

KEYWORD: Alcohol; Criminal

DIGEST: The Applicant's history of alcohol abuse and criminal conduct from 1991 until 2003, involving three alcohol related incidents over a thirteen year period, has been mitigated by his decision to stop consuming alcohol altogether. Sufficient evidence of reform and rehabilitation has been shown. Clearance is granted.

CASENO: 03-15139.h1

DATE: 02/22/2005

DATE: February 22, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15139

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's history of alcohol abuse and criminal conduct from 1991 until 2003, involving three alcohol related incidents, has not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On April 12, 2004, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, (as amended) issued a Statement of Reasons (SOR) to the Applicant, which 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 the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on a date uncertain, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on October 14, 2004, consisting of seven documents, referred to as Items 1 through 7. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on October 24, 2004, and he submitted a reply dated December 1, 2004.

The case was assigned to the undersigned for resolution on December 14, 2005.

FINDINGS OF FACT

The Applicant is 39 years old and married. He is employed as a Manager by a defense contractor and is seeking to retain a security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth in the attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and Guideline in the SOR:

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant's pattern of criminal activity creates doubt about his judgment, reliability and trustworthiness.

Since 1991, the Applicant has consumed alcohol at times to excess and to the point of intoxication. In July 1991, he was arrested and charged with Driving While Intoxicated. The Applicant stated that he was a young immature adult fresh out of college at the time who did not understand the potential implications of driving while intoxicated. He was found guilty, fined \$556.00, ordered to complete 12 hours of defensive driving school, and he lost his driver's license for nine months.

Four years later, in September 1995, the Applicant was cited for Public Drunkenness. The Applicant explained that he was celebrating a friend's wedding when he and his new wife had an argument which led to his citation. He pled guilty and was fined a total of \$97.00. He has since received marriage counseling and resolved his communication problems with his wife.

In January 2003, the Applicant was arrested for Driving Under the Influence. He was found guilty and sentenced to one year of probation in the accelerated rehabilitation program, including participation in an Addictions Awareness Program (AAP).

The Applicant continued to consume alcohol following his participation in the AAP program. In the Appellant's response to the SOR he indicates that he believed that his occasional consumption of alcohol is not cause for concern relative to his judgment, reliability and trustworthiness. (See Government Item 3). In his sworn statement to the Defense Security Service he stated that since his last arrest for DUI in 2003, he consumes about two or three beers a month. (See Government Item 5).

At some point following his 2003 arrest, the Applicant evaluated his situation to figure out why it occurred. He consulted his family physician and the company physician for their professional opinions and he also met with a rehab counselor to obtain a diagnostic substance abuse assessment. The substance abuse assessment indicates that he does not have an alcohol addiction. (See, Applicant's Response to the FORM with attachment dated April 27, 2004). His doctor has, however indicated that he should stop consuming alcohol altogether. Based upon his advice, the Applicant indicates that he will stop consuming alcohol altogether. (See Applicant's Answer to SOR).

Mitigation.

Several letters of recommendation submitted on behalf of the Applicant indicate that he is highly respected among his esteemed colleagues and friends in the company. He is considered to be a person of sound judgment, reliability and with the highest ethical standard. He is a hard-working self starter and has never missed a major deadline. He is a strong leader and functions well as a Manager, mentoring a group of seventeen employees and two first line managers. (See Appellant's Response to FORM with attachments).

POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline G (Alcohol Consumption)

Conditions that could raise a security concern:

1. alcohol-related incidents away from work, such as driving under the influence . . . ;

4. habitual or binge consumption of alcohol to the point of impaired judgement.

Condition that could mitigate security concerns:

None.

Guideline J (Criminal Conduct)

Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

2. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in a history of alcohol abuse and criminal conduct which demonstrate poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by evidence that the Applicant has engaged in alcohol abuse, (Guideline G) and criminal conduct (Guideline J). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, however, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

Upon careful review of the evidence, between 1991 and 2003, the Applicant has been arrested and/or cited on three

occasions for alcohol related incidents. Following his most recent DUI in 2003, he has taken this matter seriously and has evaluated his situation to determine why it all happened in the first place. He sought out professional assistance by consulting with his family physician and company doctor for their professional opinions. He also met with an alcohol rehab counselor. Although he has not been formally diagnosed as an alcoholic, there is obviously an alcohol problem that must be addressed. He was advised by his company doctor to stop consuming alcohol altogether. Based upon this advise, he has recently made the decision to completely abstain from the use of alcohol. He is commended for this recent decision to stop consuming alcohol. However, at this time, it is too soon in his rehabilitation to determine that he will not return to his abusive drinking pattern in the future. None of the mitigating factors under guideline G, Alcohol Abuse or J, Criminal Conduct apply. Accordingly, I find that he has not sufficiently rehabilitated himself in this area of concern. Accordingly, Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) are found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 and 2 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.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.

DARLENE LOKEY ANDERSON

Administrative Judge