

DATE: November 30 ,2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-12424

ECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was arrested in 1983 for driving while intoxicated (DWI) and arrested in 2002 for driving under the influence (DUI). He continues to consume alcohol to the point of becoming intoxicated once or twice a month. Applicant's personal conduct is mitigated. However, the record evidence is insufficient to mitigate or extenuate the negative security implications stemming from his excessive alcohol consumption and criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

On April 9, 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. On May 3, 2004, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

On September 21, 2004, the Applicant received a complete copy of the file of relevant material (FORM) dated September 10, 2004, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Applicant's response to the FORM was due on October 21, 2004. No response has been received. In the FORM, Department Counsel presented nine exhibits (Items). The Applicant submitted no exhibits. I was assigned the case on November 16, 2004.

FINDINGS OF FACT

The SOR alleges Excessive Alcohol Consumption, Personal Conduct, and Criminal Conduct concerns. The Applicant admits to the following: from 1982 to at least October 2003, he consumed alcohol with varying frequency, at times, consuming to the point of intoxication. He admits he was arrested in 1983 for DUI and in 2002 for DWI. 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.

The Applicant is 39 years old, has worked for a defense contractor since February 1984, and is seeking to obtain a security clearance.

A local agency check indicated an individual with the same first, last, and middle initial as Applicant had been arrested in 1982 for weaving-improper lane use and DWI. The entry lists Applicant's social security number, but the listed dates of birth do not match that of Applicant. Applicant denies he was in this location prior to 1984. Department Counsel states the evidence is insufficient to support this allegation.

In January 2002, his employer received an income withholding order related to child support. The amount of support, the amount of arrearage, and total amount due was listed as "unknown." (Items 7 and 8) Applicant denies his child support payments have changed or been in arrears since 1995.

In September 2002, Applicant was arrested for driving under the influence and illegal transportation of alcohol. He was fined, sentenced to one year of court supervision, and ordered to undergo an alcohol dependency evaluation. He completed 12 hours of early intervention. (Item 6) As of August 2003, the counseling and DUI services employee indicated there appeared "to be no signs of problematic drinking at the present time and no further recommendations for treatment are made at this time."

During a May 2003 interview, Applicant first stated he drank alcohol two or three times a week and later stated he drank alcohol daily. (Item 5) Applicant terminated the interview because he was repeatedly called a liar by the Defense Security Service (DSS) special agent interviewing him and he believed the interview was going nowhere. In October 2003, in his response to interrogatories, he stated he drank one-to-ten beers two-to-three times a week and drank to the point of intoxication once or twice a month.

During the summer of 2002, Applicant completed a security clearance application, SF 86. He completed the form prior to his September 2002 arrest. Six or seven months after he completed the SF 86, his supervisor's secretary sent him additional forms to complete and sign. The SF 86 (Item 4) fails to contain a signed copy or show the date Applicant completed the form. In response to question 24, which inquired about alcohol related arrests, he listed his July 1983 DUI arrest, but incorrectly listed it had occurred in 1981. The alleged 1982 arrest, which Applicant denies, and September 2002 arrest, which Applicant says occurred after he completed the form were not listed.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they 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. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Alcohol Consumption, guideline G, the Concern: 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.

Conditions that could raise a security concern and may be disqualifying include:

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. (E2.A7.1.2.1.)

5. Habitual or binge consumption of alcohol to the point of impaired judgment. (E2.A7.1.2.5.)

Conditions that could mitigate security concerns include:

None apply.

Personal Conduct, Guideline E, the Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. (E2.A5.1.1.)

Conditions that could raise a security concern and may be disqualifying include:

None apply.

Criminal Conduct, Guideline J, the Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged. (E2.A10.1.2.1.)

2. A single serious crime or multiple lesser offenses. (E2.A10.1.2.2.)

Conditions that could mitigate security concerns include:

1. The criminal behavior was not recent. (E2.A10.1.3.1.)

BURDEN OF PROOF

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." 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 restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "Any doubt as to whether access to classified information is clearly consistent

with national security will be resolved in favor of the national security." Directive ¶ E2.2.2 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, 484 U.S. at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Alcohol Consumption (Guideline G). In 1983 Applicant was arrested for DWI and was arrested in 2002 for DUI. As of October 2003, he admits becoming intoxicated once or twice a month. (Item 6) Disqualifying condition 1-~~2~~ applies.

He received a citation and was released as a result of the 1983 DUI arrest. As a result of the 2002 arrest, he was fined, sentenced to one year court supervision, and required to undergo an alcohol dependency evaluation. After completing 12 hours of early intervention there appeared to be no signs of problematic drinking and no further recommendations for treatment were made. It is unknown if the evaluator was aware Applicant was becoming intoxicated once or twice a month when these conclusions were made.

None of the mitigating factors (MC) apply. MC 1. (The alcohol related incidents do not indicate a pattern.) does not apply because there are two arrests and admissions of current intoxication once or twice monthly. The most recent arrest occurred in 2002, which is recent, therefore, MC 2. (The problem occurred a number of years ago and there is no indication of a recent problem.) does not apply. No evidence has been presented to establish MC 3 (Positive changes in behavior supportive of sobriety.) Nor has there been a showing of any type of rehabilitation. I find against Applicant because his alcohol consumption resulted in two arrests and he still drinks to intoxication once or twice a month. I find against him as to SOR paragraphs 1.a, 1.c, and 1.d.

Applicant denies the 1982 arrest. The material submitted by the government is insufficient to support this allegation. The name and social security number are similar to those of Applicant but the dates of birth do not match. DC stated the evidence was insufficient to support the allegation in SOR paragraph 1.b. I find for Applicant as to SOR paragraph 1.b.

The Government has failed to satisfy its initial burden of proof under Guideline E, Personal Conduct. Under Guideline E, the security eligibility of an applicant is placed into question when that applicant is shown to have been involved in personal conduct which creates doubt about the person's judgment, reliability, and trustworthiness. Complete honesty and candor on the part of applicants for access to classified information is essential to make an accurate and meaningful security clearance determination. Without all the relevant and material facts, a clearance decision is susceptible to error, thus jeopardizing the nation's security. During the summer of 2002, Applicant completed an SF 86, and listed his 1983 DUI arrest. When he completed the SF 86, he had not yet been arrested for the September 2002 DUI. I have already found the 1982 arrest did not involve Applicant. I find for Applicant as to SOR paragraph 2.a.

Applicant terminated a May 2003 interview, after repeatedly being called a liar by the DSS special agent and because he believed the interview was going nowhere. The record fails to establish the termination of the interview is a security concern. I find for Applicant as to SOR paragraph 2.b.

In January 2002, his employer received an income withholding order related to child support, however that order failed to list an amount of support, the amount of arrearage, or the total amount due. The mere presence of this document, without more, is insufficient to overcome Applicant's denial that his child support payments have changed or been in arrears since 1995. The order, as presented, is of no security clearance significance. I find for Applicant as to SOR paragraph 2.c.

The Government has satisfied its initial burden of proof under Guideline J, Criminal Conduct. Under Guideline J, the security eligibility of an applicant is placed into question when an applicant is shown to have a history or pattern of criminal activity creating doubt about his judgment, reliability, and trustworthiness. DC 1 (Allegations or admission of criminal conduct, regardless of whether the person was formally charged.) and 2 (A single serious crime or multiple lesser offenses.) apply due to Applicant's 1983 DWI and 2002 DUI arrest.

The record fails to support Applicant was arrested in 1982. His 1983 arrest is not recent conduct to which MC 1 (The criminal behavior was not recent.) applies. However, his 2002 DUI arrest is current and none of the mitigating

conditions apply. I find against him as to criminal conduct.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the 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 Alcohol: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Paragraph 2 Personal Conduct: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the Applicant

Subparagraph 2.c.: For the Applicant

Paragraph 3 Criminal Conduct: AGAINST THE APPLICANT

Subparagraph 3.a.: 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. Clearance is denied.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.

2. DC 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. (E2.A7.1.2.1.)