

KEYWORD: Alcohol Consumption

DIGEST: Applicant has had a history of consuming alcohol to excess, which resulted in at least five alcohol related incidents from 1978 until 2001. Applicant has not consumed any alcohol since December 29, 2001, and he has modified his lifestyle to strongly improve the likelihood that he will not have any relapses in the future. Evidence of Applicant's alcohol rehabilitation is sufficient to mitigate his alcohol related history. Clearance is granted.

CASENO: 04-00461.h1

DATE: 12/09/2005

DATE: December 9, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-00461

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jeff Nagel, Esq., Department Counsel

FOR APPLICANT

Ken Roberts, Esq.

SYNOPSIS

Applicant has had a history of consuming alcohol to excess, which resulted in at least five alcohol related incidents from 1978 until 2001. Applicant has not consumed any alcohol since December 29, 2001, and he has modified his lifestyle to strongly improve the likelihood that he will not have any relapses in the future. Evidence of Applicant's alcohol rehabilitation is sufficient to mitigate his alcohol related history. Clearance is granted.

STATEMENT OF THE CASE

On March 3, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) 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 Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed a signed and sworn, notarized response, dated March 24, 2005, to the allegations set forth in the SOR. He requested a clearance decision based on a hearing record before a DOHA Administrative Judge.

On May 23, 2005, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on August 2, 2005, and the hearing was held on August 24, 2005

At the hearing, Department Counsel offered nine documentary exhibits (Exhibits 1 - 9) and no witnesses were called. Applicant, through his counsel, offered 11 documentary exhibits (Exhibits A - K) and his own testimony and that of four additional witnesses. The transcript (Tr) was received on September 16, 2005.

FINDINGS OF FACT

The Government opposes Applicant's request for a security clearance, based upon the allegations set forth in the SOR. In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline G (Alcohol Consumption) of the Directive because of Applicant's excessive alcohol consumption. The SOR contains seven allegations, 1.a. through 1.g., under Guideline G. In his Response to the SOR (RSOR) Applicant admits all of the allegations. The admitted allegations are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents and the live testimony, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 49 years old. He is married and has two step-children. He is employed by a defense contractor, and he seeks to retain a DoD security clearance in connection with his employment in the defense sector.

(Guideline G - Alcohol consumption).

The Government alleges in this paragraph that Applicant is ineligible for clearance because he abuses alcohol to excess.

Applicant's drinking has resulted in at least five alcohol related incidents. They occurred in 1978, 1979, 1981, 1992, and 2001.

On August 3, 1978, Applicant received a Non-Judicial Punishment for Unauthorized Absence and Drinking on Duty. He was reduced to the next inferior pay grade and fined \$100 (RSOR, Exhibit 9).

On January 11, 1979, Applicant was recommended for separation from the United States Navy for Unsuitability based in part on admitted alcohol abuse and other repeated military offenses. In February 22, 1979, Applicant was diagnosed with Alcoholism, and he was referred to an Navy alcohol abuse program. He refused to attend the program (RSOR, Exhibits 7, 8).

On July 15, 1981, Applicant was arrested and charged with three Counts; 1) Driving Under the Influence of Alcohol (DUI), 2) Driving Too Slow and 3) Vehicle Tabs Violation. He pled guilty to Counts 2 and 3, and the DUI charge was dismissed. He was fined \$28 (RSOR, Exhibit 6).

On May 7, 1992, Applicant was arrested and charged with two Counts; 1) DUI, and 2) Driving with 0.08 % or more by weight, alcohol in blood. He pled guilty to Count 1, and Count 2 was dismissed. He was sentenced to serve 48 hours in jail, five years unsupervised probation, fined \$1,382, and he was ordered to attend an alcohol education program (RSOR, Exhibit 5).

On December 29, 2001, Applicant was arrested and charged with DUI. He pled guilty, and he was placed on five years probation and fined \$2,010 (RSOR, Exhibits 3, 4).

Applicant testified that he has not consumed any alcoholic beverage since his December 29, 2001 arrest, and he intends never to imbibe in the future. While he had attempted to abstain from alcohol before and ultimately began to drink again, he has had a number of significant changes in his life since he last consumed alcohol, including the fact that he is now married and has two step-children, that he has a more satisfying and less stress filled job, and he is more committed to his religion. All of these changes are helping him to remain alcohol free in the future (Tr at 109-111).

Applicant submitted a letter from the company that had tested him during the period of his probation from September 2002 through August 2004. He was tested on average 6 to 8 times a month for drug and alcohol; he always promptly appeared for his testing and his tests were always negative (Exhibit H).

Four witnesses, including Applicant's wife testified on his behalf. His wife testified that her husband has never consumed alcohol in her presence, and his desire is not to consume alcohol in the future. One of the other witnesses knew Applicant primarily in a work setting, but all three had seen Applicant in social settings. They all spoke very positively about Applicant, and none of them had ever seen Applicant consume alcohol.

Applicant submitted a number of additional documents that were extremely favorable to him. These included two performance appraisals, one of which he received in August 20, 2005. He always

met or exceeded all of his requirements, and his supervisor stated that he was, "reliable and can always be counted on to go the extra mile on assigned tasks. . . . He is highly regarded by customers and co-workers alike." (Exhibits B, C).

Exhibit E is a report of a psychiatrist, who examined Applicant in preparation for this case. He strongly opined that

Applicant was devoid of psychiatric or substance illness, and he is unlikely to have alcohol related problems in the future.

Finally, Applicant submitted 33 letters of appreciation, recommendation and awards. The letters came from individuals who have known Applicant in many different settings. All of them spoke in extremely positive terms about Applicant, including his trustworthiness, integrity and exceptional work ability (Exhibits H, I).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case.

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an

Applicant's request for access to classified information.

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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

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 or her a security clearance.

In this case, the Government has met its initial burden of proving by substantial evidence that Applicant has used alcohol to excess (Guideline G). Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him.

Paragraph 1 (Guideline G - Alcohol Consumption). While Applicant has had a long history of consuming alcohol, at times to excess, which did cause him a number of significant alcohol-related problems, he was credible when he testified that he has not consumed any alcohol since December 2001, nor will he consume alcohol in the future. In addition to Applicant's testimony, I have considered the report of the examining psychiatrist, the excellent recommendations that he received from the witnesses who testified at the hearing and the many individuals, including supervisors, co-workers and friends, who submitted letters of reference and were extremely laudatory to the Applicant.

I did consider that Applicant had tried to abstain from alcohol in the past, and ultimately he resumed consuming alcohol. However, I find that the changes in his current life, including the fact that he is now married and has two step-children, that he has a more satisfying and less stress filled job, and he is more committed to his religion, to be significant and compelling reasons why he has a far, greater opportunity to be successful in the future.

The Government did establish that Applicant was involved in alcohol-related incidents away from work, which is Disqualifying Condition (DC) (E2.A7.1.2.1.), and that he has engaged in habitual or binge consumption of alcohol to the point of impaired judgment, DC (E2.A7.1.2.5.).

In reviewing the Mitigating Conditions (MC), (E2.A7.1.3.2.) is applicable because the problem last occurred almost four years ago, in 2001, and there is no indication of a recent problem. Also, MC (E2.A7.1.3.3.) applies because of the positive changes in Applicant's behavior supportive of sobriety. Overall, the mitigating conditions outweigh the disqualifying conditions, and Guideline G is concluded for Applicant.

On balance, it is concluded that the Applicant has overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding for Applicant as expressed in Paragraph 1 of the Government's SOR.

FORMAL FINDINGS

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.

Subparagraph 1.f.: For Applicant.

Subparagraph 1.g.: For Applicant.

DECISION

In light of all 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 the Applicant.

Martin H. Mogul

Administrative Judge