

KEYWORD: Personal Conduct; Criminal Conduct; Alcohol

DIGEST: Applicant's history of criminal conduct and alcohol abuse has not been mitigated by a sufficient showing of rehabilitation and reform. Clearance is denied.

CASENO: 03-26971.h1

DATE: 01/17/2006

DATE: January 17, 2006

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 03-26971

**DECISION OF ADMINISTRATIVE JUDGE**

**DARLENE LOKEY ANDERSON**

**APPEARANCES**

**FOR GOVERNMENT**

Candace Le'i, Department Counsel

## **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant's history of criminal conduct and alcohol abuse has not been mitigated by a sufficient showing of rehabilitation and reform. Clearance is denied.

### **STATEMENT OF THE CASE**

On April 7, 2005, 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 April 28, 2005, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on August 17, 2005. A notice of hearing was issued on September 13, 2005, scheduling the hearing for October 19, 2005. At the hearing the Government presented six exhibits. The Applicant presented three exhibits and testified on his own behalf. The official transcript (Tr.) was received on November 1, 2005.

### **FINDINGS OF FACT**

The Applicant is 31 years old. He is employed by a defense contractor as a Deck Hand, and is seeking to retain his security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations.

The Applicant denies that he was ever terminated from his employment. On August 10, 2002, the Applicant resigned from his employment following allegations of misconduct. The Applicant explained that when he was working as a security supervisor, at times, he worked from home. He logged in extra hours to compensate for the hours he worked while at home. He indicates that this situation was approved by his supervisor. However, when the corporate office learned of the matter, the Applicant was told that he was going to be let go. The Applicant resigned from the position before being terminated.

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant admitted all of the allegations set forth in the SOR under this guideline.

From 1996 through 2001, the Applicant was involved in six separate alcohol related incidents. Four of them occurred while he was on active duty in the Marine Corps.

The first of these incidents occurred on April 4, 1996. The Applicant explained that he was a Training NCO at the time and had been drinking at a strip bar. He ran several miles to the front gate of the base and was picked up by the military police. They smelled the alcohol on his breath. The Applicant received non-judicial punishment under Article 15 of the Uniform Code of Military Justice for the offense of Disorderly Conduct. He was sentenced to Level 1 Treatment for alcohol, which was one week of counseling. He also attended Alcoholics Anonymous meetings. The Applicant learned for the first time that he had a problem with alcohol. (Tr. p. 30). He tried to reduce his consumption of alcohol, but could not stop. (Tr. p. 53).

On October 17, 1997, the Applicant received non-judicial punishment, under Article 15 of the Uniform Code of Military Justice for the offense of Disorderly Conduct. The Applicant explained that he was still a Training NCO when he went out to a bar with friends and drank about a twelve pack. He ended up urinating on the lobby couch of the barracks. (Tr. p. 33). This time, the Applicant was sentenced to Level 2 Treatment for alcohol. He completed this program and even sought out his own counseling for his alcohol problem. He continued to be in denial and continued to abuse alcohol. He became dependent on alcohol and needed it to get through his life.

On July 14, 1998, the Applicant received non-judicial punishment under Article 15 of the Uniform Code of Military Justice for the offense of Disorderly Conduct. At this time, the Applicant was a jungle warfare instructor, who was celebrating his class' graduation and had too much to drink. The Applicant went to the wrong barracks and fell down a flight of stairs. He was taken to the hospital and refused treatment. The Applicant was sentenced to a reduction in rank, forfeiture of one half month's pay for two months, and restricted for thirty days.

The Applicant continued to consume alcohol to excess, and in February 2000, while he was a Chief Scout he was arrested and charged with Driving Under the Influence of Alcohol. The Applicant explained that he had been drinking beer in the barracks and decided to drive home. As he was driving, he peeled out into the street and a military police officer caught him and pulled him over. He was administered a breathalyzer and released to his wife. He was sentenced to a reduction in rank, forfeiture of one half month's pay for two months and restricted for thirty days. During the Applicant's treatment program, the physician diagnosed the Applicant as being "alcohol dependent". (Tr. p. 50).

At this point, given the fact that his serious drinking problem had caused him to be overlooked for promotion, the Applicant decided that it would be best to get out of the military. He received an honorable discharge. (See Government Exhibit 6). After doing so, he had difficulty finding employment and this was causing marital problems. On August 1, 2000, the Applicant, who was still living on the military base because his wife was active duty Marine, had been drinking and went for a run. He was picked up by the military police and they took him back to his house. He called his wife who was out of town visiting a friend. She started yelling and screaming. The Applicant continued to drink and walked out of the house. He got picked up again and started a verbal argument. He was arrested and charged with Disorderly Conduct: Person Under the Influence of Alcohol/Drugs. He pleaded nolo contendere to the amended charge of Fighting, Noise, and Offensive Words and was fined \$139.00. (See Government Exhibits 3, 4 and 5).

On May 9, 2001, the Applicant was again arrested and charged with Disorderly Conduct. The Applicant explained that his wife confessed to him that day that she had been cheating on him for over two years. The Applicant went to his brother's place of employment drunk and got into an argument with him. The police were called. The Applicant was apprehended. He pleaded nolo contendere and was fined \$100.00. Following this incident, the Applicant went through psychiatric and marital counseling one to two times per week from October 2000 through February/March 2001. He and his wife were divorced in August 2002.

Paragraph 3 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant was consuming alcohol to excess from 1996 to at least 2002. He usually drank in the evenings after work or on the weekends. When he consumed alcohol, he became loud and obnoxious. He stopped consuming alcohol in March 2002. He states that he simply went "cold turkey". (Tr. p. 52). After each alcohol treatment program followed by AA meetings, he returned to abusing alcohol. At AA, he has never worked the twelve step program, nor did he ever have a sponsor. He does have the twelve step book that he reads. He has not successfully completed an alcohol rehabilitation program nor has he received a favorable prognosis. (Tr. 50).

The Applicant now has a new girlfriend, a son, and is planning on getting married. He appears to realize the seriousness of his alcohol problem as he admits that he is an alcoholic who cannot have even one drink for fear that he could return to his old habits. The Applicant's support group consists of his parents, his brother and his fiancé. They all consume alcohol, but the Applicant does not participate. The Applicant keeps non-alcoholic beer in his home. Instead of drinking alcohol he now finds other things to do, like spear fishing, hiking, running or weight lifting. (Tr. p. 52).

Applicant's performance appraisal from October 1, 2004 through September 30, 2005, indicates that he rates "very good" in every category. (See Applicant's Exhibit A).

Letters of character reference submitted on the Applicant's behalf by the Boat Captain and the Marine Services Supervisor state that the Applicant is trustworthy and reliable. He is considered to be a person of high moral integrity and honesty. Both recommend the Applicant for a position of trust and would like to see him promoted. (See Applicant's Exhibits B and C).

## **POLICIES**

Enclosure 2 and Section E.2.2. 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 E (Personal Conduct)**

#### **Condition that could raise a security concern:**

None.

#### **Conditions that could mitigate security concerns:**

None.

#### Guideline J (Criminal Conduct)

##### Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

##### Condition that could mitigate security concerns:

None.

#### 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.

5. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol treatment program.

Condition that could mitigate security concerns:

None.

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 predicted 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. 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 personal conduct, criminal conduct, and 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 a security clearance.



In this case the Government has met its initial burden of proving that the Applicant has engaged in criminal conduct (Guideline J); and alcohol abuse (Guideline G). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines J and G of the SOR.

The Applicant's personal conduct has been mitigated as it related to a job termination that he never experienced. Accordingly, Guideline E is found for the Applicant.

His history of criminal and alcohol abuse is a different matter. From 1996 to at least 2002, he abused alcohol on numerous occasions, and received non-judicial punishment or was arrested on six separate occasions. While in the military, he was diagnosed with alcohol dependence and was unable to stop his abusive drinking habit. Since 2002, he has stopped drinking, went cold turkey, and is working hard to turn his life around. He has divorced his wife, has a new fiancé and a son and is looking forward to a new lifestyle without alcohol. He is commended for his accomplishments, including his good performance on the job. However, given the extensive nature of his alcohol problem and his criminal history, it is too early in his rehabilitation to ensure the Government that he will not return to his old ways.

The Applicant has not successfully completed an inpatient or outpatient treatment program along with aftercare requirements. He does not participate in Alcoholics Anonymous and he has not received a favorable prognosis from a credential medical professional. Under Criminal Conduct, conditions that could raise a security concern are (1) *Allegations or admissions of criminal conduct, regardless of whether the person was formally charged* and (2) *A single serious crime or multiple lesser offenses* which both apply. None of the mitigating factors are applicable. Under Alcohol Consumption, conditions that could raise a security concern are (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*, and (5) *Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol treatment program* which are also applicable. None of the mitigating factors apply. Accordingly, Guidelines J, and G are found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 2 and 3 of the SOR. As stated above, Paragraph 1 is found for the Applicant.

## **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.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Subpara. 2.c.: Against the Applicant.

Subpara 2.d.: Against the Applicant.

Subpara 2.e.: Against the Applicant.

Subpara 2.f.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant.

Subpara. 3.b.: 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 or continue a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge