

DATE: February 9, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-11758

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of excessive alcohol consumption and substance abuse. He was discharged from the U.S. Army for alcohol rehabilitation failure. He continues to drink alcohol, raising serious concerns about his security worthiness. 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 May 19, 2004, under the applicable Executive Order⁽¹⁾ and Department of Defense Directive,⁽²⁾ DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on June 15, 2004, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on July 27, 2004. The FORM contained documents identified as Items 1 through 7. By letter dated July 30, 2004, a copy of the FORM was forwarded to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant did not submit any information within the required time period, but submitted a response received by DOHA on or about November 10, 2004. Department Counsel did not object to Applicant's untimely response and it was entered in the record of this case. On November 19, 2004, the case was assigned to me for a decision.

FINDINGS OF FACT

The SOR contains five allegations of disqualifying conduct charged under Guideline G, Alcohol Consumption. In his answer to the SOR, Applicant admitted three of the five allegations. Applicant's admissions are incorporated as findings of fact.

Applicant, who is 27 years old, has been employed for almost five years by a government contractor. He began working

for the contractor as a clerk and was promoted to assistant manager. His supervisor at his present job commends him as an exceptional employee.

He is married and the father of two young children. His wife is a resident alien and a citizen of a South American country.

Applicant enlisted in the U.S. Army in 1996, at the age of 19. In December 1997, while in the military, he began to use marijuana. He also used methamphetamines and cocaine.

On February 3, 1998, Applicant received a Non-Judicial Punishment under Article 15 of the Uniform Code of Military Justice for transporting an open container of alcohol while in a motor vehicle, underage consumption of alcohol, and wrongful use of amphetamine, dethamphetamine, and methamphetamine, schedule II controlled substances. On February 4, 1998, Applicant enrolled himself in his command's alcohol and drug abuse prevention program. He continued using amphetamines and metamphetamines while in the alcohol and drug abuse prevention program. On February 17, 1998, he tested positive for metaphetamines during a command urinalysis. His command concluded he was an Alcohol or Other Drug Abuse Rehabilitation Failure and separated him from the Army with a general discharge under honorable conditions. (Item 7, at 1.) His captain and his security manager recommended that Applicant never be granted a security clearance. (Item 7, at 5.)

On April 9, 2004, Applicant was evaluated by a certified substance abuse counselor at a facility providing comprehensive addiction treatment services. The counselor completed a BioPsychoSocial Assessment of Applicant and determined he met diagnostic criteria for Amphetamine Dependence, in full remission. (Item 6, at 6.) The counselor also reported Applicant has a history of heavy drinking and continues to use alcohol, which increases his risk of future problems with alcohol consumption. The counselor recommended Applicant enter and complete a full addiction treatment program. (Item 6, at 6.)

Applicant says he consumes three glasses of alcohol a month. He has undergone drug testing in his current job, with no negative results.

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

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to

rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

CONCLUSIONS

Guideline G - Alcohol Consumption

In the SOR DOHA alleged Applicant consumed alcohol, at times to the point of intoxication, from approximately December 1997 to April 2004 (¶ 1.a.); that in February 1998, he was found guilty of wrongfully transporting an open container of alcohol, wrongfully consuming alcohol when under the age of 21, and wrongfully using Amphetamine, Dhethamphetamine, and Methamphetamine, resulting in a Non-Judicial Punishment under Article 15 of the Uniform Code of Military Justice, reduction in rank, forfeiture of pay, physical restriction to the company area for 45 days, and 45 days of extra duty (¶ 1.b.); that Applicant was enrolled in an alcohol and drug abuse prevention program on

February 4, 1998 at his military base, was found to be recalcitrant, and it was determined that further rehabilitation efforts in the military environment would not result in his full return to effective duty (¶ 1.c.); that he was discharged from the United States Army on April 29, 1998 for alcohol rehabilitation failure (¶ 1.d.)⁽³⁾; that a April 2004 assessment of Applicant by a certified alcohol counselor concluded he would benefit from attending an alcohol treatment program since his reports of heavy drinking and continued use of alcohol increased his risk of future problems with alcohol consumption (¶ 1.e.)

Security concerns under ¶¶ E2.A7.1.2.1⁽⁴⁾ and E2.A7.1.2.5⁽⁵⁾ are raised by Applicant's admissions and the record evidence. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, and failure to control impulses, thereby increasing the risk of unauthorized disclosure of classified information due to carelessness. Applicant was arrested in 1998 for an alcohol-related incident away from work. Applicant denied the SOR allegation at ¶ 1.a. that he, at times between December 1997 and April 2004, consumed alcohol to excess and to the point of intoxication. However, he acknowledged when evaluated by a certified substance abuse counselor in April 2004 that he had been a heavy drinker in the past. Applicant also denied the SOR allegation at ¶ 1.c. and stated he was not recalcitrant when enrolled in the Army alcohol and drug rehabilitation program. However, the record evidence shows he continued using controlled substances while enrolled in the program, and tested positive for them as an enrollee.

Applicant was not diagnosed as alcohol dependent or an abuser of alcohol by the certified substance abuse counselor and therefore security concerns under E2.A7.1.2.4 do not apply. However, the counselor cautioned that Applicant's continued use of alcohol, after heavy drinking in the past, increased his risk of future problems, and she advised he attend and complete a full alcohol treatment program.

The security concerns raised by Applicant's Guideline G disqualifying conduct could be mitigated if the alcohol related incidents do not indicate a pattern (¶ E2.A7.1.3.1), the problem with excessive alcohol consumption occurred a number of years ago and there is no indication of a recent problem (¶ E2.A7.1.3.2.), and if Applicant shows positive changes in behavior supportive of sobriety (¶ E2.A7.1.3.3.). Applicant's disqualifying conduct could also be mitigated if, following a diagnosis of alcohol abuse or alcohol dependence, he successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participated frequently in meetings of Alcoholics Anonymous or a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional. (¶ E2.A7.1.3.4.)

Applicant's episodic heavy drinking in the past indicates a lifestyle and pattern of behavior. He continues to use alcohol despite the counselor's admonition his continued drinking could cause him to have problems with alcohol consumption in the future. Since his discharge from the Army, he has not sought inpatient or outpatient rehabilitation or treatment. I conclude that mitigating factors E2.A7.1.3.1, E2.A7.1.3.2, E2.A7.1.3.3 and E2.A7.1.3.4 do not apply to Applicant's case.⁽⁶⁾

In ISCR Case No. 98-0761 at 3 (Dec.27, 1999), DOHA's Appeal Board states that an administrative judge, in deciding an Applicant's security worthiness, "must consider the record as a whole (Directive Section F.3.) and decide whether the

favorable evidence outweighs the unfavorable evidence, or *vice versa*." I have considered the record as a whole and have evaluated Applicant's conduct under the whole person concept of the Directive, and I conclude that Applicant has not mitigated the security concerns raised by the allegations in the SOR and he has not demonstrated that it is clearly consistent with the national interest to grant him a security clearance.

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

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.

Joan Caton Anthony

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. In a memorandum to Applicant, his Commanding Officer stated he was initiating action to separate him from the Army for "Alcohol or Other Drug Abuse Rehabilitation Failure." (Item 7, at 7.) Applicant's Certificate of Release or Discharge from Active Duty (DD Form 214-automated, Nov. 88) lists as the narrative reason for separation: "alcohol rehabilitation failure."
4. Item E2.A7.1.2.1 under Guideline G, Alcohol Consumption identifies "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" as conduct that could raise a security concern and disqualify one from a grant of a security clearance.
5. Item E2.A7.1.2.5. under Guideline G identifies "habitual or binge consumption of alcohol to the point of impaired judgment" as conduct that could raise a security concern and disqualifying condition.
6. In ISCR Case No. 02-15358 at 4 (July 22, 2003), DOHA's Appeal Board stated that the record evidence in a case supported a conclusion that episodic abuse of alcohol raised security concerns under Guideline G. The Appeal Board also stated: "Nothing in the Directive precludes consideration of the security significance of alcohol abuse that occurs in the absence of a diagnosis of alcoholism or alcohol dependence. Nothing in the Directive precludes consideration of the security significance of episodic alcohol abuse that falls short of habitual or binge drinking. Nothing in the Directive precludes consideration of the security significance of alcohol abuse that occurs during off-duty hours."