

DATE: June 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04141

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant deliberately omitted relevant information about his arrest record and mental health counseling from his April 2002 security clearance application (SF 86). He also has a mental condition that could impair his judgment. While his alcohol consumption (Guideline G) is not a security concern, Applicant has failed to mitigate the impact of his criminal conduct (Guideline J), mental health issues (Guideline I), or deliberate falsification of security clearance questionnaires (Guideline E). Clearance is denied.

STATEMENT OF THE CASE

On November 13, 2003, in accordance with DoD Directive 5220.6, as amended (Directive), the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns about his personal conduct, alcohol consumption, mental health, and criminal conduct. The SOR further informed Applicant that, based on information available to the government, DOHA adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#)

On January 17, 2004, Applicant responded to the SOR (Answer) and admitted to the allegations in SOR subparagraphs 1.b, 2.b, and 3.a. He also requested a determination without a hearing. On March 30, 2004, DOHA Department Counsel submitted a file of relevant materials with 10 exhibits (Items 1 - 10) attached (FORM) in support of the government's preliminary decision, a copy of which was sent to Applicant on April 1, 2004. Applicant received the FORM on April 8, 2004, and had until May 9, 2004 to submit additional information in response to the government's case. However, Applicant did not submit anything further in his own behalf and the case was assigned to me on May 19, 2004.

FINDINGS OF FACT

Applicant's aforementioned admissions are incorporated herein as facts. After a thorough review of the pleadings and

exhibits, I make the following additional findings of fact:

Applicant is a 44-year-old supply technician employed by a defense contractor since June 2001. He also served in the U.S. Air Force between 1977 and 1984, holding a Top Secret clearance during that time. In July 1996, he married for the third time. Two previous marriages ended in divorce in 1983 and 1988.

In 1983 or 1984, Applicant was assigned to an overseas Air Force facility. He had just learned his first wife had decided to re-marry, thus relieving Applicant of his support obligations. He proceeded to celebrate his new-found largesse by drinking 13 tequila sunrise cocktails at the NCO club, causing him to pass out across the street. He was roused by the base police and taken to jail. At an Article 15 hearing, he was reduced in grade to Airman 1st Class (E-4), jailed for 30 days, issued a letter of reprimand, and ordered to undergo alcohol awareness counseling for 90 days. [\(2\)](#)

On January 9, 1998, Applicant and his current wife got into an argument over money matters (he was unemployed due to a back injury at the time) and her displeasure over his weekend drinking (he had not had anything to drink that day). As the argument escalated, Applicant's step-daughter intervened and Applicant twice threw her to the floor, injuring her wrist. The step-daughter left the house and called police. Applicant admitted what had happened, was charged with Assault (Domestic Violence) and released on his own recognizance. At trial in February 1998, he was placed on 12 months probation and ordered to attend six months of weekly anger management sessions for men. He successfully completed the program and all other terms of his probation. In February 1999, the judgment of conviction was discharged and set aside. [\(3\)](#)

Applicant received mental health counseling in 1998 and 1999. [\(4\)](#) The police report of his 1998 arrest indicates he was taking medication for anger management, but had not taken it that day. [\(5\)](#) According to the Authorization for Release of Medical Information Applicant signed on October 8, 2002, his treating physician feels Applicant has a condition that could impair his judgment or reliability within the context of safeguarding classified information. [\(6\)](#)

Applicant has submitted two security clearance applications (SF 86) - one on August 21, 2003 and an electronic version on April 23, 2002. In neither form did he disclose his 1983/1984 Article 15 charge and sentence as required by question 24; nor did he disclose his 1998 arrest as required by question 26. [\(7\)](#) Applicant claims he had forgotten about his Article 15 charge as it was 20 years old. As for his 1998 arrest, Applicant asked a court clerk where his trial had taken place whether he had to disclose the arrest. He was advised that, because the domestic violence charge was discharged and set aside, he did not have to list it. [\(8\)](#) Further, Applicant answered "yes" to question 19 regarding any past mental health counseling. He also answered "yes" to the second part of that question, thus specifying his counseling was not related to any violence on his part. [\(9\)](#)

Applicant consumes six 16-ounce beers each weekend. He does not feel he has an alcohol problem, has not been diagnosed as alcoholic or an alcohol abuser, and becomes intoxicated once or twice annually. [\(10\)](#)

POLICIES

The Directive sets forth adjudicative guidelines [\(11\)](#) to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline E (personal conduct), Guideline G (alcohol consumption), Guideline I (mental health), and Guideline J (criminal conduct).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽¹²⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽¹³⁾

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁽¹⁴⁾

CONCLUSIONS

Under Guideline E (personal conduct), conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.⁽¹⁵⁾ Department Counsel has presented sufficient evidence in the FORM to establish a *prima facie* case for disqualification under this guideline and I conclude that Guideline E disqualifying condition (DC) 2⁽¹⁶⁾ applies here. Applicant claims he forgot about his Article 15 conviction in the early 1980s; however, I find it hard to believe anyone would forget being in military corrective custody for a month or going through 90 days of alcohol awareness training. Further, rather than simply list his 1998 arrest, Applicant sought a way of not listing it and relied to his detriment on advice from a court clerk. Absent any information to show the clerk was experienced in matters of personnel security investigations, I decline to apply Guideline E mitigating condition (MC) 4.⁽¹⁷⁾

I am also persuaded of Applicant's intent to mislead the government by his answer to the second part of SF 86 question 19. By answering "yes" he avers that any counseling he has received in the last seven years did not involve violence on his part, despite the fact he was on medication to control his anger and he completed six months of male-oriented anger management counseling after his 1998 arrest. Applicant has failed to produce any information to mitigate, extenuate or refute the government's information about his personal conduct. I conclude Guideline E against the Applicant.

Under Guideline G (alcohol consumption), a security concern arises where it is shown a person abuses or is addicted to alcohol, is involved in alcohol-related incidents such as domestic violence, driving while intoxicated or other alcohol-related criminal acts, reporting to work under the influence or with a hangover, or drinking on the job. Such conduct indicates poor judgment or reliability and may lead to the unauthorized disclosure of classified information.⁽¹⁸⁾ While Applicant has one alcohol-related incident in his background (SOR 2.b), the information presented in the FORM falls short of establishing a *prima facie* case for disqualification. One such incident two decades ago does not equate to an alcohol problem. Applicant continues to drink, but there is no available information about any subsequent alcohol-related incidents. Further, Department Counsel's assertion that Applicant is being treated for substance abuse is based on the inclusion of the words "substance abuse" in a barely-legible exhibit.⁽¹⁹⁾ There is, likewise, no detail about a diagnosis or some other professional finding that Applicant has a problem with alcohol. I conclude Guideline G for the Applicant.

Under Guideline I (mental health), the concern is that emotional, mental, and personality disorders can cause a significant deficit in an individual's psychological, social and occupational functioning. These disorders are of security concern because they may indicate a defect in judgment, reliability or stability.⁽²⁰⁾ The government has established a *prima facie* case for disqualification under this guideline. A credentialed medical professional has indicated Applicant has a disorder that could impair his judgment or reliability, especially within the context of safeguarding classified information.⁽²¹⁾ However, there is no detail available regarding his treatment other than an indication by his wife in 1998 that he is taking medication for anger control. It also appears that his failure to take that medication led to his 1998

arrest for domestic violence. Guideline I DC 1 [\(22\)](#) and DC 2 [\(23\)](#) apply.

There is nothing in the record to support application of any Guideline I mitigating conditions. Applicant has not provided information to suggest that his problem is no longer present, or that it was a temporary condition. Nor is there any finding by a licensed physician or other professional in the mental health field suggestive of a favorable prognosis or that Applicant is not likely to suffer a defect in judgment in the future. Further, his attempt to conceal the fact he has received counseling or treatment related to the violent aspect of his mental state only compounds the government's concerns in this area. I conclude Guideline I against the Applicant.

Under Guideline J (criminal conduct), a security concern exists where it is shown an Applicant is willing to disregard the law. Such conduct indicates an inability or unwillingness to abide by rules and procedures established to protect classified information. [\(24\)](#) Department Counsel has presented sufficient evidence in the FORM to establish a *prima facie* case for disqualification under this guideline and I conclude that Guideline J DC 2 [\(25\)](#) applies here. Applicant was charged and convicted of domestic assault because he pushed his step-daughter to the ground and injured her. He had failed to take his medication that day and, based on available information, still requires treatment for his anger management. His criminal conduct may be considered isolated as it was 20 years removed from his earlier military offense, and it may not be considered a recent occurrence as it happened over five years ago. Guideline J MC 1 [\(26\)](#) and MC 2 [\(27\)](#) apply. However, the record suggests that the conditions leading to both instances of criminal conduct still exist; Applicant still drinks and he still has an anger management problem. On balance, I conclude Guideline J against the Applicant. [\(28\)](#)

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. These facts raise reasonable doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to resolve those doubts, which Applicant failed to provide, I cannot conclude it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

FORMAL FINDINGS

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Mental Health (Guideline I): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Paragraph 2, Alcohol Consumption (Guideline G): FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

Subparagraph 2.b: For the Applicant

Paragraph 3, Criminal Conduct (Guideline J): AGAINST THE APPLICANT

Subparagraph 3.a: Against the Applicant

Paragraph 4, Personal Conduct (Guideline E): AGAINST THE APPLICANT

Subparagraph 4.a: Against the Applicant

Subparagraph 4.b: Against the Applicant

Subparagraph 4.c: Against the 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 the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Item 10.
3. Items 6 -10.
4. Item 4, Question 19.
5. Item 6.
6. Item 9.
7. Items 4 and 5.
8. Item 10.
9. Items 4 and 5.
10. Item 10.
11. Directive, Enclosure 2.
12. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
13. *See Egan*, 484 U.S. at 528, 531.
14. *See Egan*; Directive E2.2.2.
15. Directive, E2.A5.1.1.
16. Directive, E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;
17. Directive, E2.A5.1.3.4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided;
18. Directive, E2.A7.1.1.
19. Item 9.
20. Directive, E2.A9.1.1.
21. Item 9.

22. Directive, E2.A9.1.2.1. An opinion by a credentialed mental health professional that the individual has a condition or treatment that may indicate a defect in judgment, reliability, or stability;
23. Directive, E2.A9.1.2.2. Information that suggests that an individual has failed to follow appropriate medical advice relating to treatment of a condition, e.g. failure to take prescribed medication;
24. Directive, E2.A10.1.1.
25. Directive, E2.A10.1.2.2. A single serious crime or multiple lesser offenses.
26. Directive, E2.A10.1.3.1. The criminal behavior was not recent;
27. Directive, E2.A10.1.3.2. The crime was an isolated incident;
28. While it was not alleged in the SOR, I have also considered his deliberate violation of Title 18 U.S.C. §1001 by signing an SF-86 in August 2003 he knew to contain false or misleading statements about his criminal conduct and mental health counseling.