

DATE: March 30, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-05521

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

James F. Duffy, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 41 years old and has consumed alcohol, at times to excess, for over 25 years. In 2006, he was convicted of driving under the influence of alcohol (DUI) twice in 2005, for which he is still on probation. He received inpatient alcohol treatment in 1988. During outpatient treatment in 2005 and 2006, he was diagnosed as alcohol-dependent, and he consumed alcohol during his treatment. Applicant deliberately lied to the police, and to government investigators and clearance adjudicators about his drinking, and about the details of a minor traffic accident in 2006. He failed to mitigate the resulting security concerns about his alcohol consumption, criminal conduct, and personal conduct. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant's request for a security clearance. On December 11, 2006, DOHA issued to Applicant a Statement of Reasons (SOR), ⁽¹⁾ which specified the basis for its decision - security concerns addressed in the Directive under Guideline G (alcohol consumption), Guideline J (criminal conduct), and Guideline E (personal conduct). On January 5, 2007, Applicant answered the SOR, admitted to all of the allegations therein, and requested a determination without a hearing.

On January 31, 2007, DOHA Department Counsel submitted a file of relevant materials (FORM) ⁽²⁾ in support of the government's preliminary decision, a copy of which Applicant received on February 5, 2007. Applicant timely submitted additional information in response to the FORM, and the case was assigned to me on March 15, 2007.

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 41 years old and has worked since September 2004 as a program control officer for a defense contractor. In

September 2004, he retired as a Master Sergeant (paygrade E-7) after 20 years of service in the U.S. Air Force. Applicant has been married twice. His first marriage lasted from May 1987 until a divorce in November 1988. Applicant re-married in April 1992. As of March 2001, he and his second wife were separated.

Applicant first consumed alcohol at age 14, while he was living in Germany as a dependent of a military serviceman. He typically would drink two liters of beer every weekend until the family returned to the U.S. when he was 16 years old. In his third year of high school, he drank to intoxication every weekend, but stopped when his family moved during his final year in high school. He attended college for two years and drank infrequently and in moderation, but admits he got drunk and passed out on one occasion. After joining the Air Force in 1984, his drinking increased both in volume and frequency. By 1987, he was drinking as much as a case of beer a day, six days a week. In 1987, he self-referred to an Air Force medical facility for a 30-day in-patient alcohol treatment program. From 1988 until March 2001, Applicant consumed only one six-pack of beer. After he and his second wife separated, however, he resumed drinking between six and eight beers a night, three or four nights a week. In September 2001, Applicant was deployed to Pakistan for four months and did not drink at all. After returning in to the U.S., he resumed his previous volume and frequency of drinking. ⁽³⁾

On February 19, 2005, Applicant was charged with driving under the influence of alcohol (DUI). He had been drinking all day, got into an argument with his live-in girlfriend, went to a bar, came home in the evening, resumed the argument and eventually assaulted her. He again left the house when she called the police, drove to a friend's house to cool off, but then drove home because his friend was not home. The police were waiting for him and arrested him after he failed a breathalyzer test. ⁽⁴⁾ On July 6, 2005, Applicant was again arrested and charged with DUI. He was despondent over the fact his girlfriend had moved out, and he had been drinking heavily for three days. ⁽⁵⁾

Applicant's two DUI charges were disposed of together in court on February 7, 2006. His driver's license was suspended for 60 days, he was assessed fines and court costs in excess of \$1,000, and incarcerated for six days. Applicant was also placed on probation for 18 months, and ordered to continue, through September 2006, a course of outpatient alcohol treatment, counseling, and Alcoholics Anonymous (AA) meetings he began on advice of legal counsel following his arrest in July 2005.

Through his July 2005 - September 2006 treatment, Applicant was diagnosed as alcohol dependent and suffering from depression. While in treatment, Applicant consumed alcohol on at least two occasions. On May 5, 2006, Applicant was approached at a local bar by police who were responding to a report of a minor traffic accident involving Applicant's SUV. A witness reported that Applicant's SUV had hit a pickup truck in the parking lot of a local bar causing minor damage, but that the driver had left the scene. Two police officers approached Applicant in the bar, where they found him to be extremely intoxicated. He first denied the SUV in question was his, then claimed his ex-wife had been using the vehicle to move her belongings, had returned the keys to him in the bar, then had walked home. ⁽⁶⁾ Applicant was issued a citation for careless driving and leaving the scene of the accident, but the charges were later dismissed.

Applicant also drank a six-pack of beer on June 28, 2006. He claimed he became depressed after learning the appraised value of his ex-wife's home. He denied drinking anything since then. ⁽⁷⁾

On October 25, 2006, Applicant gave three signed, sworn statements to an investigator from the Federal Investigative Service. In the second statement, he reiterated the claim he made to police on May 5, 2006, about his ex-wife's role in the minor traffic accident that day. He also denied he had been drinking that day. In the third statement, Applicant admitted lying when he said his ex-wife had driven his vehicle. He also recanted, in part, his claim he had not consumed alcohol that day. Instead, he stated he did not drink until the police left, then had a few beers. ⁽⁸⁾ He reiterated this statement in his response to the SOR. ⁽⁹⁾ On September 25, 2006, in response to interrogatories from a DOHA adjudicator, Applicant denied consuming alcohol before he was cited by police, denied drinking alcohol while he was at the bar in question, and stated that his wife drove his vehicle that day. ⁽¹⁰⁾

Applicant received several personal and unit decorations and citations during his Air Force career. Since he began his current employment two years ago, he has earned the trust of his co-workers and his manager, who feels Applicant can be trusted with classified information. Applicant stated in his reply to the FORM that, as of February 25, 2007, he

intended to begin an intensive 20-week alcohol outpatient treatment program to start on March 5, 2007. He also claimed to be attending AA meetings four or five times each week, although the last known attendance at an AA meeting was on September 22, 2006.⁽¹¹⁾

POLICIES AND BURDEN OF PROOF

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁽¹²⁾ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for an applicant to have access to classified information. The applicant must then present sufficient evidence to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, applicants bear a heavy burden of persuasion to comply with the government's compelling interest in ensuring each applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own.⁽¹³⁾ The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁽¹⁴⁾

The Directive sets forth adjudicative guidelines⁽¹⁵⁾ for consideration when evaluating an applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of disqualifying and mitigating conditions listed under each adjudicative guideline as may be applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in the Revised Adjudicative Guidelines, ¶ 2(a).⁽¹⁶⁾ The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the pleadings and the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline G (alcohol consumption), Guideline J (criminal conduct), and Guideline E (personal conduct).

CONCLUSIONS

Alcohol Consumption. The government alleged Applicant consumed alcohol, at times to excess, from about 1980 until at least June 2006 (SOR ¶ 1.a); that, in February 2006, he was convicted of DUI offenses that occurred in February 2005 (SOR ¶ 1.b) and July 2005 (SOR ¶ 1.c); that Applicant received extensive outpatient alcohol treatment from July 2005 until September 2006, through which he was diagnosed as alcohol dependent (SOR ¶ 1.d); that he consumed alcohol on at least two occasions in 2006 while he was receiving treatment (SOR ¶ 1.e); and that he had completed inpatient alcohol treatment in 1988 while he was in the Air Force (SOR ¶ 1.f). Available information in this record is sufficient to support the SOR allegations about Applicant's use of alcohol. There are no controverted issues of fact as Applicant admitted all of these allegations in response to the SOR, and the FORM and its attachments contain sufficient independent information to support these allegations.

The facts established through SOR ¶ 1 raise reasonable doubts about Applicant's suitability to hold a security clearance. Specifically, excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.⁽¹⁷⁾ Under this guideline, and on these facts, disqualifying condition (DC) 22(a) and DC 22(c)⁽¹⁸⁾ apply. Applicant was twice convicted of DUI, and his statements to investigators about his history of alcohol consumption show that he has abused alcohol since he was 14 years old, and has engaged in binge on several occasions. It also appears he assaulted his live-in girlfriend after he had been drinking, which eventually led to one of his DUI arrests.

The plain language of DC 22(d) and 22(e)⁽¹⁹⁾ regarding a diagnosis of alcohol dependence requires it be shown that licensed medical professionals or clinical social workers rendered such a diagnosis. Thus, as a technical matter, it is questionable whether these disqualifiers may be applied. For that matter, application of DC 22(f)⁽²⁰⁾ is also

questionable absent more information about who actually examined Applicant and made the diagnosis. Nonetheless, Applicant admitted he was diagnosed as alcohol dependent, and available information shows he drank to excess several times since his first treatment in 1988, and that he drank on at least two occasions during his most recent treatment in 2006. These facts cannot be ignored in this case, no matter the wording of the aforementioned adjudicative factors.

By contrast, the record does not support application of any of the listed mitigating conditions. In light of his extensive history of alcohol abuse over the past 27 years, I do not find it credible that he claims he has not consumed alcohol since June 2006. Nor is it sufficient that he intends to enter yet another round of alcohol treatment in March 2007. His excessive drinking and his alcohol-related problems have persisted despite two previous rounds of treatment. Applicant has provided little information to show he has made significant changes in his lifestyle supportive of sobriety, and his intentionally false statements about his drinking (discussed in more detail under Guideline E, below) greatly undermine any confidence he will not abuse alcohol or become involved in alcohol-related incidents in the future.

Criminal Conduct. The government alleged that Applicant was charged in May 2006 with leaving the scene of an accident and careless driving (SOR ¶ 2.a); that he was arrested in August 2004 at work and charged with violating a protective order (SOR ¶ 2.b); that he was cited for disturbing the peace in January 2003, a charge that was eventually dismissed (SOR ¶ 2.c); that he was also cited for disturbing the peace in March 2001, and was found guilty and fined (SOR ¶ 2.d). SOR ¶ 2.e also alleged the criminal aspects of "subparagraphs 1.a and 1.b." However, Applicant correctly amended these allegations to refer to SOR ¶¶ 1.b and 1.c, Applicant's 2005 DUI convictions, and he admitted to both.

As to SOR ¶ 2.a, this charge was eventually dismissed. For purposes of assessing an applicant's suitability to hold a security clearance, criminal conduct may be found even if it has not been formally charged, prosecuted, or a conviction entered. Applicant admits only to being charged but does not admit he actually hit the vehicle.⁽²¹⁾ Nonetheless, available information, which consists of Applicant's false statements to the police to the effect that he did not even own the car involved and/or that his ex-wife was the driver, witness statements to the police about what they saw, and the on-scene findings by the police (e.g., matching paint on Applicant's car and on the car that was hit, and the fact that the point at which the other car was damaged was at the same height as Applicant's bumper)⁽²²⁾ all constitute substantial evidence that Applicant acted as charged.

As to SOR ¶ 2.b, it appears this charge was also dismissed. Just as with the SOR ¶ 1.a allegation, lack of prosecution or other action is not required before it may be found the conduct occurred. However, unlike the SOR ¶ 1.a allegation, there is no information in the case file about what happened in this instance. Charges such as this are often found to be baseless, and, therefore, do not constitute criminal conduct. While Applicant's admission relieves the government of its burden of proving this as a fact, without some idea of what actually happened and/or a finding of guilt, I am reluctant to find that there was any disqualifying conduct. All that has been proven here is that Applicant was charged with an offense that was not prosecuted. The government should at least produce some information to show the basis of its allegation. I find for Applicant as to SOR ¶ 2.b.

As to SOR ¶¶ 2.c and 2.d, Applicant admits that he was charged with and found guilty of disorderly conduct. Despite the lack of detailed information, but in light of admitted findings of guilt, I conclude SOR ¶¶ 2.c and 2.d against the Applicant. For the same reasons, the government's information is sufficient to support the SOR ¶ 2.e allegation that Applicant's alcohol-related driving offenses in 2005 were also criminal conduct. Available information shows he will be on probation for his DUI convictions until August 2007.

The facts established through SOR ¶¶ 2.a, 2.c, 2.d, and 2.e raise security concerns addressed under Guideline J; that is, criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.⁽²³⁾ Additionally, of the disqualifiers listed under Guideline J, DC 31(a), 31(c), and 31(d)⁽²⁴⁾ must be considered. By contrast, there is no support in this record for application of any of the listed mitigating conditions. Indeed, Applicant's willingness to lie to government investigators when confronted with adverse information undermines any claim of rehabilitation.⁽²⁵⁾ I conclude this guideline against the Applicant.

Personal Conduct. The government alleged deliberately lied to the police when he stated he did not hit a parked

vehicle on May 6, 2006 (SOR ¶ 3.a); that he deliberately lied to a government investigator during his background investigation when he again denied he had hit a parked vehicle (SOR ¶ 3.b); and that he deliberately lied to a government investigator when he denied having consumed alcohol on the day he allegedly hit the parked vehicle (SOR ¶ 3.c).

As to SOR ¶ 3.a, Applicant has maintained throughout this matter that he is unsure if he actually hit the other parked vehicle; however, the police reports established Applicant's car hit the other car. Further, available information shows Applicant lied to the police about a variety of details of the alleged accident. He lied when he said his ex-wife was driving his vehicle, and when he tried to convince the police his was not one of the vehicles involved. In short, Applicant hit the other car and lied to the police about it. The fact the charges related to this accident were dismissed does not change his deception.

As to SOR ¶ 3.b, Applicant admitted in the third of three written statements he gave a government investigator on October 25, 2006, that he lied to that investigator in a previous statement that day, wherein he tried again to misrepresent details about the May 5, 2006, accident. As to SOR ¶ 3.c, in his second statement that day, Applicant claimed he did not have anything to drink "and was definitely not drunk" on May 6, 2006. But in the third statement, Applicant allowed that he drank alcohol that day, but only after the police left. Comparison of the police reports from May 5, 2006, to these two statements shows Applicant's eyes were glassy, that his speech was slurred, the bartender had taken Applicant's car keys because he was highly intoxicated, and that Applicant nearly fell down because he was intoxicated. [\(26\)](#)

The facts established through these allegations raise security concerns addressed under Guideline E; that is, conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. [\(27\)](#) Further, of the disqualifiers listed under Guideline E, DC 16(b) [\(28\)](#) applies to Applicant's false statements to an investigator during his background investigation, alleged under SOR ¶¶ 3.b and 3.c. His false statements to law enforcement alleged in SOR ¶ 3.a, although not directly addressed under the guideline in the same way as his statements to the government investigator, are disqualifying under DC 16(d)(3), [\(29\)](#) as they are part of his well-documented propensity to lie. By contrast, there is no support in this record for application of any of the listed mitigating conditions. Applicant repeatedly lied to investigators about the events of May 5, 2006. Additionally, in his answer to the DOHA interrogatories before the SOR was issued, and in his response to the SOR, Applicant repeated the version of events he gave the investigator in his second statement to the investigators. I conclude this guideline against the Applicant.

Whole Person. I have assessed the facts presented in this record and have applied the appropriate adjudicative factors, pro and con, under Guidelines G, J, and E. I have also reviewed the record before me in the context of the whole person factors listed in Revised Adjudicative Guidelines, ¶ 2(a). [\(30\)](#) Applicant is 41 years old and has abused alcohol for most of his life. He has been unable or unwilling to make the lifestyle and other changes needed to resolve this issue despite two rounds of treatment and counseling. Until he does so, he is at risk of future adverse conduct that will continue to undermine the government's confidence in his trustworthiness, judgment, and willingness to follow rules and regulations. The same can be said of his criminal conduct, which is recent and ongoing, in that he had two DUI convictions in within the past two years and is still on probation for both. Lastly, and most pertinent to his suitability for access, are Applicant's deliberate false statements to the police, and to government investigators and adjudicators in the past year.

A fair and commonsense assessment [\(31\)](#) of the entire record before me shows the government's doubts about Applicant's suitability to have access to classified information are based on reliable information about his use of alcohol, his alcohol-related and other criminal conduct, and his repeated intentional falsifications about relevant adverse information in his background. Applicant has failed to carry his burden of producing information sufficient to resolve those doubts. Accordingly, available information shows it is not clearly consistent with the national interest to grant Applicant's request for access to classified information.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline G (Alcohol): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Paragraph 2, Guideline J (Criminal Conduct): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: For the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: Against the Applicant

Subparagraph 2.e: Against the Applicant

Subparagraph 2.f: Against the Applicant

Paragraph 3, Guideline E (Personal Conduct): AGAINST THE APPLICANT

Subparagraph 3.a: Against the Applicant

Subparagraph 3.b: Against the Applicant

Subparagraph 3.c: 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 a security clearance for the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. The FORM included 12 documents (Items 1 - 12) proffered in support of the government's case.
3. Item 10.
4. Applicant told a government investigator that he thought his blood alcohol content (BAC) was about 1.58%, a level that would probably preclude walking, much less driving. More than likely he meant it was .158%. (Item 10).

5. Applicant stated he drank about 18 beers each day over the July 4th weekend. (Item 10).
6. Items 8 and 9.
7. Item 11.
8. Items 11 and 12.
9. Item 5.
10. Item 7.
11. Id.
12. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
13. *See Egan*, 484 U.S. at 528, 531.
14. *See Egan*; *see also* Revised Adjudicative Guidelines, ¶ 2(b).
15. The Adjudicative Guidelines in Directive, Enclosure 2 have been superceded by the Revised Adjudicative Guidelines, issued in December 2005, but implemented by the Department of Defense on September 1, 2006. The Directive has not been formally amended and reissued to contain these new guidelines, and there is no indication in the SOR or the case file that the new guidelines were actually sent to Applicant along with the SOR. However, the Director, DOHA, has indicated that, as of September 1, 2006, he had directed the old versions of enclosure 2 to be destroyed and the Revised Guidelines be sent instead. I assume this has occurred in this case.
16. "(a) 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 adjudication 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. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: (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 extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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."
17. Revised Adjudicative Guidelines, ¶ 21.
18. "(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;"
19. "(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; (e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;"
20. "(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program;
21. Items 4 and 5.

22. Items 8, 9, 11, and 12.

23. Revised Adjudicative Guidelines, ¶ 30.

24. Directive, ¶ 31. "Conditions that could raise a security concern and may be disqualifying include: (a) a single serious crime or multiple lesser offenses; (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and (d) individual is currently on parole or probation."

25. Although not alleged, I would also be remiss if I did not consider also that Applicant's false statements to the government constitute criminal conduct as they violate federal criminal law (18 U.S.C. § 1001) against knowing and willful false statements or representations.

26. Items 8 - 12.

27. Revised Adjudicative Guidelines, ¶ 16.

28. "(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;"

29. (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: ...(3) a pattern of dishonesty or rule violations;..."

30. See footnote 15, supra.

31. Required by the Revised Adjudicative Guidelines, ¶ 2(c).