

DATE: December 20, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-10343

ECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Jason Perry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of alcohol abuse and criminal conduct resulting in four arrests and convictions for Driving While Under the Influence of Alcohol have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On May 28, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on June 22, 2004, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on September 10, 2004, consisting of thirteen documents, referred to as Items 1 through 13. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on November 10, 2004, and he submitted a reply that same day.

The case was assigned to the undersigned for resolution on November 23, 2004.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the seven exhibits, and his reply to the FORM. The Applicant is 50 years old. He is employed by a defense contractor as a Mechanical Technician, and is seeking to retain his security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant admits each of the allegations set forth in the SOR under Guidelines G and J. He began consuming alcohol in 1972 while in the United States Navy. From 1972 until 1990 his use of alcohol consisted of about ten beers a week and a fifth of hard liquor a month. He drank to the point of intoxication about twice a week. (See Government Item 10).

From 1990 to June 2000, his use of alcohol decreased to about six beers a week and about a fifth of hard liquor ever other month. He drank to the point of intoxication about monthly. From June 2000 to the present, his use of alcohol consists of about six beers per month and no hard liquor. He states that he drinks to the point of intoxication about yearly. Although he admits that he at one time had an alcohol problem, he does not believe that he is an alcoholic. (See Government Item 10).

The Applicant was first arrested in July 1988 for Driving Under the Influence of Alcohol. He pled guilty to the offense. Two years later, his second arrest occurred in February 1990 for Driving While Intoxicated and Failure to Maintain Control. Her pled guilty to Driving While Intoxicated. The Applicant explained that he had been consuming about ten beers, fifteen shots of hard liquor and had two large gulps of moonshine before he started driving his vehicle that night. While driving home he rear-ended a one ton truck. The truck was totaled. The Applicant cracked his rib and suffered a deep cut on his head. He was sentenced to six months in jail, which was suspended, placed on probation for one year and fined \$200.00 plus court costs, ordered to attend a driver's improvement and substance abuse program and ordered to perform 48 hours of community service. (See Government Item 10).

Six years later, in March 1996, the Applicant was arrested a third time for Driving While Intoxicated. He was also charged with Improper Parking. He had consumed about five or six beers over the span of two hours and then started to drive his vehicle. He did not feel intoxicated at the time. He was leaving a hotel bar when he was arrested. He was pulled over by the police and refused to take the breathalyzer. He was arrested and booked. He was placed on probation for one year and ordered to pay fines and costs of \$225.00, ordered to attend a driver improvement and substance abuse program, be evaluated and ordered to perform five to eight hour days of community service. (See Government Item 10).

Just four years later, in June 2000, the Applicant was arrested a fourth time for Driving While Intoxicated and Improper Backing. The Applicant explained that he was attending a friend's birthday party and had consumed two mixed drinks and four beers over a two and a half hour period. He left and went to another lounge and consumed four beers over a period of an hour and a half. While backing up his car, the Applicant was subsequently pulled over by the police and arrested. He was found guilty of Driving While Intoxicated. The Applicant was sentenced to six months in jail, (all but ten days suspended), ordered to pay fines and costs totaling approximately \$1,058.00, ordered to attend driver's education and substance abuse programs, consisting of twenty four hours of substance abuse counseling and evaluation and three Alcoholics Anonymous meetings a week for twenty weeks, perform 240 hours community service, placed on two years supervised probation until all conditions of probation were met, then unsupervised, and ordered not to drive without an interlock device. The charge of Improper Backing was nolle prosequi. (See Government Item 10).

The Applicant indicates that he has attended many Alcoholics Anonymous meetings in his lifetime and that he does not believe that he is an alcoholic. He also indicates that he no longer drinks and drives. (See Government Item 3).

Although the SOR does not allege these arrests, the record reveals that the Applicant was also arrested for Driving Under the Influence of Alcohol in 1974, August 1979 and May 1987. (See Government Item 6).

The Applicant has also used cocaine in October 2001 and again in December 2001. (See Government Item 10).

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline G (Alcohol Consumption)

Conditions that could raise a security concern:

1. alcohol-related incidents away from work, such as driving under the influence . . . ;
4. habitual or binge consumption of alcohol to the point of impaired judgement.

Condition that could mitigate security concerns:

None.

Guideline J (Criminal Conduct)

Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make

an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing 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 determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in criminal conduct and alcohol abuse that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in alcohol abuse (Guideline G), and criminal conduct (Guideline J). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is insufficient to overcome the Government's case under Guidelines J and G of the SOR.

Applicant's extensive history of alcohol abuse began in 1972 and has continued until at least 2000, resulting in four arrests and convictions for Driving While Intoxicated. The Applicant has been consistently punished by the court for his misconduct. He has been incarcerated, fined and ordered by the court on numerous occasions to attend an alcohol awareness program and to undergo alcohol evaluations. He has also attended numerous Alcoholic Anonymous meetings. Despite this, he continues to consume alcohol and he does not believe that he is an alcoholic.

Obviously, the Applicant believes that he no longer has an alcohol problem. However, given his over twenty-eight year history of alcohol abuse, there is no guarantee that he will remain sober for any given period, especially since he still consumes alcohol. Admittedly he has decreased his consumption of alcohol over the years, but he has not stopped. In any case, more time is needed in an alcohol free lifestyle to be assured that the Applicant will not revert to his old self. Under Guideline G, Disqualifying Conditions *1*, (*alcohol related incidents away from work*), and *4* (*binge or habitual consumption of alcohol to the point of impairment*) apply. None of the mitigating conditions apply. Accordingly, I find against the Applicant under Guideline J, (Alcohol Abuse).

For purposes of this SOR, the Applicant's criminal history began in 1974, and continued until at least 2000. The Applicant's criminal history, consists of four arrests and/or convictions, for Driving While Under the Influence of Alcohol, the most recent of which occurred in 2000. Taken together, Applicant history and pattern of criminal conduct establishes that the exercise of poor judgment is not an aberration, but has been a basic part of Applicant's character for almost all of his adult life.

Under Guideline J (Criminal Conduct), Disqualifying Conditions *1* (*any criminal conduct, regardless of whether the person has been formally charged*) and *2* (*a single serious crime or multiple lesser offenses*) are clearly applicable. None of the mitigating conditions apply. Admittedly, the Applicant's most recent arrest occurred in 2000, about four years ago. However, in the context of so many criminal acts over so long a period, there is no substantive indication of a

fundamental change in the Applicant's thinking process or character. On this basis, I conclude that the criminal conduct remains current and is clearly not an isolated incident (Mitigating Conditions 1 and 2). There is also no clear indication of the Applicant's rehabilitation. Accordingly Guideline J is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

DECISION

In light of all 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 the Applicant.

Darlene Lokey Anderson

Administrative Judge