

DATE: June 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04107

DECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Catherine M. Engstrom, Department Counsel

Nichole Noel, Department Counsel

FOR APPLICANT

Richard Murray, Esq.

SYNOPSIS

Applicant has mitigated two DUI offense, the latest of which occurred over four and a half years ago. There is no evidence to indicate that Applicant is an alcoholic, drinks to excess, or even routinely drinks. Applicant appears to have addressed his problem by ensuring he never drives while drinking. He only drinks at home or away from home when he can walk there or others can drive. Applicant's drinking does not appear to be frequent or routine. He appears to be a social drinker, drinking with friends or relatives while watching sporting events or at a family get-together. Though already moderate, moreover, Applicant's use of alcohol appears to be declining as he spends more time with his fiancée, who does not drink. Clearance is granted.

STATEMENT OF THE CASE

On September 29, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ issued a Statement Reasons (SOR) to Applicant. The SOR details security concerns under Guideline G (Alcohol Consumption). The SOR states that DOHA was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommends that his case be submitted to an Administrative Judge.

On October 21, 2003, Applicant responded to the SOR and requested a hearing. The case was assigned to me on January 8, 2004. A notice of hearing was issued on January 30, 2004 and the hearing was held on March 9, 2004. During the hearing, four Government exhibits (Govt Ex), two Applicant exhibits (Ap Ex) and the testimony of three Applicant witnesses, including Applicant, were received. The transcript (Tr) was received on March 17, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact:

Applicant is a 38-year-old network systems engineer who is employed by a defense contractor. He is seeking a security clearance.

On January 1, 1984, Applicant was arrested for driving under the influence (DUI) while returning home from a coworker's home, where he had consumed champagne. Applicant was given probation before judgment, placed on unsupervised probation for one year, fined \$500.00, and ordered to attend an alcohol awareness class (SOR ¶ 1.d).

On November 29, 1999, Applicant was arrested on charges that included speeding, negligent driving, consuming an alcoholic beverage while operating a motor vehicle, and driving under the influence of alcohol (DUI). He was attempting to drive to his girlfriend's home after consuming several beers with friends at a bar. On August 22, 2000, a court fined Applicant \$150.00, placed him under supervised probation for three years, and ordered him to install an ignition interlock device for one year (SOR ¶ 1.a).

On January 3, 2000, Applicant obtained admission to an alcohol counseling program. He passed a test after completing the education portion of the program. Applicant also attended 27 counseling sessions, alcoholics anonymous meetings twice a week, and was tested for alcohol on 17 occasions with negative results. He completed the 26 week program on July 17, 2000 (SOR ¶ 1.b). In December 2000, Applicant obtained his bachelor of science degree in computer and information science.

Following his security clearance application, Applicant admitted during his interview with a Defense Security Service (DSS) investigator that he consumed alcohol before the end of his most recent probation, contrary to the terms of his probation (SOR ¶ 1.c). The first such occasion was on or about September 2001, when Applicant walked to the home of a friend and consumed a few beers while watching a Redskins game.

Applicant only drank occasionally while with friends at a party or while attending or watching a ball game on television. He never drinks and drives. The last occasion on which he drank was February 1, 2004, when he had a few friends over to watch the Super Bowl on television.

Applicant's consumption of alcohol has been even less often as he spends more time with his fiancée, who does not drink alcohol. They plan to marry in September and Applicant has provided a home for them with the purchase of his parents house. Applicant's fiancée has a disability retirement following two operations to remove cancer. She has known him for approximately 11 years. Applicant's fiancée has only observed him to drink one or two beers on special occasions, such as holidays, her birthday, or a family get-together. One of her brothers was an alcoholic as was her ex-husband who was abusive towards her.

POLICIES

Department Counsel is responsible for presenting evidence to establish controverted facts in the SOR. Directive E3.1.14. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision. Directive E3.1.15.

Eligibility for access to classified information is predicated upon an individual meeting adjudicative guidelines discussed in Enclosure 2 of the Directive. An evaluation of whether an applicant meets these guidelines also includes the consideration of a number of variables known as the "whole person concept." Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a decision. This assessment should include the following factors: (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 individual'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 or recurrence. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of national security. Directive E2.2.2.

Enclosure 2 provides conditions for each guideline that could raise a concern and may be disqualifying, as well as further conditions that could mitigate a concern and support granting a clearance. The following guidelines are applicable to this case.

Guideline G: Alcohol Consumption

The concern under Guideline G is that 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. Conditions that could raise a security concern and may be disqualifying under Guideline G include 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 (Disqualifying Condition 1).

Conditions that could mitigate security concerns include E2.A7.1.3.2, the problem occurred a number of years ago and there is no indication of a recent problem (Mitigating Condition 2) and

E2.A7.1.3.3, positive changes in behavior supportive of sobriety (Mitigating Condition 3).

CONCLUSIONS

Guideline G: Alcohol Consumption

Applicant's two DUI offenses raise Disqualifying Condition 1. Although Applicant committed two DUI offenses, they occurred 15 years apart and they appear to be the only alcohol-related incidents in his background. There is no evidence to indicate that Applicant is an alcoholic, drinks to excess, or even routinely drinks. Based on repeated testing during his alcohol counseling program, he totally refrained from the use of alcohol during the 26 week course. Applicant's predicament stems from him driving when he has been under the influence of alcohol.

Applicant appears to have addressed his problem by ensuring he never drives while drinking. He only drinks at home or away from home when he can walk there or others can drive. Applicant's drinking does not appear to be frequent or routine. He appears to be a social drinker, drinking with friends or relatives while watching sporting events or at a family get-together. Although Applicant resumed limited use of alcohol before the conclusion of his probation period, he was forthright about this with the DSS investigator. Based on this and the other record evidence, I believe Applicant has mitigated his probationary transgression.

Though already moderate, Applicant's use of alcohol appears to be declining as he spends more time with his fiancée, who does not drink. I found her testimony compelling because she was a victim of alcohol abuse. It does not appear that she would tolerate any misuse of alcohol on the part of Applicant. The fact she sees nothing wrong with his occasional use of alcohol is a testimony to Applicant's controlled use of it.

Based on the record, Applicant has demonstrated the applicability of Mitigating Condition 2. His last DUI occurred over four and a half years ago and there is no indication of a recent problem and no indication that any problem is likely to occur. Based on the influence of his fiancée, the prospect of his marriage and his devotion to his job, it appears that Applicant has made and will continue to maintain positive changes in his behavior supportive of sobriety. Undoubtedly, Applicant recognizes that further alcohol-related incidents could have a disastrous impact on his career. Therefore, I find in favor of Applicant.

FORMAL FINDINGS

Formal findings, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

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

DECISION

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

Signed

Roger E. Willmeth

Administrative Judge

1. Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.