

DATE: December 19, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-26835

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 33 years old and works as a systems technician for a defense contractor. In 1991, 1992, and 2000, he was arrested and convicted of charges related to alcohol. In 1995, he was convicted of a drug charge. Subsequently, Applicant completed all terms imposed on him by the court, including probation and alcohol counseling programs. Since 2000, he has not been involved in any alcohol related incidents. On his security clearance application, he failed to disclose the 1992 alcohol charge, and disclosed the 1995 drug charge under the wrong security clearance application heading. He credibly denied any intention to falsify information to the government. Applicant mitigated the security concerns related to his alcohol consumption and personal conduct. Clearance is granted.

STATEMENT OF THE CASE

On March 29, 2005, the Defense Office of Hearings and Appeals (DOHA) under Executive Order 10865, *Safeguarding Classified Information Within Industry*, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR, which is essentially an administrative complaint, detailed reasons under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant a security clearance to Applicant. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted.

On May 31, 2005, Applicant filed his answer, admitting all of the allegations contained in the SOR, and requested a hearing. The case was assigned to an administrative judge on July 21, 2005, and reassigned to me on September 13, 2005. A Notice of Hearing was issued on September 26, 2005, and the hearing was held on October 26, 2005. At the hearing the Government introduced Exhibits 1-8 into evidence and they were admitted without objection. Applicant introduced Exhibits A-H into evidence and they were admitted without objection. Applicant testified in his case-in-chief. DOHA received the Transcript (Tr.) on November 9, 2005.

FINDINGS OF FACT

In his answer to the SOR, Applicant admitted all of the allegations contained in paragraph 1 under Guideline G and those contained in paragraph 2 under Guideline E. These admissions are incorporated into my findings of fact. After a complete review of the evidence in the record, I make the following additional findings of fact:

Applicant is 33 years old. He graduated from high school and attended college sporadically.⁽¹⁾ After high school, Applicant held various jobs with private companies and federal contractors. Since September 2002, he has worked as a system technician for a defense contractor.⁽²⁾ In October 2002, he completed a Security Clearance Application (SCA).⁽³⁾

In August 1991, Applicant was in an automobile accident after drinking ten to eleven beers over a period of six hours.⁽⁴⁾ He was arrested for Driving Under the Influence of Alcohol and No Proof of Insurance. In October 1991, he pleaded guilty to Driving While Impaired. The court fined him \$250.00 with \$100.00 suspended, ordered him to serve 20 days in jail, with 20 days suspended and to pay court costs. He was required to perform 48 hours of community service, and to attend an alcohol education program.⁽⁵⁾ He completed that program in April 1992.⁽⁶⁾ After the arrest, Applicant stopped drinking alcohol for six months.⁽⁷⁾ Applicant was 19 years old at the time.

In September 1992, Applicant was charged with the Sale of Alcohol to a Minor after he was arrested at a county fair for handing a beer to one of his friends.⁽⁸⁾ In October 1992, he pleaded guilty to Underage Drinking and was fined \$53.00.⁽⁹⁾ Applicant was 20 years old at the time.

In July 1995, Applicant was arrested and charged with Driving Under the Influence of Drugs-Cannabis after being stopped by the state police. In August 1996, he pleaded guilty to Driving Under the Influence of Drugs and was fined \$400.00, ordered to perform 48 hours of community service and placed on home detention for three weeks.⁽¹⁰⁾ He was required to undergo another alcohol treatment and education program.⁽¹¹⁾ Applicant completed the community service hours in October 1996.⁽¹²⁾ He completed the alcohol treatment program in June 1997.⁽¹³⁾ Applicant was 22 years old at the time of this arrest.

In September 2000, Applicant was arrested and charged with Driving Under the Influence of Alcohol and Driving While Ability Impaired. He pleaded guilty to Driving While Impaired and was sentenced to jail for 15 days, with 15 days suspended, and 30 days of home detention. He was placed on alcohol probation for one year, ordered to perform 36 hours of community service, pay court costs and a fine, attend another alcohol education program, and participate in 86 hours of alcohol/drug therapy. The probation order also required him to submit random urine screens and take antabuse for six months.⁽¹⁴⁾ From approximately March 2001 through October 2002, Applicant submitted to at least 17 random urine screens, all of which were negative.⁽¹⁵⁾ However, he did not take antabuse because his physician refused to prescribe it for him.⁽¹⁶⁾ In March 2002, a Motion to Revoke Probation was filed because Applicant did not complete his alcohol program in a timely fashion. The Motion was later withdrawn and Applicant received a time extension. He completed the course in July 2002.⁽¹⁷⁾ Applicant was 27 years old when he was arrested for this charge.

After the September 2000 arrest, Applicant stopped drinking for more than a year.⁽¹⁸⁾ Although he has never been diagnosed as an alcoholic, he considers himself one because at the time he got into trouble he had a drinking problem.⁽¹⁹⁾ Presently, he believes he has his drinking under control and does not drink to intoxication.⁽²⁰⁾ He does not attend Alcoholic Anonymous meetings, but considers the men at work to be a supportive influence.⁽²¹⁾ During his course of alcohol treatment, Applicant formed a good relationship with his alcohol counselor, who stated Applicant focused "on all aspects of therapy" while in treatment.⁽²²⁾ Applicant continues to speak to his counselor periodically.⁽²³⁾ Applicant occasionally drinks two or three beers at home on weekends.⁽²⁴⁾ The last time he drank was three weeks before his hearing when he had two beers at his home.⁽²⁵⁾ Applicant feels he has grown up in five years and never wants to hurt his family or friends again.⁽²⁶⁾ Since September 2000, Applicant has not encountered any legal problems, driving offenses, or other criminal actions related to alcohol or drugs.

When Applicant completed the SCA in October 2002, he certified his answers were "true, complete and correct" to the best of his knowledge and belief. In response to Question 24 (*YOUR POLICE RECORD - Alcohol/Drug Offenses; Have you been arrested for, charged with, or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the records in your case has been "sealed" or otherwise stricken from the record. The single exception in this requirement is for certain convictions under the Federal Controlled Substance Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.*), Applicant answered "Yes." He disclosed the 1991 and 2000 charges, but did not disclose the 1992 conviction.⁽²⁷⁾ Instead of listing the 1995 drug related charge under this heading, Applicant inserted it under General Remarks.⁽²⁸⁾

Subsequent to meeting with a government investigator regarding his answers to the SCA, Applicant submitted a supplemental explanation, which specifically addressed his arrests and other matters in the SCA.⁽²⁹⁾ Applicant admitted the 1992 arrest and conviction. He did not intend to omit it. He thinks he forgot it because it occurred ten years ago and involved a minimal fine of \$53.00.⁽³⁰⁾ Applicant acknowledged that he should have disclosed the 1995 drug charge under Question 24, but said he inserted it under the General Remarks section because he was convicted of a speeding violation, not a drug related offense, and he misinterpreted the question.⁽³¹⁾ I find these explanations credible.

POLICIES

Enclosure 2 of the Directive, *Adjudicative Guidelines For Determining Eligibility For Access To Classified Information*, sets forth criteria which must be evaluated when determining security clearance eligibility. Within those adjudicative guidelines are factors to consider in denying or revoking an individual's request for access to classified information (Disqualifying Conditions), and factors to consider in granting an individual's request for access to classified information (Mitigating Conditions). By recognizing that individual circumstances of each case are different, the guidelines provide substantive standards to assist an administrative judge in weighing the evidence in order to reach a fair, impartial and common sense decision.

The adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at meritorious decisions. Section E2.2. of Enclosure 2 of the Directive describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

Granting an applicant's clearance for access to classified information is predicated on a high degree of trust and confidence in the individual. Accordingly, decisions under the Directive must include consideration of not only the *actual* risk of disclosure of classified information, but also consideration of any *possible* risk an applicant may deliberately or inadvertently compromise classified information. Any doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting classified information.⁽³²⁾ The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty.⁽³³⁾ Instead, it is a determination that an applicant has not met the strict guidelines established by the Department of Defense 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.⁽³⁴⁾ 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.⁽³⁵⁾

Once the Government establishes a disqualifying condition by substantial evidence, the corresponding burden of rebuttal shifts to the applicant to present evidence in refutation, extenuation, or mitigation sufficient to overcome the
⁽³⁶⁾

position of the government. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance." (37)

Based upon the allegations contained in the SOR and a consideration of the evidence as a whole, the following adjudicative guidelines are pertinent to an evaluation of the facts of this case:

Guideline G - Alcohol Consumption: A security concern arises because 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.

Guideline E - Personal Conduct: A security concern arises when an individual's conduct involving questionable judgment, untrustworthiness, unreliability, lacks of candor, dishonesty, or unwillingness to comply with the rules and regulations could indicate that the person may not properly safeguard classified information.

The Guideline G and Guideline E disqualifying and mitigating conditions, either raising security concerns or mitigating security concerns applicable to this case, are set forth and discussed in the Conclusions section below.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and the application of the appropriate adjudicative factors and legal standards, I conclude the following with respect to the allegations set forth in the SOR:

Guideline G: Alcohol Consumption

The government established its case under Guideline G. Based on the evidence in this case Alcohol Consumption Disqualifying Condition (AC DC) E2.A7.1.2.1. (*Alcohol-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*), and AC DC E2.A7.1.2.5. (*Habitual or binge consumption of alcohol to the point of impaired judgment*), apply to the allegations contained in Paragraph 1 of the SOR. Applicant admitted he was arrested and charged in 1991, 1992, and 2000, with crimes involving the misuse of alcohol, two of which were the result of his intoxication.

I considered all the mitigating conditions under Guideline G, in particular Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.2. (*The problem occurred a number of years ago and there is no indication of a recent problem*), and AC MC E2.A7.1.3.3. (*Positive changes in behavior supportive of sobriety*), and conclude both apply. In addition to being remorseful about his past behavior, Applicant expressed an appreciation of the problems associated with the abuse of alcohol, which he learned through participation in the treatment programs. As a result he has reduced his drinking considerably, made a commitment to his family to avoid similar conduct, and has found a support system at work. That evidence, along with the completion of two alcohol treatment programs and the passage of five years without incident, sufficiently mitigates the security concerns related to alcohol consumption. Accordingly, allegations 1.a. through 1.d. are concluded for Applicant.

Guideline E: Personal Conduct

The government has established a case under Guideline E. Based on the evidence, Personal Conduct Disqualifying Condition (PO DC) E2.A5.1.2.2. (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*), applies to this case. Applicant failed to list the 1992 alcohol related arrest and listed the 1995 crime under the wrong heading. However, I find Applicant credibly explained that the omission of the 1992 charge was not deliberate, but an oversight based on the lapse of ten years, the nature of the incident, and an insignificant fine. As to the 1995 drug charge, I find Applicant made a mistake when he disclosed the 1995 drug charge under the wrong heading of the SCA, and not a deliberate omission. If he had intended to mislead the government, he would not have disclosed it under any section of the application. Hence, Applicant mitigated this security concern. Accordingly, Guideline E is concluded for Applicant.

I have further considered all the evidence in this case with respect to the "whole person" concept required by the Directive in evaluating Applicant's vulnerability in protecting our national security. I am persuaded by the totality of the evidence that it is clearly consistent with the national interest to grant Applicant a security clearance.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1: Guideline G (Alcohol Consumption) FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Paragraph 2: Guideline E (Personal Conduct) FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is consistent with the national interest to grant a security clearance to Applicant. Clearance is granted.

Shari Dam

Administrative Judge

1. Government Exhibit 1 (Security Clearance Application, dated October 4, 2002) at 2.
2. *Id.*
3. *Id.* at 6.
4. Government Exhibit 8 (Statement of Subject, dated November 20, 2003) at 1.
5. Government Exhibit 6 (Court Records for August 10, 1991 Charges) at 2.
6. Applicant Exhibit E (Certificate of Completion for Chemical Dependency Program, dated April 14, 1992).
7. Tr. 34.
8. Tr. 22-23.
9. Government Exhibit 4 (Court Records for September 6, 1992 Charges) at 5.
10. Government Exhibit 7 (Court Records for July 24, 1995 Charges) at 9.
11. *Id.*
12. *Id.* at 13.
13. *Id.* at 16.

14. Government Exhibit 5 (Court Records for September 30, 2000) at 8.
15. Government Exhibit 8, *supra* note 4, at 4.
16. Applicant's Exhibit H (Note from Physician); Tr. 27.
17. Government Exhibit 5, *supra* note 4, at 1; Tr. 29.
18. Tr. 55.
19. Tr. 39 and 53.
20. Tr. 39.
21. Tr. 40.
22. Applicant Exhibit D (Letter of Recommendation, dated October 25, 2005) at 3.
23. Tr. 55.
24. Tr. 36.
25. Tr. 41.
26. Tr. 56.
27. Government Exhibit 2 (SCA, dated October 10, 2002 and Submitted Electronically) at 11.
28. *Id.* at 14.
29. Government Exhibit 8, *supra* note 4, at 3.
30. *Id.*
31. *Id.* at 2; Tr. 25.
32. Directive, Enclosure 2, ¶ E2.2.2.
33. Executive Order 10865, § 7.
34. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
35. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).
36. ISCR Case No. 01-20700 at 3 (App. Bd., Dec. 19, 2002); Directive, Enclosure 3, ¶ E3.1.15.
37. *Id.*