

DATE: May 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-07374

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of alcohol consumption concerns, to include several minor alcohol related incidents that occurred a number of years ago, a 2002 DUI arrest, and a subsequent diagnosis as alcohol dependent sustained partial remission. He has fully mitigated these concerns by a positive behavior change supportive of sobriety and sustained abstinence for three years coupled with a favorable diagnosis and prognosis. Personal conduct concerns arose over a discrepancy over failing to list a past alcohol-related incident, which Applicant demonstrated was an inadvertent error. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On May 3, 2004, DOHA issued a Statement of Reasons (SOR) [\(1\)](#) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on May 24, 2004, and elected to have a hearing before an administrative judge.

The case was assigned to another administrative judge on March 9, 2005, and on March 23, 2005, DOHA issued a notice of hearing scheduling a hearing for April 8, 2005. Due to caseload considerations, the case was transferred to me on April 1, 2005. The hearing was conducted as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The government offered seven documents, which were admitted without objection as Government Exhibits (GE) 1 through 7. The Applicant offered ten documents, which were admitted without objection as Applicant Exhibits (AE) A through and J. I left the record open after the hearing to afford Applicant the opportunity to submit additional documents. The Applicant submitted three additional documents, which were admitted without objection as AE K through M. DOHA received the transcript on April 19, 2005.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 58-year-old married man, who has been married to his wife for the past 36 years. He and his wife have one adult son, age 29, who they put through college. His son is a successful hydrologic engineer employed by a defense contractor.

Applicant is a high school graduate, served in the Air Force from September 1966 to September 1986, and retired as a Master Sergeant, pay grade E-7. He held a secret or top secret clearance the majority of his Air Force career.

Since January 2000, Applicant has been employed as a munitions specialist for his current employer, a defense contractor. He has worked for several companies since he retired from the Air Force as a munitions specialist. Essentially, Applicant has stayed in place doing the same job as different companies were awarded the contract at his work site. He seeks to renew his secret clearance, which he has held since February 1993.

In September 1966, Applicant was charged with minor in possession of alcohol, SOR ¶ 1.b. At the time of the arrest, he was 19 years old. Just prior to shipping out to Air Force Basic Training, Applicant and a group of his friends who were entering the service decided to spend an evening celebrating. At some point during the evening, the police discovered an open container in Applicant's car. The charge was dismissed at his court hearing when Applicant informed the judge he was going into the Air Force. GE 2, GE 3, Tr. 27-28.

In April 1978, while in the Air Force stationed overseas, Applicant was charged with failure to obey a lawful order when ordered to leave a bar by the military police, SOR ¶ 1.c. At an administrative hearing, Applicant's Commander awarded him a Letter of Reprimand. Applicant testified he was on a remote site, working 12 hours shifts. At the conclusion of the work day, he and a fellow Air Force member "went downtown." He got into an argument with a bartender he believed stole money from him. When the military police arrived at the bar, he was ordered to leave and failed to do so. GE 2, GE 3, Tr. 28-29.

On June 18, 1994, Applicant was cited for having an open container, SOR ¶ 1.d. Applicant paid a \$66.64 fine by mail and attended a driver improvement school. Applicant testified after working all day his wife informed him there was a problem with the muffler on their car. Applicant drove the car to a garage to have it repaired and on the way stopped off at a convenience store and bought a can of beer and consumed some of it. While enroute to the garage, another driver ran a stop sign and broadsided Applicant. When the police arrived, Applicant was cited versus charged or arrested for this offense. GE 4, Tr. 29-31.

On May 8, 2002, Applicant was arrested and charged with driving under the influence (DUI), SOR ¶ 1.e. He plead nolo contendere and was sentenced to nine months probation, fined approximately \$250.00 plus \$283.50 court costs, and ordered to complete 50 hours of community service, and attend First Offender DUI School. Applicant testified that after arriving home from work, he discovered his wife, who is a paranoid schizophrenic, had not taken her medication and was "having one of her schizophrenic spells." He "had a beer or two" and drove to a convenience store to purchase a six pack of beer. He then drove to a national park to relax and drank four more beers. On the way home, a woman pulled out in front of him and he hit her causing minor damage to her vehicle. She was cited for an illegal left-hand turn and Applicant was arrested for DUI. GE 4, GE 5, Tr. 31-32.

Following his May 8, 2002 DUI arrest, Applicant was referred for further alcohol treatment by DUI School. From June 26, 2002 to August 7, 2002, he received treatment at a behavioral and educational service center and was diagnosed as alcohol dependent sustained partial remission, SOR ¶ 1.f. GE 4, GE 6, Tr. 32-35. On April 15, 2005, three years later, Applicant was diagnosed alcohol dependent sustained full remission. Discharge comments provide in part: "Client meets DSM IV criteria for a diagnosis of Alcohol Dependence (Sustained Full Remission), based on the available information, which indicates the client has not met any of the criteria for dependence for nearly **three years** [emphasis added]. Client was originally enrolled in and successfully completed treatment in 2002 because of a DUI. Client stated that he has not consumed any alcohol since the night of the DUI, and his appearance supports that statement. Relapse potential is considered to be very low. Client does not require any additional treatment at this time. Immediate

Discharge is appropriate." AE M.

Since Applicant's May 8, 2002 DUI arrest, he has avoided being in places or situations where alcohol is consumed and expressed a sincere desire to remain alcohol free. Tr. 34-36.

SOR ¶ 2.a. alleged Applicant falsified his response to Question 24 on his security clearance application, dated May 25, 2000, when he responded negatively to past alcohol offenses by failing to list his 1994 arrest for an open container, SOR ¶ 1.d. Applicant's explanation was, "I did not list this information on my security questionnaire I completed in 2000 because I considered it to be a traffic violation." GE 4. He further testified that he provided this information on earlier forms while in the military, and the government conceded that Applicant "had already put us on notice" regarding this offense. Applicant further testified, "I received a traffic citation and paid it by mail." Tr. 43-44.

Applicant is a highly valued, trusted and experienced employee. He has a 20-year record of dedicated and superb military service. Additionally, he has an equally impressive post-military career of making significant contributions to the defense industry. AE A through J.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, administrative judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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." Executive Order 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.

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive

Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

Guideline G - Alcohol Consumption

In the SOR, DOHA alleged Applicant consumed alcohol, at times to excess and to the point of intoxication, that he was arrested in 1966 and charged with minor in possession of alcohol, that he was apprehended by military police in 1978 while overseas and charged with failure to leave a bar when ordered to do so, that he was cited in 1994 and charged with having an open container, that he was arrested in 2002 for DUI, and that he received treatment for alcohol dependence in 2002. (¶¶ 1.a. through 1.f). *The Concern*: 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 its case under Guideline G by Applicant's admissions and evidence submitted as to ¶¶ 1.a. through 1.f. These allegations give rise to Alcohol Consumption Disqualifying Condition (AC DC) E2.A7.1.2.1. (*Alcohol-related incidents away from work, such as driving while under the influence, . . . or other criminal incidents related to alcohol use*); AC DC E2.A7.1.2.3. (*Diagnosis by a credentialed medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*); and AC DC E2.A7.1.2.5 (*Habitual or binge consumption of alcohol to the point of impaired judgment*).

Applicant's arrest in September 1966 for minor in possession of alcohol, his apprehension by military police in 1978 while overseas for failure to leave a bar, and his citation in June 1994 for having an open container occurred 38, 27, and 11 years ago, respectively.

As a result of his May 2002 DUI, Applicant was ordered among other things to attend First

Offender DUI School. He was referred for further alcohol treatment at a behavioral and educational service center, which resulted in a diagnosis of alcohol dependent sustained partial dependence. Applicant has availed himself of treatment offered at this facility and submitted documented proof of remaining alcohol free for three years. He was recently diagnosed as alcohol dependent sustained full remission. His prognosis looks very promising with a relapse potential considered to be very low. Since he entered a treatment program, Applicant has done everything within his means to modify his lifestyle and engage in behavior supportive of sobriety.

These facts and accomplishments trigger Alcohol Consumption Mitigating Conditions (AC MC) E2.A7.1.3.3; (*Positive changes in behavior supportive of sobriety*); and AC MC E2.A7.1.3.4. (*Following 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*).

Guideline E - Personal Conduct

In the SOR, DOHA alleged under personal conduct (¶ 2.a.), that Applicant falsified material facts on his security clearance application by failing to list his 1994 citation for having an open container in June 1994.

The Concern: 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.

Posing potential security concerns are Applicant's failing to list his citation for having an open container in June 1994. Applicant credibly testified he believed this offense to be a "traffic violation," and therefore he was not required to list

it. Furthermore, Department Counsel indicated that Applicant has previously put the government on notice by providing this information on earlier forms. Applicant was forthcoming and complete on all other facts of his alcohol consumption history during the security-clearance process. His failure to list this offense is attributable to an honest mistake and failure to understand the question asked.

Applicant's explanation of his failure to list this offense coupled with his having provided this information on other forms in the security-clearance process is persuasive enough to avert inferences of knowing and wilful omission. There being no misconduct substantiated, no need to show extenuation and mitigation arises. Little could be gained by Applicant from a wilful misrepresentation in this regard given the fact he had already provided this information to the government in a different venue. While Applicant could reasonably have been expected to be more diligent when responding to this inquiry, his judgment lapses are not enough to impute knowing and wilful falsification under Guideline E.

Applicant has a lifetime of dedicated government service - 20 years of active duty followed by government service as munitions specialist, who has made countless contributions to the national defense. He has held a security clearance the majority of those years, without incident. I found his testimony credible and his successful completion of an alcohol treatment program followed by three years of documented alcohol abstinence commendable.

Based on the totality of the circumstances to include his documented actions coupled with his credible testimony, I find for Applicant on SOR ¶ 1 and ¶¶ 1.a. through 1.f., and SOR ¶ 2 and ¶ 2.a.

FORMAL FINDINGS

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

Paragraph 1: Guideline G: FOR APPLICANT

Subparagraph 1.a.-1.f.: For Applicant

Paragraph 2: Guideline E: FOR APPLICANT

Subparagraph 2.a.: 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.

Robert J. Tuider

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.