

DATE: July 14, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05802

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esq., Department Counsel

FOR APPLICANT

David I. West, Esq.

SYNOPSIS

Applicant is a 58-year-old employee of a defense contractor. She is a group manager supervising about 100 people for a defense contractor that provides support for government information systems. She has held a security clearance since 1992. Applicant had two alcohol-related incidents away from work: one in 1995 and another in 2002. She subsequently completed the court-ordered evaluation and an alcohol rehabilitation program, and has made positive changes of behavior supportive of sobriety. Applicant mitigated the security concerns arising from her alcohol consumption. Clearance is granted.

STATEMENT OF THE CASE

On June 26, 2002, Applicant submitted an application for a security clearance. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (the "Directive"). On August 23, 2004, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under Guideline G of the Directive, Alcohol Consumption.

Applicant answered the SOR by letter dated September 20, 2004. Applicant elected to have a hearing before an administrative judge.

The case was originally assigned to another administrative judge, but was reassigned to me on February 10, 2005. With the concurrence of the parties, I conducted the hearing on March 8, 2005. The department counsel introduced five exhibits. Applicant's counsel presented documents admitted as Exhibits A and B, and Applicant testified on her own behalf. Upon the request of Applicant's counsel, I left the record open to allow the submission of additional matters. On March 21, 2005, Applicant submitted a document, without objection, which I admitted as Exhibit C. I took official notice of the pertinent sections of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR), without objection, and included those portions as Board Exhibit I. DOHA received the transcript (Tr.) on March 18, 2005.

FINDINGS OF FACT

Applicant denied the allegations in ¶ 1.a of the SOR. Answer to SOR, dated September 20, 2004, at 1. She admitted the remaining factual allegations in the SOR, with explanations. *Id.* at 1-2. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact.

Applicant is 58 years old. Ex. 3 at 1. She works as a group manager supervising over 100 people for a defense contractor that provides support for government information systems. *Id.*; Ex. C at 2. Her supervisor feels she is a woman of the highest integrity who is scrupulously honest. Ex. C at 2. She has worked for defense contractors since about 1991 and has held a security clearance since about 1992. Ex. 3 at 1-3. She seeks renewal of her security clearance.

Applicant began drinking alcohol in about 1967, when she was about 21 years old. Ex. 5 at 3. She normally consumed alcohol about once a month, when she was out to dinner or socializing with friends. *Id.* She usually drank one glass of wine with dinner. *Id.* On unusual occasions (about once a year) she would have more than one drink. *Id.*

In September 1995, Applicant went out with a friend after work. Applicant had just learned that her aunt was dying and she was very upset. Ex. 5 at 1. She had about three mixed drinks. Tr. at 54. The local police stopped Applicant while she was driving home. Ex. 1 at 12. Test results revealed that she had a blood-alcohol concentration of .12%-above the legal limit in that jurisdiction. *Id.*

Local authorities cited Applicant for driving a motor vehicle while under the influence of alcohol, a gross misdemeanor in that jurisdiction. *Id.* The court deferred prosecution to pursue an alternate disposition. Ex. 3 at 9. Applicant attended Alcohol Information School and the Victim's Panel, paid court costs and fees, and participated in an alcohol assessment, as ordered by the court. Ex. 3 at 11. Thereafter, the court amended the charge to negligent driving. Ex. 3 at 4, 11. Applicant pled guilty and was found guilty of the lesser charge. Ex. 3 at 11, 12.

In January 2002, Applicant went out with a friend. Applicant's friend had just learned that she was dying of cancer and had only a few weeks to live. Ex. 5 at 2. They each had several drinks. *Id.* Applicant began to drive home. On the way, she fell asleep and drove off the road. Ex. 2 at 4. Her vehicle traveled over a raised curb and got stuck. *Id.* A passing motorist called the local police, who responded to the scene. The police officer gave her a field sobriety test and a breath test. Applicant's blood-alcohol concentration was .12%. *Id.* at 4, 5.

Authorities charged her with driving under the influence of alcohol. Ex. 2 at 1, 5; Ex. 3 at 5. Applicant entered into a pretrial diversion agreement with prosecutors. Ex. 2 at 6. The prosecution agreed to dismiss the charges with prejudice after two years, provided Applicant satisfied certain conditions, including payment of \$500.00 court costs, making a \$100.00 contribution to Mother's Against Drunk Driving, submitting to a chemical dependency evaluation and complying with all treatment recommendations, attending a DUI victim's panel, and not driving any vehicle with more than .03% blood-alcohol concentration. Ex. 2 at 8-10. Applicant complied with all the requirements of the pretrial diversion agreement, including attending a recommended outpatient alcohol treatment program and abstaining from alcohol use for one year. The government dismissed the charge with prejudice in February 2004. Ex. A.

As part of the court-ordered diversion program, Applicant submitted to an evaluation at an alcohol and drug abuse treatment center. Ex. 4. The counselor administered two psychological tests-both indicated Applicant had no significant problem with either alcohol or drugs. Ex. 4 at 3. The counselor determined Applicant was not alcohol dependent. Ex. 4 at 4. The counselor's evaluation was Alcohol Abuse, under the DSM-IV, § 305.00, apparently based upon the fact that Applicant had a previous alcohol-related conviction in 1995.

After the initiation of this action, Applicant obtained an independent evaluation on January 5, 2005. Ex. B at 1. Her evaluator is a licensed clinical social worker who is the executive director of an alcohol and drug treatment clinic that conducts forensic assessments for criminal and family law cases. *Id.* at 5. A battery of psychological tests did not indicate chemical dependency or symptoms of substance abuse. *Id.* at 2. The evaluator's diagnosis was that Applicant did not meet the criteria for Alcohol Dependence or Alcohol Abuse. He explained:

If one follows the clinical guidelines for substance abuse in the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM-IV) such a diagnosis requires recurrent substance abuse legal problems within a 12 month period of time or other significant interference in her ability to fulfill her major life obligations. In my clinical estimation [Applicant] did not meet such criteria in 2002 and certainly does not at this time in her life.

The DSM-IV-TR, § 305, indicates that the criteria for diagnosing Alcohol Abuse are the same as for Substance Abuse. According to the DSM-IV-TR, "The essential feature of Substance Abuse is a maladaptive pattern of substance use manifested by recurrent and significant adverse consequences related to the repeated use of substances." DSM-IV-TR, at 198. Alcohol Abuse may only be diagnosed once the absence of Alcohol Dependence has been established. *See* DSM-IV-TR, § 303. According to the DSM-IV-TR at 199, the diagnostic criteria for Substance Abuse are:

A. A maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period:

(1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household)

(2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use)

(3) recurrent substance-related legal problems (e.g. arrests for substance-related disorderly conduct)

(4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substances (e.g., arguments with spouse about consequences of intoxication, physical fights)

B. The symptoms have never met the criteria for Substance Dependence for this class of substance.

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline G, Alcohol Consumption. 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.

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

"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." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge should consider 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. *Id.*

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. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive, ¶ E2.2.2.

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 a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

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

Paragraph E2.A7.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "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." The evidence shows two instances where Applicant drove under the influence of alcohol away from work: one in 1995 and one in 2002. I conclude this potentially disqualifying condition applies.

Under ¶ E2.A7.1.2.4 of the Directive, an "[e]valuation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program" is potentially disqualifying. The parties agreed that the evaluation completed in 2002 was done by a licensed clinical social worker on the staff of a treatment center approved by the local courts and that the counselor diagnosed Alcohol Abuse. However, Applicant's counsel challenges the correctness of the diagnosis. The DSM-IV-TR (Bd. Ex. I) makes it clear that Alcohol Abuse may only be diagnosed where there are multiple incidents meeting the criteria within a 12-month period. The DSM-IV-TR specifically states the "essential feature" of Alcohol Abuse is a "maladaptive *pattern* of substance use manifested by *recurrent* and significant adverse consequences related to the *repeated* use of substances." Bd. Ex. I at 198 (emphasis added). The diagnostic criteria requires that there be "recurrent" substance abuse within a 12-month period. The available evidence shows one instance of driving under the influence of alcohol in 1995 and another in 2002. The evaluation in 2002 (Ex. 4) does not reflect a factual basis for the finding of alcohol abuse. The more recent evaluation (Ex. B) accurately reports and applies the criteria, and concludes there is an insufficient basis to diagnose Alcohol Abuse. I conclude the evidence is insufficient to raise this potentially disqualifying condition.

Finally, under ¶ E2.A7.1.2.6 of the Directive, it may be disqualifying where there is evidence of "[c]onsumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program." Paragraph 1.f of the SOR alleges Applicant continues "to consume alcohol notwithstanding your treatment for alcohol abuse." It is important to note the distinction between alcoholism (also known as alcohol dependence) and alcohol abuse. Applicant was not diagnosed as being an alcoholic or alcohol dependent. Indeed, in order to make a diagnosis of Alcohol Abuse, practitioners had to rule out a diagnosis of Alcohol Dependence. Applicant was never diagnosed as an alcoholic or alcohol dependent, nor were any diagnoses made by a credentialed medical professional, therefore this potentially disqualifying condition does not apply.

The security concerns arising from Applicant's alcohol consumption can be mitigated under certain circumstances. Under the Directive, ¶ E2.A7.1.3.1, it may be mitigating where "[t]he alcohol-related incidents do not indicate a pattern." The alcohol-related incidents in this case were separated by about seven years, therefore they do not show a pattern. Applicant's evidence persuades me that this potentially mitigating condition applies.

Under ¶ E2.A7.1.3.2 of the Directive, it may be mitigating where "[t]he problem occurred a number of years ago and there is no indication of a recent problem." Applicant's first alcohol-related incident occurred in 1995, which was a number of years ago. I am unable to find that there is no indication of a recent problem, however. Applicant's most recent alcohol-related incident occurred in 2002. At the time Applicant submitted this application for a security clearance, the charges were still pending, awaiting Applicant's completion of the requirements of the diversion agreement. This mitigating condition does not apply.

Paragraph E2.A7.1.3.3 provides that "[p]ositive changes in behavior supportive of sobriety" may also be a mitigating factor. Following her alcohol-related incident in 2002, Applicant attended court-ordered evaluation, and completed an alcohol rehabilitation course. She gained increased awareness of the dangers of drinking and driving. Although Applicant still drinks alcohol on occasion, she is careful not to drink and drive. I find this potentially mitigating condition applies.

Under ¶ E2.A7.1.3.4 of the Directive, it may be mitigating where,

[f]ollowing diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

In this case, Applicant was diagnosed as an Alcohol Abuser (although it was incorrect, as discussed above), successfully completed outpatient rehabilitation, and abstained from alcohol for a one year period. However, she does not participate frequently in meetings of Alcoholics Anonymous or a similar organization, therefore this potentially mitigating condition does not apply.

I considered carefully all the facts and circumstances in this case in light of the "whole person" concept. Applicant is a mature individual who has successfully held a position of responsibility for many years. She has held a security clearance since 1992. Her record of two alcohol-related incidents are the only blemishes on her otherwise excellent record of performance and service. The incidents were separated by about seven years. The available evidence indicates these incidents occurred during unusual periods of great emotional stress, rather than regularly occurring conduct. I am persuaded Applicant recognizes the seriousness of her position, and realizes that one more incident could have dire consequences. I am convinced Applicant has made long-term behavioral changes, and such problems will not recur. I conclude Applicant has mitigated the security concerns arising from her personal conduct.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR 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

DECISION

In light of all of the circumstances presented by 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.

Michael J. Breslin

Administrative Judge