

DATE: December 7, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26384

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL J. BRESLIN

APPEARANCES

FOR GOVERNMENT

Sabrina Redd, Esq., Department Counsel

FOR APPLICANT

Jack Snyder, Personal Representative

SYNOPSIS

Applicant is a 23-year-old employee of a defense contractor, who seeks a security clearance. When he was between 16 and 18 years old, Applicant was convicted of three separate offenses: driving under the influence of alcohol, reckless driving, and possession of marijuana. Since 2000, Applicant successfully completed his alcohol and drug rehabilitation programs, held steady employment, and accepted great personal responsibility. His supervisors, co-workers, and friends praise his character, responsibility, and trustworthiness. Applicant mitigated the security concerns arising from his history of alcohol consumption and criminal conduct. Clearance is granted.

STATEMENT OF THE CASE

Applicant submitted an application for a security clearance on March 24, 2003. The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant under Executive Order 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 (the "Directive"). On January 25, 2005, DOHA issued a Statement of Reasons (SOR) detailing the basis for its decision. The SOR alleges security concerns raised under the Directive, specifically Guideline G, Alcohol Consumption, and Guideline J, Criminal Conduct.

Applicant answered the SOR in a declaration received on February 5, 2005. He elected to have a hearing before an administrative judge.

The case was assigned to me on August 1, 2005. With the concurrence of Applicant and Department Counsel, I convened the hearing on October 12, 2005. The government introduced Exhibits 1 through 9, and called one witness to testify. Applicant's personal representative presented Exhibits A through HH and the testimony of ten witnesses. Applicant also testified on his own behalf. DOHA received the final transcript of the hearing (Tr.) on October 28, 2005.

FINDINGS OF FACT

Applicant denied the factual allegations in the SOR. Applicant's Answer to SOR, dated November 23, 2004. After a complete and thorough review of the evidence in the record, I make the following findings of fact.

Applicant was born in January 1982. Ex. 1 at 1. In 1998, when he was 16 years old, he and his friends began taking beer from their parents and drinking it until they were intoxicated. Ex. 2 at 1. In May 1998, after drinking a large quantity of beer at a party with some friends, Applicant began driving home. Ex. 2 at 2. He lost control of his vehicle, struck a tree, and was knocked unconscious. *Id.*; Tr. at 103.

State authorities charged Applicant with driving under the influence of alcohol (DUI), DUI with property damage, and DUI with personal injury, all misdemeanor offenses. Ex. 4 at 1-2. Applicant pled guilty to DUI with bodily injury. Ex. 2 at 3; Ex. 5 at 1. The court sentenced Applicant to 50 hours of community service, payment of fines and court costs totaling over \$1,200.00, supervised probation for nine months, license revocation for nine months, completion of DUI School and the Victim's Awareness program, and submission to random testing. Ex. 5 at 1. Applicant successfully completed the requirements of his sentence, including completion of an alcohol abuse counseling program.. Ex. 2 at 3; Ex. B.

In January 1999, at a party celebrating Applicant's 17th birthday, he received a gift of about 10 grams of marijuana. Ex. 2 at 3. Later that night, while riding as a passenger in a friend's car, they were stopped and Applicant was arrested for possession of marijuana. *Id.* Applicant pled *nolo contendere* to the offense. Ex. 7 at 1. The court sentenced him to 20 hours of community service and a fine. Ex. 2 at 3.

One night in June 1999, Applicant and a friend were walking down a street near Applicant's home when a loose dog chased them into a neighbor's yard, where they hid behind a bush. Ex. 2 at 4; Tr. at 94. The neighbor became concerned and opened a door, setting off a burglar alarm. Tr. at 94. Local police found Applicant and his friend walking on the road and charged them with burglary. After a court hearing, the charges were dismissed. Tr. at 94.

Applicant graduated from high school in May 2000. Ex. 1 at 2. He began working as a cook in a local restaurant. *Id.* at 3. He also began dating a young woman he had known for several years. Tr. at 68.

In June 2000, when he was 18 years old, Applicant had an alcoholic drink at a bar near his home and began driving home. Ex. 2 at 4. A police officer pulled him over for driving too slowly. *Id.* A field sobriety test revealed a blood-alcohol content of .070 and .063, below the normal level for intoxication. *Id.* However, state law prohibited anyone under 21 from driving with any amount of alcohol in their blood. Additionally, a search of the car incident to the arrest revealed a small quantity of marijuana. *Id.*

The state charged Applicant with felony possession of a controlled substance and DUI. Ex. 6 at 1. After a hearing, the state agreed not to prosecute the possession charge, and accepted Applicant's *nolo contendere* plea to a reduced offense of Reckless Driving. *Id.*; Ex. 2 at 4. The court sentenced him to 90 days in the detention center, with credit for one day served and 79 days suspended, so that Applicant spent 10 days at the county work farm. Ex. 2 at 5. The sentence also required Applicant to complete DUI school and other classes, attend a 12-week counseling program, perform 75 hours of community service, and serve one year on probation. Ex. 7 at 2. Applicant completed all the requirements of his sentence, including the alcohol counseling program. Ex. 2 at 5; Ex. A; Ex. D; Ex. E. Applicant also attended meetings of Alcoholics Anonymous (AA) during his counseling sessions, and he continued attending for one or two months thereafter. Tr. at 95, 110, 112. A review of Applicant's counseling records indicated he was first given a diagnosis of "Alcohol Abuse" under § 305.00 of the Diagnostic and Statistical Manual of Mental Disorders (DSM), and a later diagnosis of § 305.03, "Alcohol Abuse, in remission." Ex. A. The records do not indicate the qualifications of the individual making the diagnosis.

In August 2000, Applicant began attending a local community college. Ex. 1 at 2. He continued working as a cook while in college for several semesters. Ultimately, Applicant's fiancée became pregnant, and Applicant left school to provide for his family. Their child was born in 2002; tragically, the child suffers from a significant handicap physicians have been unable to diagnose or treat. Tr. at 61.

Applicant began working as an administrative assistant for a defense contractor in March 2002. Ex. 1 at 2. Applicant's

duty performance has been excellent. After he was first hired, he had an interim clearance and access to sensitive information for a period of time, without adverse incident. Tr. at 101. In about two and one-half years of service, he received very favorable ratings, was promoted twice, and was given merit increases. Exs. V, W, X, Y, and Z; Tr. at 99. An impressive number of directors, managers, supervisors, co-workers and friends praised his character, dedication, skill, hard work, diligence and professionalism. Exs. L, M, N, O, P, Q, R, S, T, and U; Tr. at 45, 49, 72-73, 76-77; 84.

Applicant has been a devoted father to his child. He purchased a home and his fiancée and child live with him. Exs. G, H, I and J; Tr. at 97. He cares for his son while his wife works on weekends. Tr. at 66. Applicant has been engaged to be married for over a year; his fiancée's mother wants them to wait until his fiancée completes college. Tr. at 97. Applicant is in good financial condition. Ex. F; Ex. K.

Since the last incident in 2000, Applicant has not been involved in any unlawful conduct. He drinks beer occasionally, but only in moderation, and never when he has the responsibility for caring for his son. Tr. at 69, 98.

POLICIES

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." *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guidelines at issue in this case are:

Guideline G, Alcohol Consumption. 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.

Guideline J, Criminal Conduct. A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive, ¶ E2.A10.1.1.

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to these adjudicative guidelines, are set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance." Directive, ¶ E2.2.1. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. *Id.* An administrative judge 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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent 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. *Id.*

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. Directive, ¶ E3.1.14. Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. 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 (App. Bd. Dec. 19, 2002). "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.

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to

classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. Exec. Ord. 10865, § 7. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I considered carefully all the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

Guideline G, Alcohol Consumption.

Paragraph E2.A7.1.2.1 of the Directive provides that it may be a disqualifying condition if the evidence reveals "[a]lcohol-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." The evidence establishes two alcohol-related incidents away from work: driving under the influence of alcohol in 1998, and reckless driving in 2000. I conclude this potentially disqualifying condition applies.

Under the Directive, ¶ E2.A7.1.2.3 and ¶ E2.A7.1.2.4, it may be disqualifying if an applicant is given a diagnosis of alcohol abuse or alcohol dependence by either a credentialed medical professional (e.g., physician, clinical psychologist, or psychologist) or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program. The extract from Applicant's counseling records indicate he received a diagnosis of alcohol abuse in 2001, but the records do not indicate the qualifications of the individual who made the diagnosis. I also note the later diagnosis indicated the alcohol abuse was in remission. Finally, the evaluation occurred over four years ago. I conclude the available evidence does not establish this potentially disqualifying condition.

Under the Directive, ¶ E2.A7.1.2.5, "habitual . . . consumption of alcohol to the point of impaired judgment" may be disqualifying. Applicant admitted that he consumed alcohol to excess on occasion when he was in high school. The evidence of his alcohol-related offenses shed further light on his drinking history. Clearly there is evidence of episodes of excessive drinking. However, I am not persuaded that this evidence is sufficient to constitute "habitual" consumption of alcohol. I conclude this potentially disqualifying condition does not apply.

The security concerns arising from Applicant's history of excessive alcohol consumption can be mitigated under certain circumstances. Under the Directive, ¶ E2.A7.1.3.1, it may be mitigating where "[t]he alcohol-related incidents do not indicate a pattern." There were two alcohol-related incidents away from work in this case. One involved driving under the influence of alcohol and the second arose from driving after drinking some quantity of alcohol while under 21 years old. I conclude these alcohol-related incidents indicated a pattern, therefore this potentially mitigating condition does not apply.

Under ¶ E2.A7.1.3.2 of the Directive, it may be mitigating where "[t]he problem occurred a number of years ago and there is no indication of a recent problem." The Directive does not define the terms "a number of years ago" or "recent"; whether these conditions apply is determined by all the circumstances in each individual case. Applicant's first alcohol-related incident occurred in 1998, and Applicant's latest alcohol-related incident occurred in 2000. Each could be fairly described as being "a number of years ago." Moreover, these incidents occurred when Applicant was 16 and 18 years old, respectively. Experience teaches us that there is a substantial difference in maturity between age 18 and age 23, especially for one who has successfully embarked on a career and undertaken significant personal responsibility. Presently, Applicant drinks alcohol only in moderation. Considering all the circumstances, I find no indication of a recent problem with alcohol. I conclude this potentially mitigating condition applies.

Paragraph E2.A7.1.3.3 provides that "[p]ositive changes in behavior supportive of sobriety" may also be a mitigating factor. Following his alcohol-related incident in 2000, Applicant attended the court-ordered alcohol awareness program and a several AA meetings, as required. He drinks only in moderation, and has not had any further alcohol-related incidents. I find this potentially mitigating condition applies.

I considered the potentially disqualifying and mitigating factors, as well as the "whole person" concept. Applicant is a young adult, just beginning his career. He had several problems with alcohol when he was a teenager, but has not had

any alcohol-related incidents since 2000. All the available evidence indicates Applicant has become a mature, stable, responsible adult. I conclude Applicant has mitigated the security concerns arising from his history of problems arising from alcohol consumption.

Guideline J, Criminal Conduct.

Paragraph E2.A10.1.2.1 of the Directive provides an "admission of criminal conduct" may be disqualifying. Similarly, under ¶ E2.A10.1.2.2 of the Directive, it may be disqualifying where an applicant committed "a single serious crime or multiple lesser offenses." Applicant was convicted of multiple lesser offenses, including driving under the influence of alcohol, reckless driving, and possession of marijuana. He admitted his criminal conduct. I conclude these disqualifying conditions apply.

Paragraph 2.c of the SOR alleges that Applicant was arrested for burglary in June 1999, and that the charges were dismissed. The available evidence indicates that was true, but that the arrest was made in error. I conclude this evidence does not raise a security concern.

Similarly, paragraph 2.d of the SOR asserts Applicant was arrested in July 1999 and charged with shoplifting. Applicant denies any knowledge of the matter. Other than an entry on Applicant's FBI report, there is no evidence indicating what this matter involved. I conclude this evidence does not raise a security concern.

Under the Directive, the security concerns arising from a history of criminal conduct may be mitigated in certain circumstances. Under ¶ E2.A10.1.3.1 of the Directive, it may be mitigating when "the criminal behavior was not recent." Applicant's offenses occurred more than five years ago, when Applicant was between the ages of 16 and 18 years old. I conclude this conduct is not recent, therefore this potentially mitigating condition applies.

The Directive, ¶ E2.A10.1.3.2, also provides that it may be mitigating where "the crime was an isolated incident." Applicant was convicted of two alcohol-related traffic offenses, and was arrested while in possession of marijuana on two occasions. I conclude this mitigating condition does not apply.

Paragraph E2.A10.1.3.4 of the Directive states it may be mitigating where "the factors leading to the violation are not likely to recur." Applicant's offenses occurred while he was a teenager; since then, he has matured greatly and accepted significant responsibilities. He has changed his lifestyle so substantially that I find the factors leading to his offenses are not likely to recur.

Under ¶ E2.A10.1.3.6 of the Directive, it may be mitigating where "there is clear evidence of successful rehabilitation." Applicant's offenses occurred when he was a young man; since then he has assumed great personal responsibilities and held steady employment. He recognizes the mistakes he made, and is resolved not to offend in the future. I considered carefully Applicant's demeanor during the hearing and find that he has matured and is unlikely to commit criminal acts in the future. I conclude this mitigating factor applies.

I carefully considered the disqualifying and mitigating conditions in this case, in light of the "whole person" concept. Balancing the disqualifying and mitigating factors in light of the "whole person" concept, I conclude Applicant has mitigated the security concerns arising from his history of criminal conduct.

FORMAL FINDINGS

My conclusions as to each allegation in the SOR are:

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

Paragraph 2, Guideline J: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.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.

Michael J. Breslin

Administrative Judge