

DATE: November 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12314

ECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Michael H. Gottesman, Esquire

SYNOPSIS

Applicant was an alcohol abuser who was previously assessed and evaluated as such under the criteria of the DSM-IV. His 16 years of alcohol abuse resulted in one arrest for DWI (in 1986) and two arrests for DUI (in 1999 when the charge was dismissed, and 2002), followed up by court action. Since being assessed and evaluated, he has dramatically altered his attitude, relationship with alcohol, and his lifestyle, and has seemingly abstained since December 2002. He attended AA and MADD meetings briefly and has vowed to his family to remain alcohol-free. Clearance is granted.

STATEMENT OF THE CASE

On March 8, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to 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, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, dated April 6, 2004, Applicant responded to the allegations in the SOR, and requested a hearing. The case was assigned to me on September 20, 2004. A notice of hearing was issued that same date, and the hearing was held on October 5, 2004. During the hearing, six Government exhibits, four Applicant exhibits⁽¹⁾, and the testimony of two Applicant witnesses (including the Applicant), were received. The transcript (Tr.) was received on October 14, 2004.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to alcohol under Guideline G (subparagraphs 1.a. through

1.e.). Those admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 43-year-old employee of a defense contractor seeking to retain a security clearance which was previously granted to him in October 1984.

Applicant was an alcohol abuser. He commenced consuming alcohol at some point prior to 1986, but that early alcohol consumption was undistinguished as to quantity and frequency. Commencing in June 1986, it became something of a problem and he was subsequently involved in three alcohol-related incidents resulting in arrests (1986, 1999, and 2002). In June 1986, Applicant visited his brother for the first time in several years and consumed between two and four beers on an empty stomach.⁽²⁾ Realizing he was running late for a flight, he departed and was eventually stopped for speeding and administered a field sobriety test after the officer smelled alcohol on his breath.⁽³⁾ Although the results of the test have not been specified, he was arrested and charged with driving while intoxicated (DWI).⁽⁴⁾ After remaining in jail over night and entering a plea of no contest, Applicant was sentenced to 90 days confinement,⁽⁵⁾ ordered to pay a fine and court costs, and given two years of probation.⁽⁶⁾ Despite the information appearing in the FBI record, Applicant continues to dispute the accuracy of the record and contends he was not sentenced to any confinement time.⁽⁷⁾ The charge was eventually expunged from his record.⁽⁸⁾

In September 1999, Applicant went to dinner with some friends and consumed some wine and "stuff" during dinner⁽⁹⁾ and cocktails and two beers thereafter.⁽¹⁰⁾ After returning to his hotel, Applicant had to go to a store for contact lens solution, and, a few minutes before midnight,⁽¹¹⁾ while driving back ran through a stop sign.⁽¹²⁾ He was administered a field sobriety test and a breathalyzer.⁽¹³⁾ The breathalyzer machine was not working properly, and a blood test was provided.⁽¹⁴⁾ No results of the blood test have been divulged, but based on the field sobriety test results, Applicant was arrested and charged with driving under the influence of alcohol.⁽¹⁵⁾ Applicant acknowledged he was intoxicated at the time, but contends he was still safe to drive.⁽¹⁶⁾ Two months later, the charge was dismissed on the motion of the district attorney for insufficient evidence.⁽¹⁷⁾

In December 2002, after working late, Applicant consumed three or four beers⁽¹⁸⁾ and some cocktails at the hotel.⁽¹⁹⁾ He and his colleagues looked for a restaurant but they were all closed because of the time and the inclement weather. They stayed at another bar and he continued to consume a couple more beers.⁽²⁰⁾ Applicant then decided to look for an open grocery store. On the way to one, after changing lanes, he was stopped by the police for an improper lane change.⁽²¹⁾ He was administered a field sobriety test after the officer smelled alcohol on his breath.⁽²²⁾ Although the results of the test have not been specified, he was arrested and charged with driving under the influence.⁽²³⁾ Applicant acknowledged he was intoxicated at the time.⁽²⁴⁾ He eventually entered a plea for probation before judgment and was sentenced to three years of unsupervised probation and ordered to pay a fine and court costs.⁽²⁵⁾

In March 2003, upon the advice of his attorney, Applicant underwent a substance abuse assessment or evaluation conducted by a Certified Independent Social Worker (C.I.S.W.). As part of the assessment he was interviewed and administered a Substance Abuse Subtle Screening Inventory (SASSI). Based on the results of the SASSI, the evaluator concluded Applicant had a "low probability of having a substance abuse dependence disorder."⁽²⁶⁾ However, because of concerns voiced by Applicant's family, the evaluator also concluded that Applicant met the criteria for alcohol abuse in the *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition (DSM-IV).⁽²⁷⁾ He recommended Applicant continue to abstain, attend six Alcoholics Anonymous (AA) meetings, and attend two Mothers' Against Drunk Driving (MADD.) meetings.⁽²⁸⁾

Applicant has seemingly abstained since his December 2002 arrest--nearly two years, although he acknowledged consuming alcohol on weekends while playing golf or in a social situation.⁽²⁹⁾ He attended AA and MADD meetings,

and attributes his continuing abstinence to what he learned during those meetings, as well as to a commitment to his family after realizing how traumatic the entire experience has been.⁽³⁰⁾ Applicant no longer attends AA meetings, and while he claims to have learned a lot from them, cannot recite either the Serenity Prayer nor any of the 12 steps.⁽³¹⁾ He denied having an alcohol problem,⁽³²⁾ but has vowed never to consume it again.⁽³³⁾

Applicant earned an M.B.A. degree in 1994. He has been employed by the same government contractor or successor company since August 1984, and is currently serving as a flight test engineer. His direct supervisor considers Applicant to be one of his two most reliable employees,⁽³⁴⁾ and Applicant's performance appraisal characterized his performance as excellent.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guideline most pertinent to an evaluation of the facts of this case:

Alcohol Consumption - Guideline G: 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.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the "clearly consistent with the interests of national security" standard⁽³⁵⁾ or "clearly consistent with the national interest" standard. For the purposes herein, despite the different language in each, I have concluded those standards are one and the same. In reaching this Decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent

with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. Because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions are predictive in nature and must often address potential, rather than actual, risk of compromise of classified information.

Finally, Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

The government has established its case under Guideline G. Commencing at some point in 1986, and continuing periodically until December 2002, Applicant seemingly threw caution to the wind and exhibited a pattern of questionable judgment, irresponsibility, and immature behavior by abusing alcohol. His alcohol consumption resulted in one arrest for DWI in 1986 and two arrests for DUI in 1999 and 2002, followed up by court action. These incidents and the conduct which contributed to the incidents fall within Alcohol Consumption Disqualifying Condition (AC DC) 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 AC DC E2.A7.1.2.5. (*habitual or binge consumption of alcohol to the point of impaired judgment*). However, because there is no evidence that alcohol had any impact on his job performance and activities, there does not appear to be any justification to apply AC DC E2.A7.1.2.2. (*alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job*).

Following the 2002 incident, Applicant's attorney advised him to undergo an alcohol assessment or evaluation. He did so in March 2003. His condition was initially tentatively identified as a "low probability of having a substance abuse dependence disorder, but because of concerns voiced by Applicant's family, the evaluator also concluded that Applicant met the criteria for alcohol abuse in the DSM-IV. The evaluator recommended Applicant continue to abstain and attend AA and MADD meetings. Applicant did so, and has seemingly continued to abstain for nearly two years. While the evidence of abstinence is inconsistent, largely because of Applicant's varying stories in this regard, the testimony of his wife tips the scale in favor of a finding of abstinence. The alcohol assessment or evaluation conducted by the C.I.S.W. was not a diagnosis by a credentialed medical professional, and thus does not fall within AC DC E2.A7.1.2.3. (*diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*). Likewise, because the record is silent as to whether the C.I.S.W. was a staff member of a recognized alcohol treatment program, the evaluation does not come within AC DC 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*).

Applicant's actions since the alcohol assessment and evaluation, including his limited participation in AA and MADD meetings, along with continuing abstinence, reveal an individual who has dramatically altered his attitude, relationship with alcohol, and his lifestyle. That changed behavior clearly falls within Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.3. (*positive changes in behavior supportive of sobriety*) and AC MC E2.A7.1.3.2. (*the problem occurred a number of years ago and there is no indication of a recent problem*).

Under the evidence presented, I am confident that Applicant's alcohol abuse of the past will not recur. There is convincing evidence of current abstinence and sobriety. He has taken efforts to rehabilitate himself, and it appears he has, in fact, been successful. Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the government's case with respect to the issue of alcohol consumption. Accordingly, allegations 1.a. through 1.e. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline G: 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

Subparagraph 1.e.: 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.

Robert Robinson Gales

Chief Administrative Judge

1. One of the five initial Applicant exhibits marked for identification was withdrawn by Applicant as it was a duplicate of a Government exhibit..
2. Tr., at 26-27.
3. Government Exhibit 2 (Statement, dated March 26, 2003), at 1.
4. Response to SOR, dated April 6, 2004, at 2.
5. Federal Bureau of Investigation (FBI) Identification Record, dated February 14, 2001), at 3.
6. *Id.*
7. Response to SOR, *supra* note 4, at 2.
8. *Id.*
9. Tr., at 27-28, 31.
10. Tr., at 31.

11. Government Exhibit 3 (Police Records-DUI/Drug Influence Report, dated September 22, 1999), at 1.
12. Government Exhibit 2, *supra* note 3, at 1.
13. Government Exhibit 3, *supra* note 11, at 4.
14. *Id.*
15. Response to SOR, *supra* note 4, at 2.
16. Tr., at 33.
17. Government Exhibit 5 (Court Records-Criminal Case Docket, dated February 22, 2001), at 3.
18. Government Exhibit 2, *supra* note 3, at 2.
19. Tr., at 32.
20. Tr., at 33.
21. Government Exhibit 2, *supra* note 3, at 2.
22. *Id.*
23. Response to SOR, *supra* note 4, at 1.
24. Tr., at 33.
25. Response to SOR, *supra* note 4, at 2.
26. Government Exhibit 4 (Substance Abuse Evaluation Report, dated March 17, 2003), at 1.
27. *Id.*
28. *Id.*
29. Tr., at 21, 48. Both Applicant and his wife contend he has abstained since December 2002, but in March 2003, Applicant acknowledged consuming alcohol on weekends while playing golf or in a social situation. Government Exhibit 2, *supra* note 3, at 3.
30. Tr., at 22, 49.
31. Tr., at 40.
32. Tr., at 40.
33. Tr., at 41.
34. Applicant Exhibit B (Letter from Supervisor, undated).
35. Exec. Or. 12968, "*Access to Classified Information*," as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2,

Sec. E2.2.2.)