

DATE: January 27, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-10649

DECISION OF ADMINISTRATIVE JUDGE

CHRISTOPHER GRAHAM

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, age 50, has a history of three alcohol related traffic arrests since 1982. Notwithstanding the recommendations of two clinical social workers to abstain from alcohol use, Applicant continues to drink, and did so during his most recent treatment program. Applicant has failed to mitigate serious questions about his security eligibility and suitability. Clearance is denied.

STATEMENT OF THE CASE

On January 20, 2004, the Defense Office of Hearings and Appeals (DOHA), issued a Statement of Reasons (SOR) to Applicant. The SOR detailed reasons why DOHA could not find that it is clearly in the national interest to grant or continue a security clearance.⁽¹⁾ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline G, alcohol consumption.

In a sworn written statement, dated February 10, 2004, Applicant answered the SOR (Answer) and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted a file of relevant material (FORM) in support of the government's preliminary decision, a copy of which was received by Applicant on August 3, 2004. Applicant was afforded the opportunity to file objections and submit material in refutation, extenuation, or mitigation by September 2, 2004. Applicant did not object to the FORM and did not submit anything further in his own behalf. The case was assigned to me on January 14, 2005.

FINDINGS OF FACT

Applicant has admitted all nine factual allegations pertaining to alcohol consumption under Guideline G as stated in the SOR. These admissions are incorporated herein as findings of fact. After a thorough review of the record as a whole, I make the following additional findings of fact:

Applicant is a 50-year-old employee of a federal contractor working as a millwright, and has held his current security

clearance was dated February 4, 1991.⁽²⁾ He is a divorced father of two grown children. One 7-year-old child died in a drowning accident.⁽³⁾

Applicant has a long history of alcohol abuse. He began drinking as a teenager and as a result of such abuse was arrested three times for driving under the influence.⁽⁴⁾ As a result of such abuse he was first arrested on February 25, 1982, and charged with driving while intoxicated with blood alcohol content of .30. He pled guilty to a reduced charge of driving while impaired, paid a fine, was given a conditional discharge and ordered to and did complete the state's Drinking Driver Program.⁽⁵⁾

On May 12, 1995, Applicant was arrested for driving while intoxicated with blood alcohol content of .12, and subsequently pled guilty to a reduced charge of driving while ability impaired. He paid a fine and received a conditional discharge.⁽⁶⁾

On May 26, 1995, Applicant was evaluated by another (CSW) who recommended an outpatient alcohol education class for periodic alcohol abuse.⁽⁷⁾ He participated in an outpatient alcohol assessment program from July 10, 1995 to September 13, 1995, and at the completion of the alcohol program was re-evaluated as having episodic alcohol abuse.⁽⁸⁾

Applicant was arrested on April 3, 2002 for driving while intoxicated with blood alcohol content of .15. He pled guilty and was sentenced to a fine, conditional discharge, and his license was suspended for 90 days.⁽⁹⁾

Applicant voluntarily was evaluated by a third CSW who recommended he abstain from drinking alcoholic beverages, attend an outpatient program and participate in Alcoholics Anonymous (AA). He received treatment from June 24, 2002 to October 22, 2002, attended weekly individual and group counseling sessions, and was found to be alcohol dependent.⁽¹⁰⁾

Applicant continued to consume alcoholic beverages during this period.⁽¹¹⁾ Notwithstanding the evaluation of alcohol dependence, Applicant continues to consume intoxicating beverages.⁽¹²⁾

POLICIES

The Directive sets forth adjudicative guidelines⁽¹³⁾ to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in ¶ 6.3 of the Directive: nature and seriousness of the conduct and surrounding circumstances; frequency and recency of the conduct; age of the Applicant; motivation of the applicant, and the extent to which the conduct was negligent, wilful, voluntary, or undertaken with knowledge of the consequences involved; absence or presence of rehabilitation; and probability that the circumstances or conduct will continue or recur in the future. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed under Guideline G (alcohol consumption).

BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽¹⁴⁾ for an Applicant to either receive or continue to have access to classified information. The government bears an initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a prima facie case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion.⁽¹⁵⁾

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government. ⁽¹⁶⁾

CONCLUSIONS

Under Guideline G (alcohol consumption), excessive alcohol consumption is a security concern because it 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. One who shows he cannot manage the intoxicating effects of alcohol in a responsible manner may be prone to inadvertent disclosures of sensitive or classified information. Such conduct may also indicate a more general lack of trustworthiness or good judgment.

Department Counsel has presented sufficient evidence to establish a *prima facie* case for disqualification under Guideline G. The Applicant has a 20-year history of alcohol related incidents and arrest. The arrest records, the evaluations by CSWs, as well as the Applicant's own admissions in the Answer, and his sworn statement to the Defense Security Service, fully support the SOR allegations. The following Guideline G disqualifying conditions apply. Directive, ¶ E2.A7.1.2.1. *Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or their criminal incidents related to alcohol use*; Directive, ¶ E2.A7.1.2.4. *Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*; and Directive, ¶ E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment*.

Applicant's position in his 2002 statement is that ". . . my use of alcohol has not changed since my last statement [1995] concerning a similar issue. My use of alcohol has not affected me financially and it has not affected my job performance or my health. I do not feel that I have a drinking problem and no one has criticized my drinking habits. I have been through counseling following other incidents involving alcohol and I have never been found to have an alcohol dependence." ⁽¹⁷⁾ This is not true. Applicant has expended money to hire lawyers to defend his DWI arrests, he has paid fines, court costs and costs associated with CSW evaluations and alcohol treatment programs. ⁽¹⁸⁾ The fact that he continues to consume intoxicating beverages after these treatment programs, ⁽¹⁹⁾ that he continued to drink during these programs and continues to drink notwithstanding the recommendation of his third CSW evaluation that he abstain from alcohol, leads me to conclude that Applicant remains in a state of denial. The fact that he drank to excess after completing two treatment programs ⁽²⁰⁾ further undermines my confidence that Applicant's drinking will not be a problem in the future. I also find that Applicant has failed to satisfy any of four mitigating conditions. I conclude Guideline G against the Applicant.

I have carefully weighed all of the evidence. And I have applied the disqualifying and mitigating condition as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive ¶ 6.3, as called for by a fair and commonsense assessment of the record before me as required by Directive ¶ E2.2.3. These facts raise reasonable doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one whom the government entrusts its interests. Absent substantial information to resolve those doubts, which Applicant failed to provide, I conclude it is not clearly consistent with the national interest to grant or continue Applicant's security clearance.

FORMAL FINDINGS

Formal Findings regarding each SOR allegation as required by Directive ¶ E3.1.25 are as follows:

Paragraph 1., Guideline G: AGAINST THE APPLICANT

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. Against the Applicant

Subparagraph 1.i. 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 Applicant. Clearance is denied.

Christopher Graham

Administrative Judge

1. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified.
2. Item 4 (Employer's letter, dated September 3, 2002).
3. Item 5 (letter from a clinical social worker (CSW), dated May 30, 2002), at 1.
4. Id. At 2; Item 6 (medical information questionnaire, dated November 8, 2002), at 1-2; Item 7 (Applicant's statement, dated October 24, 2002), at 1-2; Item 8 (Applicant's court file, dated April 2002), at 1-9; Item 9 (Applicant's statement, dated February 15, 1996), at 1-5; and Item 10 (letter from another CSW, dated ay 26, 1995), at 1-5.
5. Id 9, at 1-2.
6. Id. 9, at 1-2; and Id.10 at 2-4.
7. Id. 10 at 4.
8. Item 11 (letter from another CSW, dated September 21, 1995).
9. Answer, 1 (f).
10. Item 6, supra, at 1-2.
11. Id., at 2; and Item 7, supra, at 1-2.
12. Answer, 1(i).
13. Directive, Enclosure 2.
14. See *Department of the Navy v. Egan*, 484 U.S. 518 (1998).

15. See *Egan*, 484 U.S. at 528,531.

16. See *Egan*; Directive ¶ E2.2.2.

17. Item 7, *supra*, at 2.

18. Answer, 1 (a-h).

19. Answer, 1 (i).

20. Item 6, *supra*, at 1-2.