

DATE: February 16, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08020

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of alcohol abuse including driving while under the influence and reporting for work with alcohol in his system. He failed to disclose all of his history and treatment for alcohol abuse when interviewed by an agent of the Defense Security Service. Applicant failed to mitigate security concerns raised by his consumption of alcohol personal conduct. 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 17 March 2004, DOHA issued a Statement of Reasons⁽¹⁾ (SOR) 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 13 June 2004 and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on 9 November 2004. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant received the FORM on 29 November 2004, but did not respond. The case was assigned to me on 14 January 2005.

RULINGS ON PROCEDURE

In the FORM, the Government moved to amend the SOR by adding ¶ 1.h as follows:

You were arrested on December 19, 2003, . . . and charged with (1) Driving Under the Influence and (2) Violation of Implied Consent.⁽²⁾

Applicant did not object. The Government's motion is granted.

FINDINGS OF FACT

Applicant is a 51-year-old warehouse supervisor for a defense contractor. Item 1 at 1, 2. He was granted a secret clearance January 2002. Item 5.

Applicant began drinking alcoholic beverages when he was in high school. He estimates he has been "inebriated" once or twice a month. He was arrested for driving under the influence of alcohol (DUI) in July 1989 after he drove his vehicle into a parked car on a rural road. His blood alcohol content was .26%. He pled no contest to the charge and was sentenced to one year in jail, with all but 48 hours suspended. He was ordered to pay fines and court costs, and to attend DUI school. Answer; Item 6 at 2. On 30 September 1998, Applicant was walking home from a club when he was arrested and charged with public intoxication. The charge was dismissed. Answer; Item 6 at 2.

In May 2002, Applicant was arrested and charged with DUI and violating the implied consent law. He had left a club after consuming alcoholic beverages. As he drove home, he struck one of the plastic barrels defining a construction zone. The barrel became stuck under his van which led the police to stop him. He failed the field sobriety tests and refused to take the breath test. After Applicant made several trips to court, the case was dismissed because the government failed to prosecute. Answer; Item 6 at 2. As a result of this arrest, Applicant voluntarily underwent counseling for alcohol abuse through the employee assistance program at his place of employment. He saw a counselor two to three times as an outpatient during June 2002.

In November 2002, Applicant reported to work smelling of alcohol. A urine test returned an alcohol level of .04%. His employer referred him to the company's substance abuse counseling/treatment program. Answer. His diagnosis was alcohol abuse. Answer.

On 24 February 2003, Applicant completed a signed, sworn statement in which he acknowledged drinking alcoholic beverages to excess in the past but believed he could control himself. He claimed he had "no intention of drinking to excess in the future." Item 6 at 2. In this statement, Applicant failed to note that he had been ordered to provide a urine sample for testing after he came to work smelling of alcohol in November 2002. He also failed to divulge the alcohol counseling he underwent that month.

After he was involved in an auto accident in December 2003, Applicant was arrested and charged with DUI and refusing to provide a specimen for testing that would show the level of alcohol in his blood. The arresting officer noted Applicant was staggering, confused, and had a strong odor of alcohol around him. Item 7.

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 authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

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 the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline G--Alcohol Consumption

In the SOR, DOHA alleged Applicant consumed alcohol to excess from at least 1970-2003, sometimes to the point of intoxication (§ 1.a), received counseling for alcohol abuse in November 2002 (§ 1.b), reported to work with a alcohol level of .04 in his urine in November 2002 (§ 1.c), received counseling for alcohol abuse in June 2002 (§ 1.d), was arrested in May 2002 for DUI and violation of the implied consent law (§ 1.e), was arrested in September 1989 and charged with public intoxication (§ 1.f), was arrested in July 1989 and convicted of DUI (§ 1.g), and was arrested and charged with driving while intoxicated in December 2003 (§ 1.h). 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 each of the allegations in the SOR through Applicants admissions and the evidence of record. Applicant has had alcohol-related incidents away from work such as his DUI offenses (DC E2.A7.1.2.1) and an alcohol-related incident at work (reporting to work with an alcohol level of .04%) (DC E2.A7.1.2.2). Although he had a diagnosis of alcohol abuse, there is no evidence to suggest the person making such a diagnosis is a credentialed medical professional or a licensed clinical social worker. Therefore, DC E2.A7.1.2.3, E2.A7.1.2.4, and E2.A7.1.2.6 do not apply. There is no evidence to support a finding that any of the mitigating conditions listed under this guideline apply. I find against Applicant.

Guideline E--Personal Conduct

In the SOR, DOHA alleged Applicant initially omitted material facts in an interview with a DSS agent by failing to disclose that he had abused alcohol after his June 2002 counseling (§ 2.a). 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.

Applicant admitted that, during his 24 February 2003 interview with a DSS agent, he omitted from his statement material facts regarding his abuse of alcohol after June 2002. The SOR does not allege, and Applicant did not admit he omitted this material deliberately or intentionally. Nevertheless, I find it was deliberate. The incidents occurred less than six months before he made the written statement. The deliberate omission of material facts from a SCA is a disqualifying condition. DC E2.A5.1.2.2. None of the mitigating conditions apply. I find against 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

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against 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).
2. An arrest for driving while under the influence of alcohol does not meet any of the disqualifying conditions. It is disqualifying condition to drive while under the influence of alcohol.