

DATE: November 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-07878

ECISION OF ADMINISTRATIVE JUDGE

ROGER E. WILLMETH

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Following Applicant's second alcohol-related driving arrest in 2002, he successfully completed an alcohol education and treatment program and the prosecutor entered a nolle prosequi. Applicant's consumption of alcohol is moderate. Since his last offense, he does not drink away from home unless there is a designated driver. There is no evidence in the record of a further problem and Applicant is committed to never drinking and driving again. The Government's concern related to alcohol is mitigated. The record also establishes that Applicant's omission of his first alcohol-related driving offense from his security clearance application was not deliberate. It resulted from his confusion and the investigator confirms that Applicant voluntarily disclosed the earlier arrest to him. Clearance is granted.

STATEMENT OF THE CASE

On July 23, 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) and Guideline E (Personal Conduct). 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 August 29, 2003, Applicant answered the SOR and requested a hearing. The case was assigned to me on February 12, 2004. A notice of hearing was issued on February 24, 2004 and the hearing was held on March 23, 2004. During the hearing, five Government exhibits (Govt Ex), one Applicant exhibit (Ap Ex), and the testimony of Applicant were received. The transcript (Tr) was received on March 31, 2004.

FINDINGS OF FACT

Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is 40 years old. He and his wife own and operate a small management consulting and information technology services company that contracts with the Government.

On July 19, 1995, Applicant was arrested and charged with driving under the influence of alcohol (DUI) and speeding. He was subsequently convicted and fined \$300.00. (SOR ¶ 1.a).

On June 27, 2002, Applicant was arrested and charged with driving while intoxicated (DWI). He had a blood alcohol level of .08%. Applicant was required to attend a 12 week week alcohol education and treatment program. He successfully completed the program on November 21, 2002. As a result, the prosecutor entered a nolle prosequi on December 10, 2002. (SOR ¶ 1.b).

On December 6, 2002, Applicant executed a security clearance application (SF 86). In response to question 24, ⁽³⁾ he answered, "yes," and reported being charged with DWI in 2002. Applicant failed to list his earlier arrest for DUI in 1995. (SOR ¶ 2.a).

On February 24, 2003, Applicant provided a sworn statement to an investigator for the Defense Investigative Service (DIS). At the beginning of the interview, the investigator was unaware of Applicant's earlier arrest for DUI. Applicant voluntarily disclosed that arrest.

Applicant's consumption of alcohol is moderate. Since his arrest for DWI, he does not consume alcohol away from home unless he has a designated driver.

POLICIES

Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted. Directive E3.1.14. The applicant is responsible for presenting witnesses and other 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 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). They also include E2.A7.1.3.3, positive changes in

behavior supportive of sobriety (Mitigating Condition 3).

Guideline E: Personal Conduct

The concern under Guideline E is 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. Conditions that could raise a security concern and may be disqualifying under Guideline E include E2.A5.1.2.2 (Disqualifying Condition 2). Disqualifying Condition 2 addresses 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.

Conditions that could mitigate security concerns include E2.A5.1.3.3 (Mitigating Condition 3). Mitigating Condition 3 applies when the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

CONCLUSIONS

Guideline G: Alcohol Consumption

Applicant's alcohol-related driving offenses in 1995 and 2002 raise Disqualifying Condition 1. Following his arrest in 2002, Applicant successfully completed an alcohol education and treatment program. The prosecutor determined the case appropriate for a nolle prosequi. Applicant's consumption of alcohol is moderate. Since his last offense, he does not drink away from home unless there is a designated driver. There is no evidence in the record of a further problem and Applicant is committed to never drinking and driving again. The Government's concern related to alcohol is mitigated. I find in favor of Applicant with regard to SOR ¶ 1.

Guideline E: Personal Conduct

Applicant's omission of his first alcohol-related driving offense from his security clearance application raises Disqualifying Condition 2. Applicant denies that his omission was deliberate and the record supports that conclusion. Applicant attributed the omission to confusing the question with several that limit the response to a seven year period. The DIS investigator has confirmed that he was not aware of the offense until Applicant disclosed it during his interview. Applicant expressed concern over whether his latest alcohol-related offense would prevent him from obtaining a clearance. When the investigator asked him if he had any other offenses, applicant disclosed his earlier offense. When the investigator asked him why he had not included it on his SF 86, Applicant referred to the seven year period. Once Applicant was aware of his mistake, he asked what he needed to do to correct it. His actions and statements regarding the incident are consistent. Moreover, the investigator confirms that Applicant voluntarily disclosed the earlier arrest to him. Based on the record, I find Applicant's omission of his earlier arrest from his SF 86 was not deliberate. Therefore, I find in favor of Applicant with regard to SOR ¶ 2.

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

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

DECISION

In light of all the evidence 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.
3. "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?"