

DATE: October 28, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-11516

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Lou Keel, Esquire

SYNOPSIS

Applicant was arrested in 1996 and 2001 for driving under the influence (DUI). Both arrests resulting in DUI convictions. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from his alcohol-related incidents. Clearance is granted.

STATEMENT OF THE CASE

On September 23, 2004, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Security concerns were alleged under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct). DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On November 2, 2004, Applicant answered the SOR and requested a hearing. On March 21, 2005, I was assigned the case. On May 2, 2005, a Notice of Hearing was issued scheduling the hearing which was held on March 24, 2005. On June 2, 2005, DOHA received a copy of the transcript (Tr.).

FINDINGS OF FACT

In his response to the SOR, Applicant admits to the following: in 1996 he was arrested and pleaded guilty to DUI; in 1996 he received alcohol related treatment; in 2001 he was arrested for and found guilty of DUI; and, in 2002 receiving alcohol recover/treatment. Those admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is a 33-year-old equipment tester who has worked for a defense contractor since March 2001, and he is seeking to obtain a security clearance. Applicant spent ten years in the Air Force before being honorably discharged in 2001. In May 2002, he joined the reserves and is active in the reserves. His enlisted performance reports indicate he is a

self-motivated, exceptional, superior performer, who is conscientious, motivated, talented, hard working, who displays superior skills, and is an excellent, exceptional technician (App Ex D).

In April 1996, Applicant was stopped by the police for going 37 m.p.h. in a 25 m.p.h. zone. Applicant had been drinking beer at a club with friends. He was arrested for DUI of alcohol, speeding, for not having a state driver's license, and failing to show proof of insurance. Applicant's blood-alcohol test revealed his blood-alcohol content (BAC) was .14, which was in excess of the legal limit. He pleaded guilty to DUI and not having a state driver's license. The speeding charge was reduced. He was fined \$855 and sentenced to six months probation.

On November 20, 2001, Applicant's wife was on vacation with her mother. At the time he was working four jobs: his contractor job, with the Air Force reserves, delivering pizzas in the evenings, and helping a friend fix up apartments. He had been watching Monday night football and drinking beer with friends at a club. After leaving the club, he stopped to allow a man to cross the road. When he pulled away, he heard a thump and saw a woman getting up from the ground. Applicant stopped his car to talk with the individuals, but left when approached in an aggressive, hostile manner. The man was screaming and yelling. Applicant did not believe either were injured, so he continued home. He was stopped by the police and give a blood alcohol test which revealed his BAC was .15. He was charged with a felony for leaving the scene of an injury accident and driving under the influence (DUI).

The felony for leaving the scene of the accident was reduced to a misdemeanor for reckless driving. He was found guilty of the DUI, fined \$941, placed on one year deferred sentence, and mandated to attend 14 court ordered alcohol-education classes. The classes were group sessions of 60 to 90 minutes involving videos, readings, and discussions. Applicant also enrolled himself in an alcohol recovery/treatment program (Gov Ex 3), which he attended weekly sessions from June 2002 through September 2002. After care was completed on March 17, 2003 (Gov Ex 3, App Ex C). On May 4, 2005, the district attorney moved to dismiss the leaving the scene of an accident count and the DUI count because the deferred sentence had expired (App Ex B).

The treatment consisted of one-on-one counseling sessions rather than group meetings. From counseling he learned the "triggers" of his drinking. His counselor thought Applicant he had a control problem and not an alcohol problem. (Tr. 77) Applicant was letting alcohol and other matters control him. He learned not to allow outside influences, alcohol, family, or fiances control him or his reaction. (Tr. 82) The counseling dealt with more than alcohol, it dealt with whole-life counseling.

Following the 2001 incident, a supervisor who worked with Applicant until 2003 saw Applicant transition into a responsible adult. Following the incident, Applicant owned up to the problem. His supervisor "saw tremendous progress after that and I thought he had turned the corner on that problem and I still do." (Tr. 35) By "turning the corner" his supervisor meant Applicant step up and go through a transition into becoming a responsible adult. He was more mature. (Tr. 37) The site manager has also seen positive changes in Applicant. Over time, Applicant has matured. Applicant is an excellent worker. The air reserve technician who supervises Applicant as a reservist and 39 other personnel, states Applicant is in the top ten percent of those he supervises. Applicant was the NCO maintenance professional of the year. (Tr. 57) Applicant is always ready to work and stays late when necessary.

As of January 2003, when he completed a sworn statement (Gov Ex 2), Applicant had completed the educational classes, had attended alcoholic anonymous (AA), and stated he no longer drank and alcohol was no longer a factor in his life. Applicant completed 90 AA meetings in 90 days. Currently, he occasionally attends AA. He last attended two weeks before the hearing. He believed he was an abuser of alcohol. He has turned the control of his life over to a higher power.

Three or four times a year, or every couple of months, Applicant will have a beer or glass of wine with dinner. Since the 2001 incident, he has not had any adverse incidents with the law. He spends his free time fishing when he can. He is separated from his wife, living with a single man and that man's two children.

POLICIES

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline.

Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines 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. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here are Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct).

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. 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, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. 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. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate the government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(2\)](#)

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." 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 judgement, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information to be resolved in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Alcohol Consumption, Guideline G. A history of excessive alcohol consumption raises a security concern because of the potential for deliberate or inadvertent mishandling of classified information due to intoxication. 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. (E2.A7.1.1.) The issue is whether the record evidence raises a security concern under the applicable guideline, and here it certainly does.

In 1996 and 2001, Applicant was arrested and convicted of DUI. Disqualifying Conditions (DC) 1 (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*) and 5 (E2.A7.1.2.5. *Habitual or binge consumption of alcohol to the point of impaired judgment*) apply.

Applicant's last arrest occurred in November 2001, which was three and a half years before the hearing. Although not completely abstinent, Applicant's alcohol consumption is limited to a glass of wine with dinner every two months or so. There is no indication of a current problem with alcohol. Mitigating Condition (MC) 2 (E2.A7.1.3.2. *The problem occurred a number of years ago and there is no indication of a recent problem*) applies. I find for Applicant as to Alcohol Consumption.

The Government has satisfied its initial burden of proof under Criminal Conduct, Guideline J. Under Guideline J, the security eligibility of an applicant is placed into question when that applicant is shown to have a history or pattern of

criminal activity creating doubt about his judgment, reliability, and trustworthiness. Applicant was arrested and convicted twice for DUI. Because of these incidents, DC 1 (E2.A10.1.2.1. *Allegations or admission of criminal conduct, regardless of whether the person was formally charged*) and 2 (E2.A10.1.2.2. *A single serious crime or multiple lesser offenses*) apply.

The most recent arrest occurred in 2001, three and a half years before the hearing, and as described above, this is not recent behavior. MC 1 (E2.A10.1.3.1. *The criminal behavior was not recent*) applies. Applicant's supervisors believe Applicant has "turned a corner." He has matured since the last incident. MC6 (E2.A10.1.3.6. *There is clear evidence of successful rehabilitation.*) applies. Both incidents followed an evening with friends at a bar. Applicant no longer indulges in such behavior. He has a glass of wine or beer with dinner every few months. It is unlikely the factors leading to the violations are not likely to recur. MC 4 (E2.A10.1.3.4. *The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur*). I find for Applicant as to criminal conduct.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Guideline G (Alcohol Consumption): FOR THE APPLICANT

Subparagraph 1.a: For the Applicant

Subparagraph 1.b: For the Applicant

Subparagraph 1.c: For the Applicant

Subparagraph 1.d: For the Applicant

Paragraph 2 Guideline J (Criminal Conduct): FOR THE APPLICANT

Subparagraph 2.a: For the Applicant

DECISION

In light of all 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.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.

2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15.