

DATE: July 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15398

ECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's excessive use of alcohol and poor personal conduct evidenced by his arrest for Driving Under the Influence of Alcohol in July 2001, has been mitigated by sufficient evidence of reform and rehabilitation. Clearance is granted.

STATEMENT OF THE CASE

On November 26, 2003, 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, 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 January 26, 2004, and requested a hearing before a DOHA Administrative Judge. This case was transferred to the undersigned on April 26, 2004. A notice of hearing was issued on May 28, 2004, scheduling the hearing for June 24, 2004. At the hearing the Government presented four exhibits. The Applicant presented four exhibits and called one witness. He also testified on his own behalf. The official transcript (Tr.) was received on July 13, 2004.

FINDINGS OF FACT

The Applicant is 30 years old and has a high school diploma and some college. He is employed by a defense contractor as an Inspector of Plastic Parts Development, and he seeks a security clearance in connection with his employment.

The Government opposes the Applicant's request for a 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 criterion in the SOR:

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

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant has engaged in conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

On July 19, 2001, the Applicant went to his cousin's house for a social gathering. During the four hour visit, he consumed two 22 ounce malt liquor beers. The Applicant had nothing to eat before he consumed the alcohol. During his drive home, the Applicant was pulled over by the police for speeding. The Applicant was administered the sobriety test, and subsequently arrested and charged with Driving Under the Influence of Alcohol/Drugs and Driving with .08% or more Blood Alcohol. The Applicant pled no contest to Driving with .08% or more Blood Alcohol, and the charge of Driving Under the Influence of Alcohol/Drugs was dismissed on August 30, 2001. The Applicant was sentenced to a three month First Offenders Program. This program required the Applicant to complete 96 hours of community service, 36 months probation, pay a fine of \$1,191.00 or perform twelve days of Cal Trans and enroll in an Alcohol Education Program. The Applicant successfully completed all the court's sentencing requirements. The Applicant explained that the Alcohol Education Program consisted of eighteen hours of group sessions, twelve hours of educational classes, six self help recovery meetings and four individual interviews as well as being exposed to the dangers of driving under the influence of alcohol and its consequences. The Applicant remains on probation for the offense until August 29, 2004.

As a result of the conviction, the Applicant's driver's license was suspended for thirty days. It was then restricted, allowing him to drive only to and from his place of employment for six months. The Applicant fully complied with these conditions. The Applicant testified that he has not consumed alcohol and driven since his arrest for DUI.

In regard to his present level of alcohol consumption, the Applicant testified that, "I rarely drink anymore. I'll have like one if I know I'm going to be there for like, at a house or a restaurant or something, eating dinner or something. Once in a while. Every so often. I don't get drunk or anything like that." (Tr. p. 38).

Concerning whether the Applicant will drink and drive again, he credibly testified that, "Because I have learned from this experience. And I wish it wouldn't have gotten to this point. I just would never do it again. I understand the consequences. Just not only that but other people could get injured. I'll never do that again." (Tr. p. 38).

In regard to his future consumption of alcohol, the Applicant stated, "I'm probably just going to stop drinking, your honor. Its just coming to that. I just have so much responsibility, I just have so much to lose. That's where I'm looking at in the future." (Tr. p. 41).

Mitigation.

Numerous letters of recommendation submitted on behalf of the Applicant from his supervisor, coworkers, family and friends indicate that the Applicant is considered to be a person of exemplary character, honesty, integrity, responsibility and high morals. In the employment environment, he is considered a reliable employee with great knowledge of his job, and a vital part of the organization. Among his friends and family, he is well respected by many and considered to be an excellent role model. (See Applicant's Exhibit A).

The Applicant's wife testified that the Applicant is trustworthy and responsible and that he no longer consumes alcohol and drives. (Tr. p. 19).

The Applicant appears to have taken his DUI experience very seriously and is committed to maintaining a positive sober attitude in life and a devoted dedication to his work and family.

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:

3. Positive changes in behavior supportive of sobriety.

Guideline E (Personal Conduct)

Condition that could raise a security concern:

4. Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or pressure.

Condition that could mitigate security concerns:

5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or pressure.

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 predicated 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. All 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 repeated instances of alcohol abuse that demonstrates 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 substantial evidence that the Applicant has abused alcohol (Guideline G) and engaged in poor personal conduct (Guideline E). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Considering all of the evidence, the Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, a failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an Applicant has demonstrated a lack of respect for the law in his private affairs, there then exists the possibility that he or she may demonstrate the same attitude towards security rules and regulations.

The evidence shows that the Applicant was arrested in July 2001 for Driving Under the Influence of Alcohol. He remains on probation for the offense until August 2004. Other than this one arrest, he has no alcohol related history and he has never been arrested before. Since the arrest, the Applicant has complied with each of the courts sentencing conditions. The Applicant appears to understand the consequences of his actions and the fact that consuming alcohol to excess is extremely self destructive. For the past three years he has not consumed alcohol to excess or driven a vehicle while under the influence of alcohol. He has learned that he cannot drink and drive in the future without a severe penalty, that may effect his security clearance and his employment. He has recently decided that in the future it would be best for him not to consume alcohol. He appears to understand the responsibilities that come along with the holding of a security clearance and the privilege that it is. Based on the totality of the evidence, and the fact that the Applicant had decided to stop his consumption of alcohol altogether, it is unlikely that he will ever have another problem like this in the future. Therefore, I find that he is sufficiently trustworthy to handle classified information. The Applicant's alcohol consumption at this point does not establish doubt about his judgment, reliability and trustworthiness. Mitigating condition 3 under Guideline G applies. Mitigating Condition 5 under Guideline E also applies. Accordingly, Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) are found for the Applicant.

On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 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: For the Applicant.

Subpara. 1.a.: For the Applicant.

Subpara. 1.b.: For the Applicant.

Paragraph 2: For the Applicant.

Subpara. 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 the Applicant.

Darlene Lokey Anderson

Administrative Judge