

DATE: July 17, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-04339

ECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Ray T. Blank Jr., Esq., Department Counsel

FOR APPLICANT

W. Robb Graham, Esq.

SYNOPSIS

Applicant is alcohol dependent and was involved in a few alcohol-related incidents both at work and way from work. He has abstained since 4 July 2003 and has sought treatment and attended Alcoholics Anonymous. He mitigated alcohol consumption security concerns but not criminal conduct or personal conduct concerns raised by his inability to fully accept responsibility for deliberately falsifying material facts in statements made in connection with a security determination. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. In accordance with Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan 2. 1992), as amended, DOHA issued a Statement of Reasons (SOR) on 19 April 2005 detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the Directive. Applicant answered the SOR in writing on 13 June 2005 and elected to have a hearing before an administrative judge. The case was assigned to another judge on 6 September 2005 and was reassigned to me on 8 December 2005. On 21 June 2006, I convened a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA received the hearing transcript (Tr.) on 5 July 2006.

FINDINGS OF FACT

Applicant is a 29-year-old programmer analyst for a defense contractor. He continues to hold a secret clearance that he obtained in May 1998. Ex. 1.

He started consuming alcoholic beverages in January 2000 when he was 21 years old. On 31 July 2002, Applicant was arrested for driving while intoxicated (DWI) after he passed out and drove his car into a tree. Applicant was given two breath tests. The results were .23% and .24%. He pled guilty to DWI, was fined, had his driver's license suspended for

six months, and was ordered to attend classes at an intoxicated driver resource center. Exs. 7, 10; Answer.

In November 2002, Applicant was cited for drinking alcoholic beverages in public. He entered a "no plea" and was fined \$50. Answer.

Between June 2002 and January 2003, Applicant received verbal warnings about sleeping on the job, excessive fatigue, and reporting to work smelling of alcohol on at least four occasions. His behavior did not improve and, on 7 February 2003, he was given a letter of caution. His behavior did not improve and several of his fellow employees reported him as being unstable. His manager advised him he could seek assistance from the employee assistance program. Applicant denied he had an alcohol problem. Exs. 2, 3, 4.

On a few occasions between October 2002 and May 2003, Applicant tried to abstain from consuming alcohol. He was unable to make it past four days. He suffered withdrawal symptoms such as shakes, sweats, and sleep deprivation. Ex. 6 at 3.

Between January or February and May or June 2003, Applicant consumed alcohol every day alone in his home. He drank one-third of a bottle of whiskey or scotch and became intoxicated every evening. Ex. 6 at 1-2.

On 14 March 2003, Applicant suffered a seizure at work. He was hospitalized until 16 March 2006. He was diagnosed with alcohol abuse and the admission impression was that the seizure was associated with alcohol withdrawal. He was prescribed Ativan (an anti-anxiety drug used to help prevent withdrawal symptoms) and was strongly encouraged to abstain from consuming any alcohol and to attend Alcoholics Anonymous (AA). Ex. 15; Answer.

On 20 March 2003, Applicant reported for work under the influence of alcohol. On 3 April 2003, his employer gave Applicant a final warning concerning his behavior. Ex. 1. The following day, Applicant's employer reported to the Defense Security Service (DSS) that Applicant's performance was "slipping," he was sleeping on the job, frequently missing work, smelled of alcohol, and there was evidence of cuts on his arms and wrists. Applicant was counseled by his manager but continued to exhibit inappropriate behavior-he exuded a strong odor of alcohol, walked around the work place with a knife, and vomited. Apparently no action was taken by the company to suspend Applicant's clearance. Exs. 1, 2.

On 15 May 2003, Applicant received emergency medical treatment at a hospital for acute alcohol intoxication after being found by a neighbor lying face down, intoxicated, near his residence. Ex. 6 at 2; Ex. 14; Answer. The following day, he was admitted to an addiction treatment center for inpatient treatment for alcohol dependence. Applicant admitted drinking two-thirds of a bottle of alcohol daily for the previous three years. He reported having auditory hallucinations and frequent blackouts when drinking heavily. He was discharged on 3 June 2003. Ex. 13.

On 30 June 2003, Applicant was arrested for DWI. His breath test revealed .19 grams of alcohol per 210 liters of breath. He pled guilty and was convicted. Ex. 12. In a statement he made to an alcohol counseling service, Applicant claimed he was traveling to visit his girlfriend, bought a flask of vodka, had a drink before he left, continued drinking from the flask during the trip, dozed off, ran a yellow light, and collided with another vehicle. Ex. 12 at 5.

On 3 July 2003, Applicant bought a bottle of alcohol from a local store and started to consume it while awaiting the arrival of his girlfriend, who was traveling from another state. He then broke into his neighbor's house by smashing a window. When police questioned Applicant, they noticed a strong odor of alcoholic beverages. He denied consuming any alcohol and could not explain the cuts to his wrist and knuckles. Applicant's girlfriend confirmed that he had been drinking earlier in the evening. Applicant's neighbor decided not to press charges as nothing was missing from her home. Applicant paid his neighbor for the damages he caused. Ex. 6 at 2-3.

On 4 July 2003, Applicant's girlfriend confronted him about his drinking. She gave him an ultimatum. Either he stop drinking or she would drop him. He chose her and has not had consumed any alcohol since. Applicant's girlfriend found alcohol hidden in the house later that day, but none since. She got rid of it. She has lived with Applicant since August 2003 and has not seen any evidence that he has consumed alcohol since then. They married in November 2005. Applicant now attends AA meetings twice a month, has a sponsor, and follows the 12-step program. R. 54.

In October 2003, Applicant was interviewed by a DSS agent. On 27 October 2003, he signed, under oath, a statement he claimed was "correct and true as written." In a section entitled "Alcohol Use/Treatment/Police Contact," Applicant detailed his involvement with alcohol. He claimed his June 2003 DWI arrest was a result of consuming two glasses of whiskey during dinner, after which he ran a red light and was struck by another motorist. Ex. 7 at 2-3. He also stated he "did not seek and/or receive any counseling and/or treatment from any doctor, counselor or institution besides attending AA meetings" to assist him in his efforts to stop consuming alcohol. *Id.* at 8. He did not disclose the November 2002 citation he received in for drinking alcoholic beverages in public, the true facts about his DWI, or his treatment for alcoholism.

Applicant completed another signed, sworn statement on 14 January 2004. In it, he admitted knowingly and willfully omitting the full extent of his alcohol use and treatment, and the 3 July 2004 incident in which he broke into his neighbor's residence, from his initial interview with the DSS agent because he thought it would hinder his chances in obtaining a security clearance. Ex. 6 at 6.

Applicant was interviewed by DSS again, and provided a signed, sworn statement on 29 January 2004. In it, he admitted his 27 October 2003 statement was inaccurate in its description of his 30 June 2003 arrest. He claimed he was not trying to be deceptive, but was unable to explain why his 27 October statement was inaccurate. The DSS agent confronted him about discrepancies between his descriptions of his drinking habits. Applicant claimed he did not recall telling counselors at one of the treatment facilities that he had consumed two-thirds of a bottle of vodka every day for three years. He asserted that such information was inaccurate. He further denied knowing the cause of his seizure.

Since 2003, there have been no adverse incidents at work, and Applicant has won awards for his excellent duty performance. Applicant has been sober since July 2003. He was treated by a psychologist 21 times from May to December 2005. The psychologist believes mild depression and anxiety disorder caused Applicant to self-medicate with alcohol. He does not believe Applicant suffers from any major psychological disorder. Applicant had an eating disorder and has a family history of alcohol disorder. This suggested Applicant was subject to a compulsive addictive behavior which was likely to reassert itself by substitution unless he learned coping skills. The psychologist believes Applicant learned those coping skills at their sessions. He saw Applicant in May 2006, in preparation for the hearing, but noted no change in his emotional status. He thinks Applicant has a good prognosis. He has no concerns about Applicant's reliability.

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, 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." *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. 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.

Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Guideline G-Alcohol Consumption

In the SOR, DOHA alleged Applicant consumed alcohol to excess and to the point of intoxication from 2000 to at least

July 2003 (¶ 1.a); pled guilty to DWI after a 1 August 2003 arrest (¶ 1.b); was cited for drinking an alcoholic beverage in public in November 2002 (¶ 1.c); was under the influence of alcohol at work on at least two occasions between November 2002 and January 2003 (¶ 1.d); was treated for a alcohol abuse between 14 and 16 March 2003 (¶ 1.e); was under the influence of alcohol at work on 20 March 2003 (¶ 1.f); received emergency medical treatment for acute alcohol intoxication on 15 May 2003 (¶ 1.g); received in-patient treatment from 16 May to 3 June 2003 for alcohol dependence (¶ 1.h); pled guilty to DUI after an arrest on 30 June 2003 (¶ 1.i); broke into a neighbor's residence on 3 July 2003, after consuming alcohol (¶ 1.j); and continued consuming alcohol despite his diagnosis of, and treatment for, alcohol dependence (¶ 1.k). Applicant admitted each of these allegations, some with explanation.

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. Applicant has had alcohol-related incidents away from work (DC E2.A7.1.2.1)-his convictions for DWI and DUI, and breaking into a neighbor's house while under the influence of alcohol. He has had alcohol-related incidents at work (DC E2.A7.1.2.3)-he was intoxicated at work on at least three occasions. He was diagnosed by credentialed medical professionals with alcohol abuse and alcohol dependence. DC E2.A7.1.2.3. He was a habitual and binge consumer of alcohol. DC E2.A7.1.2.5. And he consumed alcohol after being diagnosed with alcohol dependence and completing an alcohol rehabilitation program. DC E2.A7.1.2.6.

An applicant may mitigate such alcohol consumption security concerns by showing the problem occurred a number of years ago and there is no indication of a recent problem (MC E2.A7.1.3.2), he has made positive changes in his behavior supportive of sobriety (MC E2.A7.1.3.3), and he has successfully completed an alcohol rehabilitation program, attended AA, and has a favorable prognosis from a credentialed medical professional (MC E2.A7.1.3.4). Although it has certainly been a struggle, Applicant has been sober for three years, has substantially changed his life with the help of his wife, and has a good prognosis. Under all the circumstances, including an evaluation of the adjudicative process factors, I find for Applicant.

Guideline E-Personal Conduct

In the SOR, DOHA alleged Applicant willfully falsified material facts during an interview with a security investigator in October 2003 by failing to disclose an alcohol-related incident on 3 July 2003 (¶ 2.a); and falsified material facts in a 27 October 2003 statement to a security investigator about the underlying facts of his 2003 arrest for DUI (¶ 2.b) and his treatment for alcohol abuse and dependence (¶ 2. c). In his Answer, Applicant denied the allegations in ¶¶ 2.a and 2.b. He admitted the allegation in ¶ 2.c, claiming he failed to disclose the information "based on the advice of people who treated me that this was confidential." Answer at 4.

Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate the applicant may not properly safeguard classified information. Directive ¶ E2.A5.1.1. It is potentially disqualifying for an applicant to provide false or misleading information concerning relevant matters to an investigator in connection with a personnel security determination (DC E2.A5.1.2.3). An applicant's arrests and history of alcohol use and treatment are relevant and material to a determination of his security worthiness.

Applicant admitted he deliberately falsified material facts in his October 2003 interview with the DSS agent, by failing to disclose the alcohol-related break-in of his neighbors home and his inpatient treatment for alcoholism because he felt it would hinder his chances to obtain a security clearance. Ex. 6 at 6; *but see* Answer (denying he knowingly and willfully falsified "any material facts to the investigator"). Applicant has consistently denied he deliberately falsified material facts, in his signed, sworn statement of 27 October 2003, detailing his June 2003 arrest for DWI. Answer. He admits the information is not accurate (R. 68), but he cannot explain the discrepancy (R. 71). Applicant admitted in his 14 January 2004 statement that he deliberately falsified his 27 October 2003 statement concerning receiving treatment for his alcoholism (Ex. 6). But in his Answer he asserts it was not deliberate-he claims he did so on the advice of treatment staff who told him the treatments were confidential. At the hearing he changed his story. He testified he did not list it because he did not "consider being hospitalized for a procedure to mean counseling" or treatment. R. 68. I conclude Applicant knowingly and willfully falsified material facts during his interview in October 2003 and in the signed, sworn statement he made on 27 October 2003.

An applicant may mitigate such personal conduct security concerns by establishing that omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel and the previously omitted information was promptly and fully provided (MC E2.A5.1.3.4), and he has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress (MC E2.A5.1.3.5).

Applicant may have received advice from the treatment facility staff that his treatment was confidential. But the treatment facility staff are not personnel "authorized" to give him advice on security clearance issues. He has taken steps to reduce his vulnerability by admitting the full extent of his alcohol-related incidents and treatment. But he still has not accepted full responsibility for deliberately falsifying his statements. Instead of adopting his admission to falsifying the information because he feared losing his clearance, at the hearing Applicant tried to excuse his conduct. After observing his demeanor and listening carefully to his testimony, I conclude Applicant's testimony was not credible and that neither of the mitigating conditions apply. I find against Applicant on ¶ 2.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant committed criminal offenses as alleged in ¶¶ 1.a, 1.c, 1.i, and 1.j of the SOR (¶ 3.a); and violated 18 U.S.C. § 1001 by committing the acts alleged in ¶ 2 of the SOR (¶ 3.b). In his Answer, Applicant asserted ¶ 3.a was unintelligible and denied the allegation in ¶ 3.b.

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the executive branch of the Government of the United States. 18 U.S.C. § 1001. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. *See Egan*, 484 U.S. at 527. A violation of this statute is a serious offense as the offender may be punished by imprisonment of up to five years. Applicant knowingly and willfully falsified the 27 October 2003 signed, sworn statement he completed for a DSS agent for the purpose of obtaining a security clearance.

A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1. An applicant may be disqualified if allegations of criminal conduct are raised against him (DC E2.A10.1.2.1) consisting of a single serious offense or multiple lesser offenses (DC E2.A10.1.2.2). Applicant committed a serious offense by violating 18 U.S.C. § 1001 and committed lesser offenses involving DWI, DUI, and breaking into his neighbor's home.

An applicant may mitigate such criminal conduct by establishing that the criminal behavior was not recent (MC E2.A10.1.3.1), the factors leading to the violation are not likely to recur (MC E2.A10.1.3.4), and there is clear evidence of successful rehabilitation (MC E2.A10.1.3.6). Unfortunately, Applicant failed to convince me that any of these mitigating conditions apply. The criminal behavior was recent-the false statement in October 2003 directly related to his security clearance as well as his false testimony at the hearing. The factors leading to his alcohol-related offenses are not likely to recur because he has stopped consuming alcohol. Nevertheless, his inability to face up to the truth and admit he lied to save his security clearance show there is no clear evidence of successful rehabilitation. Under all the circumstances, as well as a consideration of the adjudicative process factors, I find against Applicant on ¶ 3.

FORMAL FINDINGS

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a-1.k: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a-2.c: Against Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a-3.b: Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

James A. Young

Administrative Judge