

DATE: November 10, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-15541

DECISION OF ADMINISTRATIVE JUDGE

ROBERT J. TUIDER

APPEARANCES

FOR GOVERNMENT

Kathryn Antigone Trowbridge, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 47-year-old project leader employed by a defense contractor. He has a history of alcohol consumption concerns as a result of his being arrested for driving under the influence in 1978, 1992, 1999, and 2002. Applicant has made substantial life style changes supportive of sobriety, submitted evidence he is not alcohol dependent, and successfully petitioned the court to set aside his 2002 DUI conviction based on his positive behavior changes. Applicant has mitigated this concern. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On December 22, 2003, DOHA issued a Statement of Reasons (SOR)⁽¹⁾ detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) of the Directive. Applicant answered the SOR in writing on February 18, 2003 and elected to have a hearing before an administrative judge. The case was assigned to me on ay 21, 2004. On July 1, 2004, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the transcript (Tr.) of the proceeding on July 14, 2004.

FINDINGS OF FACT

Applicant has been employed with his current employer, a defense contractor, since October 2000 as a project leader. He is seeking a security clearance for an enhanced position with his employer.

Applicant is 47 years old and the father of two children, a daughter 22 years old, and a son 16 years old. He maintains a positive relationship with the mother of his two children and remains active and involved with his children. He has completed approximately three years of college credit and continues to attend classes.

Applicant served on active duty in the U. S. Navy for four years from September 1977 to September 1981, and was honorably discharged as a Interior Communications Seaman, pay grade E-3. He held a top secret clearance while attached to a submarine.

Security concerns arose surrounding Applicant's four alcohol-related incidents and are discussed in order.

On February 22, 1978, Applicant was arrested, charged, and convicted of driving while intoxicated (DUI) in State A. He was sentenced to one day of confinement and fined \$244.00. At the time of this arrest, Applicant had been in the Navy approximately five months, was home on leave, and was out with hometown friends.

On October 29, 1992, Applicant was arrested, charged, and convicted of driving while under the influence in State A. He was sentenced to one day of confinement, fined \$445.00, and a 90-day license suspension. At the time of this arrest, Applicant had been celebrating his birthday at a local nightclub.

On June 24, 1999, Applicant was arrested, charged, and convicted of driving while intoxicated in State B. He pled nolo contendere and was sentenced to six months probation, fined \$500.00, and assessed \$254.25 court costs. Applicant was also required to attend DUI school. At the time of this arrest, Applicant had just been laid off from his job and went to a local bar before going home.

On September 20, 2002, Applicant was arrested, charged, and convicted of driving under the influence and driving under the influence with alcohol concentration of .10 or more in State A. Applicant pled guilty to the lesser charge of DUI and the DUI with alcohol concentration of .10 or more was dismissed. Applicant was frequenting a local dance club, had four rum and Cokes, and was pulled over for driving 35 MPH in a 25 MPH zone.

Two events had a profound impact on Applicant following his September 2002 conviction for DUI. First, Applicant called the mother of his children in the middle of the night to pick him up from jail after his arrest. She arrived at jail, accompanied by their two children, his daughter who was then 18 years old, and his son, who was then 13 years old. He testified, "I had always kept on them about drinking and driving, alcohol use, drug use. And walking out of jail with them there and seeing that hypocrite type look really is what's gotten me past this whole thing. . . . But their faces when, you know, dad comes out of jail. That was pretty tough." Tr. 35-36. "I now saw them (his children) as possible victims of my actions because since they with their mother I could have easily caused them harm, death, as well as the public at large." Tr. 42.

Second, Applicant was required to attend a Mothers Against Drunk Driving (MADD) impact panel. Applicant testified "this was the first time where I actually sat with somebody and talked to them face to face who had a tragedy because of an impaired driver." Tr. 34.

Applicant on his own volition sought the services of a certified professional counselor for an alcohol screening. The counselor reported by letter dated November 25, 2002, , "The score on the SASSI (copy enclosed) rates [Applicant] as a low probability for having an alcohol dependence disorder. His test results appear valid and therefore provide a good indicator of his present relationship to alcohol. In summary, [Applicant] does not present as an individual who has a significant alcohol abuse problem. There does not seem to be a propensity for alcoholism and/or any other substance dependency." Response to SOR.

In April 2003, Applicant successfully petitioned the Court to set aside his September 2002 DUI conviction. Applicant's last drink was at a family Christmas party in December 2002 when he had wine with dinner. Since then, he has been alcohol free.

Applicant is a trusted and highly valued employee of his company. In fact, he is so highly regarded, his employer is holding his position open pending the outcome of his security clearance application.

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 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." Exec. Or. 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.

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 had consumed alcohol to excess and to the point of intoxication (¶ 1.a), and had been arrested, charged, and convicted of four driving under the influence offenses in 1978, 1992, 1999, and 2002 (¶ 1.b - 1.e). The security concern is 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. Directive ¶ E2.A7.1.1.

The Government established by substantial evidence and Applicant's admissions each of the allegations in the SOR- Applicant consumed alcohol to excess and to the point of intoxication and had been arrested, charged, and convicted of four DUIs. DC E2.A71.2 and DC E2.A71.5.

Applicant's DUIs span a 24 year period with significant gaps between each offense, with perhaps the exception of the third and fourth DUI. Although Applicant's four DUIs cannot be condoned, several items are worthy of note. Applicant credibly and convincingly testified regarding the profound affect his 2002 DUI had on him. His reaction included a combination of shame and guilt especially as it pertained to how his children viewed him. Having the mother of his children bring them to jail in the middle of the night to see their father released from jail had a profound impact on him.

Applicant further followed up with court imposed attendance at the MADD impact panel. Although court imposed, Applicant participated enthusiastically in the program and derived maximum benefit from attending. Applicant fully comprehended the lasting and adverse consequences of harm inflicted on innocent people by drunk drivers. Furthermore, following his last DUI in 2002, Applicant on his own volition sought out the professional services of a certified professional counselor to have an alcohol abuse screening. The counselor's professional opinion was that Applicant has a "low probability for having an alcohol dependence disorder" and is not "an individual who has a significant alcohol abuse problem." The Court was convinced of his sobriety and changed life that it set aside his 2002 DUI conviction in April 2003. Lastly, Applicant has been alcohol free since December 2002.

Based on all available evidence, I do not find these incidents likely to reoccur and am convinced Applicant has made significant positive changes in behavior supportive of sobriety, MC E2.A8.1.3.3. Accordingly, I find for Applicant.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

DECISION

In light of all of 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 J. Tuidor

Administrative Judge

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.