

DATE: September 15, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-06637

DECISION OF ADMINISTRATIVE JUDGE

MATTHEW E. MALONE

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant abused alcohol until 2002, and resumed more moderate drinking between 2003 and 2004 after being diagnosed as alcohol dependent. He also used marijuana from the late 1970s until about 1998, and cocaine from 1998 until 2002. His conduct resulted in the loss of one job in 2001, two arrests for driving under the influence (DUI) in 1992 and 2000, and one arrest for drug possession in 1992. Balanced against his long history of substance abuse, Applicant's recent sobriety is insufficient to mitigate security concerns about his use of drugs and alcohol and related criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to give Applicant a security clearance. On September 20, 2004, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline G (alcohol), Guideline H (illegal drugs), and Guideline J (criminal conduct). Applicant timely answered the SOR, and admitted with explanation all of the allegations therein except for SOR ¶¶ 1.c and 1.f.⁽²⁾ He also requested a hearing.

The case was assigned to me on December 9, 2004, and I convened a hearing February 7, 2005. The parties appeared as scheduled, and the government presented eight exhibits (GE 1 through 8), which were admitted without objection. In addition to the attachments to his SOR response, Applicant submitted a single exhibit, admitted without objection as Applicant's Exhibit (AE) A. Applicant testified in his own behalf, and presented testimony from one other witness. I left the record open to afford Applicant time to submit a written statement by a person who was unable to appear as a witness. Applicant timely submitted said statement, which has been admitted without objection as AE B. DOHA received the transcript (Tr) on February 16, 2005. Issuance of this decision has been delayed by an unusually large caseload.

PROCEDURAL ISSUE

At hearing, Department Counsel moved to amend the SOR. Specifically, the government requested that SOR ¶ 1.c be changed to conform to the record by reflecting that Applicant was not actually fired from his job in 2001, but that he left after it was recommended he be fired. Without objection, I granted the motion.⁽³⁾ The allegation now reads as follows:

"c. Your use of alcohol and cocaine resulted in *a recommendation for* your termination from the Washington D.C. Department of Human Services on November 29, 2000." (added text in italics)

FINDINGS OF FACT

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact:

Applicant is 46 years old and employed as a systems administrator by a defense contractor for whom he first went to work as a temp agency administrative asset in August 2002. Applicant is a high school and vocational/technical school graduate. From August 2002 until June 2003, he studied to achieve certification in various information technology skills. His current employer hired him as a regular employee in 2003, and assigned him to information technology positions in support of DoD contract efforts. He requires a clearance to continue in his current assignments. Applicant has worked steadily at a variety of jobs since at least 1992. He has been unemployed twice in the past ten years - once for a month, once for two months.

Applicant used marijuana from the late 1970s, when he was in high school, until about 1998.⁽⁴⁾ As for alcohol consumption, it is unclear when he started drinking, but sometime in 1998 or 1999 his drinking increased dramatically to include drinking as much as a six-pack of beer daily. Around this time, Applicant also began using cocaine about once a month (SOR ¶ 2.a).

In March 1992, Applicant was arrested and charged with possession of cocaine, a controlled dangerous substance. He was wearing his friend's jacket and claimed the drugs (a small amount of cocaine) were not his, but he pled guilty to the misdemeanor charge and was placed on unsupervised probation (SOR ¶ 2.c).

From 1998 until November 2000, Applicant worked for a municipal government agency in a major metropolitan city. However, his use of drug and alcohol started to cause problems in his job performance. He was often late to work or called in sick because he had been drinking and using drugs the night before. It was eventually recommended he be fired. Applicant acknowledges he left on his own after this recommendation was made. The officially documented reason for his leaving was that he was returning to school. (SOR ¶¶ 1.c and 2.d)

Applicant also has been arrested twice for driving under the influence of alcohol (DUI). The first time was in May 1992. He received probation for that offense (SOR ¶ 1.e). The second time was in April 2000, an offense of which he was convicted in April 2001 (SOR ¶ 1.d). Applicant was fined, sentenced to 24 months supervised probation, ordered to spend two weekends in jail, and directed to attend an alcohol awareness class at his own expense. Applicant paid his fine, spent four days in jail, and completed the alcohol awareness class. However, while he was on probation, he tested positive for cocaine and alcohol, thereby violating his probation (SOR ¶¶ 1.b and 2.b)

As a result of his probation violation, Applicant was told he could either return to court for sentencing on his original DUI offense or undergo inpatient drug and alcohol treatment, which he did from March 2002 until July 2002. While in treatment, which included attendance at AA meetings, Applicant was diagnosed as drug and alcohol dependent (SOR ¶ 1.b).⁽⁵⁾ This diagnosis was confirmed in May 2004 by a licensed clinical social worker (LCSW) who evaluated Applicant at the request of DOHA adjudicators. The LCSW observed that alcohol dependence is chronic and progressive, and she recommended Applicant abstain from future alcohol consumption and return to AA participation (SOR ¶ 1.a).⁽⁶⁾

After completing the aforementioned inpatient treatment, Applicant went on to satisfactorily complete his probation as of April 2003. Thereafter, Applicant thought he was allowed to resume moderate use of alcohol. Until May 2004, Applicant consumed two or three beers two or three times weekly. After meeting with the LCSW, Applicant accepted

her recommendation that he abstain from alcohol and return to AA. He has not consumed alcohol since May 2004 and has been a committed member of AA, working with the help of a sponsor to improve his circumstances. ⁽⁷⁾

Applicant is now a reliable employee. He has earned his company's confidence through that reliability and through his efforts at education and self-improvement. ⁽⁸⁾

POLICIES

The Directive sets forth adjudicative guidelines ⁽⁹⁾ to be considered in evaluating an Applicant's suitability for access to classified information. Security clearance decisions must reflect consideration of both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are Guideline G (alcohol), Guideline H (illegal drugs), and Guideline J (criminal conduct).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest ⁽¹⁰⁾ for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for the Applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it establishes that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion. ⁽¹¹⁾ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. ⁽¹²⁾

CONCLUSIONS

Alcohol consumption, as addressed under Guideline G, is a security concern 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. ⁽¹³⁾ The government established its case under Guideline G by showing Applicant engaged in habitually excessive alcohol consumption, probably to the point of impaired judgment, until March 2002. Applicant's drinking had become chronically excessive around 1998 and cost him a job in 2001. Applicant was also twice arrested for DUI and violated the terms of his probation after the second arrest. Thereafter, he was diagnosed as alcohol dependent. After abstaining from alcohol for just over one year, he resumed moderate drinking despite his diagnosis and after he completed probation. On these facts, Guideline G disqualifying condition (DC) 1, ⁽¹⁴⁾ DC 4, ⁽¹⁵⁾ and DC 5 ⁽¹⁶⁾ apply.

Having reviewed the Guideline G mitigating conditions (MC), I conclude MC 3 ⁽¹⁷⁾ applies. In support thereof, I have considered Applicant's professional improvement since joining his current employer. On his own initiative, he has studied for and obtained an array of technical qualifications that have enabled him to obtain steady employment for the past two years. Further, he has returned to AA as a lifestyle supportive of sobriety. According to his sponsor, Applicant attends AA meetings three times weekly and is adhering to the 12-step program for recovery and sobriety. His efforts in this regard are corroborated by a co-worker's testimony and a written statement from a long-time friend.

However, it is too soon, in light of a record of alcohol abuse and alcohol-related arrests dating back to 1992, to safely determine that Applicant will not resume drinking despite the earlier diagnosis of alcohol dependence. I believe his recent abstinence is motivated, not by a sincere desire for long-term sobriety, but by a concern that he might not get his

clearance. Applicant resumed drinking, albeit in moderation, after completing supervised probation. He continued drinking until DOHA adjudicators asked him to be evaluated by an LCSW in May 2004. On balance, I conclude Applicant has not mitigated the security concerns under Guideline G.

Under Guideline H, improper or illegal involvement with drugs raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. Such conduct may also be criminal and indicative of a disregard for rules and regulations used to protect national interests. ⁽¹⁸⁾ In this instance, the government has produced sufficient information through its exhibits and Applicant's admissions to support the preliminary decision as expressed in the SOR that Applicant should be denied a security clearance due to drug use and drug dependence. I am sensitive to the fact Applicant's use of marijuana and its omission from his SF 86 were not alleged in the SOR; however, Applicant use of marijuana for much of his adult life is a part of Applicant's background that cannot be ignored. Along with available information that shows he also used cocaine between 1998 and 2002, was arrested for drug possession in 1992, and was diagnosed as drug dependent in 2002, Guideline H DC 1, ⁽¹⁹⁾ DC 2, ⁽²⁰⁾ and DC 4 ⁽²¹⁾ apply.

Applicant completed a drug treatment program in 2002 and has not used illegal drugs since then. Applicant's current personal and professional circumstances are much improved, and combined with nearly three years abstinence from illegal drug use, Applicant has demonstrated an intent to not use drugs in the future as contemplated by MC 3. ⁽²²⁾ However, when balanced against nearly 25 years of illegal drug use, I conclude it is too early to conclude Applicant's conduct in this regard will not recur. Thus, he has not mitigated the security concerns about his past drug use.

Criminal conduct, as addressed under Guideline J, is a security concern because it may indicate an unwillingness to abide by rules and regulations, and may show the applicant to be lacking in reliability and trustworthiness. ⁽²³⁾ Applicant's arrests for DUI, illegal drug use and illegal drug possession constitute criminal conduct. Guideline J DC 1 ⁽²⁴⁾ and DC 2 ⁽²⁵⁾ apply here. Because his arrest record is tied directly to his alcohol and drug use, the ongoing concerns in those areas sustain security concerns about his criminal conduct. Even though his last arrest occurred in April 2000, Applicant violated the terms of his court-ordered probation in March 2002, thereby risking imposition of the original sentence from his April 2000 DUI. His criminal conduct, therefore, cannot reasonably be considered remote in time. Based on the foregoing, I conclude Applicant has not mitigated the Guideline J security concerns.

I have carefully weighed all of the available evidence, and I have applied the appropriate disqualifying and mitigating conditions. Further, I have tried to make a fair and commonsense assessment of the record before me as required by Directive Section E2.2.3. The government properly expressed reasonable doubts about Applicant's history of alcohol and drug use, as well as the criminal aspects of that conduct. Such issues bear directly on an applicant's ability to protect classified information, and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Further, available information about Applicant's change of circumstances since 2002 is not sufficient to mitigate those doubts.

FORMAL FINDINGS

Formal findings regarding each SOR allegation are as follows:

Paragraph 1, Guideline G (Alcohol): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Paragraph 2, Guideline H (Illegal Drugs): AGAINST THE APPLICANT

Subparagraph 2.a: Against the Applicant

Subparagraph 2.b: Against the Applicant

Subparagraph 2.c: Against the Applicant

Subparagraph 2.d: Against the Applicant

Paragraph 3, Guideline J (Criminal Conduct): AGAINST THE APPLICANT

Subparagraph 3.a: 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. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Applicant did not respond directly to the allegation in SOR ¶ 3.a, which refers to conduct also alleged under SOR ¶¶ 1.d, 1.e, 2.a, and 2.c. Because Applicant admitted those allegations, I conclude he also admits the SOR 3.a allegation.
3. Tr., p. 87 - 89.
4. GE 3; This drug use is not alleged in the SOR. Further, while Applicant disclosed recent use of cocaine in response to question 27 of the SF 86 he submitted in September 2003, he did not list his use of marijuana.
5. Applicant's Answer to SOR ¶ 1.a; GE 5.
6. Id.
7. AE A, AE B.
8. Attachments to Answer.
9. Directive, Enclosure 2.
10. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
11. *See Egan*, 484 U.S. at 528, 531.
12. *See Egan*; Directive E2.2.2.
13. Directive, E2.A7.1.1.
14. Directive, 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;
15. Directive, E2.A7.1.2.4. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who

is a staff member of a recognized alcohol treatment program;

16. Directive, E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;

17. Directive, E2.A7.1.3.3. Positive changes in behavior supportive of sobriety;

18. Directive, E2.A8.1.1.1.

19. Directive, E2.A8.1.2.1. Any drug abuse...;

20. Directive, E2.A8.1.2.2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;

21. Directive, E2.A8.1.2.4. Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;

22. Directive, E2.A8.1.3.3. A demonstrated intent not to abuse any drugs in the future;

23. Directive, E2.A10.1.1.

24. Directive, E2.A10.1.2.1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;

25. Directive, E2.A10.1.2.2. A single serious crime or multiple lesser offenses.