

DATE: May 24, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04047

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant mitigated security concerns raised by his consumption of alcohol, but was unable to mitigate concerns raised by over \$20,000 of delinquent debts. 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 21 October 2003, DOHA issued a Statement of Reasons (SOR)⁽¹⁾ detailing the basis for its decision-security concerns raised under Guideline F (Financial Considerations) and Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in a writing notarized on 20 November 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on 22 January 2004. On 23 March 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 30 March 2004.

Although Applicant was not employed at the time of the hearing, he was subject to rehire if he could convince the Government to grant him a security clearance. Therefore, I concluded I had jurisdiction to conduct the hearing.

FINDINGS OF FACT

Applicant is a 47-year-old test consultant for a defense contractor. He was married from 1983-90 and has a son who is 20 years old. Ex. 1 at 1, 3-4. His supervisor reports Applicant is reliable and a hard worker who has performed beyond expectations. Ex. I.

In 1975, after he was involved in an automobile accident, Applicant was arrested and charged with driving while intoxicated (DWI). He was convicted and, on 7 November 1975, sentenced to 90 days in jail (suspended), fined, and placed on probation for one year. Answer; Ex. 2 at 4.

On 4 August 1995, a police officer made a traffic stop of Applicant's vehicle for speeding. Applicant smelled of alcohol, slurred his speech, and was unsteady on his feet. Applicant refused to submit to a Breathalyzer. The officer found an empty beer can on the passenger floor board. The officer found marijuana in a plastic baggie in Applicant's pocket and a hand-made foil pipe in the console of the vehicle. Ex. 7. Applicant was charged with driving while under the influence (DUI) of alcohol, driving while his ability was impaired (DWAI), speeding, and possession of less than one ounce of marijuana. On 26 March 1996, Applicant pled guilty to DWAI and the other charges were dismissed. He was sentenced to one year of supervised probation, court costs, and ordered to complete a level II alcohol education program. Ex. 6 at 8. Applicant completed the program and finished his probationary period without incident. Answer.

In 2000, Applicant was diagnosed with Type II diabetes. His doctor prescribed a medication that is not recommended to be taken with any alcohol. Answer. Nevertheless, on 5 August 2002, Applicant consumed alcohol and was arrested and charged with driving the wrong direction on a one-way street, DWI, and DUI per se. His blood-alcohol content was .126. (2) Tr. 32. Applicant was convicted of DWAI and sentenced to 120 days in jail (suspended), one year of unsupervised probation, court costs, and ordered to complete community service and level II alcohol education and therapy. Ex. 1 at 6; Answer; Ex. 4 at 16. Applicant became "intoxicated approximately 1-3 times yearly." Ex. 2 at 2. He stopped drinking alcoholic beverages after his conviction. Tr. 31, 56.

Applicant lost his job during the economic downturn of 2001. He was unemployed from May 2001 until April 2002. To pay his living expenses and pay his part of his son's college expenses, Applicant had to run up his credit cards. He sold his car so that he could afford to make the payments on his house. Applicant signed up with a bill consolidation program and made payments on the debts alleged in ¶¶ 1.a.-1.d. in September, October, and November 2003. Applicant was terminated from his employment on 8 December 2003 because he did not have a security clearance. Thereafter, he was unable to make the \$695 monthly payments to the bill consolidator.

The following chart summarizes the delinquent debts alleged in SOR ¶ 1.

¶	Nature and Amount	Status	Record
1.a	Gas credit card charged off \$4,320	Unpaid	Tr. 27
1.b.	Bank credit card delinq \$11,198	Unpaid	Tr. 27
1.c.	Bank delinq \$7,298	Unpaid	Tr. 27.
1.d.	Delinq debt \$2,210	Unpaid	Tr. 27
1.e.	Orthodontist delinq \$200	Paid \$100	Answer; Ex. C

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 F-Financial Considerations

In the SOR, DOHA alleged Applicant had five delinquent debts (¶¶ 1.a.-1.e.). 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 each of the SOR allegations in ¶ 1. Applicant 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.A6.1.2.3.). The conditions that resulted in this behavior were largely beyond Applicant's control-he was laid off from work for almost a year between May 2001 and April 2002 and lost his latest job in December 2003 because of his inability to get a security clearance. Although he is eligible for rehire, he still has over \$20,000 in delinquent debts. Applicant made a good-faith effort to resolve his debts by participating in the debt consolidation plan. MC E2.A6.1.3.6. But Applicant has not been able to meet his payments because he was laid off again. At this time, his debt problem is not being resolved. I find against Applicant.

Guideline G-Alcohol Consumption

In the SOR, DOHA alleged Applicant was charged with and convicted three alcohol-related driving offenses (¶¶ 2.a., 2.b., and 2.d.), arrested for and convicted of disorderly conduct and public intoxication (¶ 2.c.), and drinks to the point of intoxication 1-3 times yearly (¶ 2.e.). 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.

The Government established by substantial evidence and Applicant's admissions each of the allegations contained in SOR ¶ 2, except ¶ 2.c. Applicant admitted being arrested for disorderly conduct, but not for public intoxication. Answer. There is no evidence Applicant was intoxicated or was arrested for being intoxicated. I find for Applicant on ¶ 2.c.

Applicant had alcohol-related incidents away from work-three offenses of driving while his faculties were impaired by alcohol. DC E2.A7.1.2.1. Applicant admits drinking to the point of intoxication 1-3 times yearly in the past. Applicant has made positive changes in his behavior supportive of sobriety. MC E2.A7.1.3.3. He has stopped drinking alcohol and his alcohol counselor opines that he "is not at risk for relapse or recidivism." Ex. H. I find for Applicant on ¶ 2.

FORMAL FINDINGS

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

Paragraph 1. Guideline F: 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

Paragraph 2. Guideline G: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For 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.

2. He claims it was .129 on his SCA. Ex. 1 at 6.