents away from work, such as driving while under the influence, . . . or other criminal incidents related to alcohol use*); and E2.A7.1.2.4 (*evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*). Applicant had four convictions for driving while intoxicated in twelve years. He was diagnosed as alcohol dependent by licensed clinical social workers in two separate alcohol treatment program. However, Applicant's consumption of one beer on two separate occasions and a sip of champagne in almost three years is not an excessive consumption of alcohol or the abuse of alcohol that would trigger Alcohol Consumption Disqualifying Condition E2.A7.1.2.6 (*consumption of alcohol subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*).

The Alcohol Consumption Mitigating Conditions that apply to Applicant's alcohol consumption are E2.A7.1.3.2 (*the problem occurred a number of years ago and there is no indication of a recent problem*); and E2.A7.1.3.3 (*positive changes in behavior supportive of sobriety*). The last alcohol related incident occurred in 2002 almost three years ago. Since that incident, Applicant has changed his alcohol-related behavior significantly. He has very little alcohol consumption (two beers and a sip of champagne) in the intervening three years. He has taken pride in the appearance of his home and himself. He has improved his finances and is saving his financial resources. He continues to work for the same employer and is highly thought of by them. He has reconciled with his wife and has remarried her. While he has not taken advantage of alcohol support groups or programs, he does have a good support group with his wife, children, and grandson. Applicant's alcohol problems occurred a number of years ago and there is no indication of recent problems. There are positive changes in behavior that support his sobriety. I conclude Applicant has mitigated the security concerns of alcohol consumption.

The government has established its case under Guideline J. Applicant's arrests and convictions for driving under the influence, public drinking, and driving with a suspended driver's license, and his arrest for false imprisonment brings the conduct under Criminal Conduct Disqualifying Condition E2.A10.1.2.1 (*allegations or admissions of criminal conduct, regardless of whether the person was formally charged*), and E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*). There is no dispute Applicant was arrested and convicted on the alcohol related offenses, for driving with a suspended driver's license, and arrested for false imprisonment.

The Criminal Conduct Mitigating Conditions that apply to Applicant are E2.A10.1.3.1 (*the criminal behavior was not recent*); and E2.A10.1.3.5 (*acquittal*). Applicant's alcohol related criminal behavior happened from 1988 to 2002. Since 2002, there have been no recent alcohol related offenses. He has only a limited consumption of alcohol so as not to cause a repeat of such criminal behavior. Applicant has not driven since his license was suspended indefinitely in 2002 and has others drive him to work. There have been no more driving related offenses since 2002. I conclude Applicant has mitigated any security concerns based on alcohol-related criminal conduct.

The arrest for false imprisonment was the only criminal behavior not tied to alcohol consumption. The fact Applicant was arrested for a criminal offense does not prove Applicant engaged in criminal conduct. The fact criminal charges were dropped or dismissed is not dispositive of the issue. The underlying basis of the criminal charges should be considered to determine if Applicant engaged in criminal conduct.⁽²⁹⁾ Applicant's brothers imprisoned the alleged assailant, took the person to Applicant, and asked for his help. The person was turned over to the police. While it is difficult to determine why prosecutors decided not to try Applicant but did try the brothers, it is reasonable to conclude that Applicant did not engage in criminal activity and there was no basis for a prosecution. I conclude Applicant did not engage in criminal activity concerning the false imprisonment. I conclude Applicant has mitigated any security concerns under Guideline J.

I carefully considered all of the circumstances in light of the "whole person" concept to reach a fair, impartial, and commonsense decision. I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.; For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Paragraph 2, Guideline J: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

DECISION

In light of all of the circumstances presented in the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Thomas M. Crean

Administrative Judge

1. Tr. 118.
2. Government Exhibit 6 (Applicant's statement, dated September 19, 2002), at 1-2; Tr. 98-100.
3. Tr. 128.
4. Government Exhibit 4 (Court documents, dated September 6, 2002) at 6.
5. Tr. 60-65.
6. Tr. 37-40.
7. Applicant Exhibit B (Recent Bank History, dated January 28, 2005); Tr[. 84-87.
8. Tr. 41-42.
9. Tr. 65.
10. Tr. 40-48; Tr. 64-66.
11. Applicant exhibit A (Character Statement for Applicant, dated December 23, 2004).

12. Tr. 66-67; Tr. 44-49; Tr. 88-90..
13. Government Exhibit 5 (Discharge Summary, dated March 5, 2001).
14. Government Exhibit 4 (Arrest Record and Progress Notes on Applicant, dated September 6, 2002).
15. Tr. 106.
16. Applicant Exhibit E (Clinical Evaluation, dated February 1, 2005).
17. Government Exhibit 7 (Applicant's statement, dated October 10, 2003; Applicant Exhibit C (Newspaper article and Court Judgments, dated October 29, 2001); Tr. 92-98.
18. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).
19. Exec. Or. 12968, *Access to Classified Information* § 3.1 (b) (Aug. 4, 1995).
20. Directive ¶ E2.2.1.
21. *Id.*
22. Directive ¶¶ E2.2.1.1 through E2.2.1.9.
23. *See* Exec. Or. 10865 § 7.
24. Directive ¶ E3.1.14.
25. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.
26. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).
27. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))
28. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.
29. ISCR Case No. 01-12452 (App Bd, January 27, 2003) at 3.