

DATE: October 28, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-06119

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was involved in three alcohol-related incidents, two of which he failed to list on his security clearance application. Applicant admitted deliberately omitting this information because of the embarrassment it caused him. Applicant no longer drinks alcohol when he is going to drive, but fails to comprehend that his binge drinking is itself a security issue. Applicant failed to mitigate the security concerns raised by his alcohol consumption and his falsification of his security clearance application. 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 20 May 2004, DOHA issued a Statement of Reasons [\(1\)](#) (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 9 June 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 9 August 2004. On 9 September 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 17 September 2004.

RULINGS ON PROCEDURE

Without objection from Applicant, Department Counsel moved to amend the SOR by making minor corrections to the dates alleged in ¶¶ 1.b, 1.c, 2.a, and 2.b. The motion was granted.

FINDINGS OF FACT

Applicant is a 30-year-old inspector flight specialist for a defense contractor. He is divorced and has custody of his 10-year-old son.

Applicant served in the U.S. Air Force from 1993-2000, mostly as a helicopter mechanic/crew chief. His performance reports show applicant to be a talented, highly motivated, superior performer. His evaluations from the defense contractor establish his excellent duty performance and dedication to duty.

Applicant started using alcohol in 1992 at high school graduation parties. He became intoxicated at these parties. From 1993-94, he often became intoxicated on weekends. Applicant was married from 1994 to 1998. During this period, his drinking decreased, but he still became intoxicated one-to-two times a year. Ex. 2 at 5.

In 1996 or 1997, while stationed overseas with the Air Force, Applicant was involved in a bar fight. He had consumed eight-to-ten beers over a five to six hour period. Applicant was punished under the nonjudicial punishment proceedings of the Uniform Code of Military Justice (UCMJ) for being drunk and disorderly. He was restricted to the base for 30 days and forfeited some of his pay. As a result of the incident, he was ordered to attend the base alcohol education program. *Id.* at 4.

He separated from his wife in 1998 and drank to excess with friends most weekends. *Id.* at 5. Since 1999, he has not consumed as much alcohol. He was highly intoxicated approximately four-to-five times between 1999 and December 2002 and was arrested twice for alcohol-related driving offenses. *Id.* In June 2000, he was arrested for driving under the influence of alcohol (DUI) with a blood-alcohol content of .18%. Ex. 2 at 2. He was convicted of the offense and paid a \$1,000 fine, performed 50 hours of community service, and had his driver's licence revoked for six months. He was also required to complete a drunk drivers program and an alcohol education program.

In December 2001, Applicant was arrested for driving while intoxicated (DWI) with a blood alcohol content of .19%--he had consumed ten beers in a three-hour period at a Christmas party and swerved his vehicle off the road and into a guardrail and several mailboxes. He was convicted of driving with ability impaired (DWAI). His sentence included the suspension of his driver's license for 90 days. He successfully completed a drunk driving program. *Id.* at 2-3. Applicant no longer drinks and drives. Nevertheless, he still drinks to the point of intoxication twice every year, during holidays, by consuming approximately 6-10 beers at one sitting. *Id.* at 13-14.

Applicant completed a security clearance application for his current employer. On 30 July 2002, Applicant certified that his answers were "true, complete, and correct" to the best of his knowledge and belief, and acknowledged that "a knowing and willful false statement" on the form could be punished under 18 U.S.C. § 1001. Ex. 1 at 9. Question 24 asked if Applicant had ever been charged with or convicted of any alcohol-related offenses. He answered "yes," but listed only his December 2001 arrest. *Id.* at 6. Question 25 asked if, during the previous seven years, Applicant had been subject to any disciplinary proceedings under the UCMJ. He answered "no." *Id.* at 7. Applicant deliberately omitted this information because he did not want "these embarrassing incidents brought back to memory." Answer at 2.

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 personnel 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 G--Alcohol Consumption

In the SOR, DOHA alleged Applicant consumed alcohol to the point of intoxication from June 1992-December 2002 (¶ 1.a); was arrested for and convicted of DUI in June 2000 (¶ 1.b); and was convicted of DWAI for an offense committed in December 2001 (¶ 2.c). 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 in the SOR. Applicant has had three alcohol-related incidents away from work. DC E2.A7.1.2.1. In the past, he engaged in binge consumption of alcohol to the point of impaired judgment. DC E2.A7.1.2.5. None of the mitigating conditions apply. Although Applicant has made positive changes in his behavior by not drinking and driving, he continues to drink, on occasion, to the point of intoxication and impaired judgment. Applicant does not believe he has a problem with alcohol "other than the incidents where obviously it was bad judgment." Tr. 12. He never attended Alcoholics Anonymous or participated in any treatment programs, although he attended alcohol education courses required because of his alcohol-related incidents. *Id.* Although he has not been diagnosed as an alcoholic or alcohol dependent, he clearly has problems related to his use of alcohol that have not been resolved. *Id.* at 12-13. I find against Applicant.

Guideline E--Personal Conduct

In the SOR, DOHA alleged Applicant falsified material facts on his SCA by deliberately omitting two alcohol-related arrests from his answer to question 24 (¶ 2.a) and denying he had received nonjudicial punishment in answer to question 25 (¶ 2.b). Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1.

The Government established by substantial evidence and Applicant's admissions both of the allegations. An applicant's alcohol-related incidents and criminal conduct are relevant and material to a determination of his security worthiness. Applicant deliberately omitted relevant and material facts from his SCA--his nonjudicial punishment while in the Air Force and two of his alcohol-related incidents. DC E2.A5.1.2.2. The falsification was recent and Applicant did not correct the falsification before being confronted with the facts. None of the mitigating conditions apply. I find against Applicant.

Guideline J--Criminal Conduct

In the SOR, DOHA alleged Applicant violated 18 U.S.C. § 1001 by deliberately providing false information on his SCA as alleged in ¶ 2 of the SOR. ¶ 3.a. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1.

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the Government of the United States. 18 U.S.C. § 1001.

Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan*, 484 U.S. at 527. An applicant's alcohol-related incidents are relevant and material to a determination of his security worthiness. Applicant admits deliberately omitting information about his alcohol-related incidents and police record from his SCA. Applicant admitted committing serious criminal conduct. DC E2.A10.1.2.1; DC E2.A10.1.2.2. The criminal conduct was recent and, because of the two falsifications and his alcohol-related arrests, was not isolated. Therefore, MC E2.A10.1.3.1 and E2.A10.1.3.2 do not apply. Applicant admitted his criminal conduct when confronted by a Defense Security Service agent and has taken full responsibility for the falsifications. Under the circumstances, such criminal conduct is not likely to recur. MC E2.A10.1.3.4. I find clear evidence of his rehabilitation. MC E2.A10.1.3.6. I find for Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Paragraph 3. Guideline J: FOR APPLICANT

Subparagraph 3.a: 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 (Directive).