

DATE: December 22, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07105

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 37 years old and works as a multimedia production analyst for a defense contractor. In 1997, he was convicted of Operating a Motor Vehicle While Intoxicated, and in 2003, of Driving While Ability Impaired. After the second conviction, Applicant completed an alcohol treatment program. Since 2003, he has not been involved in any alcohol related incidents. Applicant mitigated the security concerns related to his alcohol consumption. Clearance is granted.

STATEMENT OF THE CASE

On April 13, 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) 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 June 17, 2005, Applicant filed his answer and requested a hearing. The case was assigned to an administrative judge on September 19, 2005, and reassigned to me on September 21, 2005. A Notice of Hearing was issued on September 26, 2005, and the hearing was held on October 26, 2005. At the hearing the parties stipulated to the introduction of Government Exhibits 1-9 into evidence. Applicant submitted three exhibits that were marked as Applicant Exhibits A-C and admitted into evidence without an objection. Applicant testified in his case-in-chief and called one witness. DOHA received the Transcript (Tr.) on November 9, 2005.

FINDINGS OF FACT

In his answer to the SOR, Applicant admitted all of the allegations pertaining to Guideline G. 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 37 years old. He graduated from college in 1997.⁽¹⁾ After college, Applicant worked as an industrial designer in private industry for a couple years. Since July 2001, he has worked as a multimedia production analyst for a defense contractor.⁽²⁾ In January 2003, he completed a Security Clearance Application (SCA).⁽³⁾

In February 1997, Applicant was arrested and charged with Operating a Motor Vehicle While Intoxicated in a state where he previously resided. Prior to the arrest, he had attended a sports event with friends and celebrated the team's victory by drinking three or four beers over a period of three hours.⁽⁴⁾ He pleaded guilty to the amended charge of Driving While Impaired by Alcohol and was fined \$300.00. His driver's license was suspended.⁽⁵⁾

In March 2003, Applicant was arrested and charged with Driving Under the Influence of Alcohol, Driving Under the Influence, and Lane Usage after drinking three or four beers and a couple glasses of champagne at a friend's birthday party.⁽⁶⁾ In July 2003, he pleaded guilty to the amended charge of Driving While Ability Impaired, and the other charges were dismissed. He was sentenced to 45 days jail, served in house detention, and placed on 18 months of supervised probation. He was ordered to perform 24 hours of community service, pay \$453.00 in court costs, and complete an alcohol evaluation and treatment program. This arrest occurred approximately two months after Applicant applied for a security clearance.

In February 2004, Applicant was resentenced to an additional 24 hours of community service and fined an additional \$100.00 because the court had not been notified of the previous alcohol related offense.⁽⁷⁾ Applicant did not disclose the 1997 offense at the time of sentencing in 2003, because he was under the assumption that he did not have an obligation to do so based on the information he received during the court hearing on the first offense.⁽⁸⁾ He was unaware that his driver's license had been suspended.⁽⁹⁾

While on supervised probation, Applicant stopped drinking for three months.⁽¹⁰⁾ As part of alcohol treatment, Applicant received Level II alcohol counseling from December 22, 2003 to June 18, 2004.⁽¹¹⁾ He completed 48 hours of community service, attended 12 driver education classes, and paid a \$500.00 fine. He participated in a treatment program for 42 weeks, including approximately 20 group therapy sessions.⁽¹²⁾ In October 2004, he began individual therapy with an alcohol counselor whom he saw for ten sessions. In February 2005, his counselor noted Applicant benefited from therapy and was "making positive choices in his life and is proactive toward any situation which might jeopardize his success in abiding by the drinking and driving laws. He is responsible and takes appropriate steps to make sure he doesn't place himself or others at risk."⁽¹³⁾

Applicant has never been diagnosed as an alcoholic and does not consider himself one.⁽¹⁴⁾ Presently, his drinking is at a minimum. He drinks wine with dinner at home, but does not drink and drive.⁽¹⁵⁾ The last time Applicant drank was the weekend before this hearing when he had a couple drinks to celebrate the launching of a documentary he produced. The party was at a hotel and he stayed overnight.⁽¹⁶⁾ He is aware of the seriousness of the previous alcohol related charges and the impact they have on a security clearance.⁽¹⁷⁾ He admits he did not learn a lesson after the 1997 incident, but did after the second one. "I learned a massive lesson. It took me two years to get through it. It was a really painful, emotional experience. But I did get through it, and fulfilled all my obligations."⁽¹⁸⁾ Since July 2003, Applicant has not encountered any legal problems, driving offenses, or other criminal actions related to alcohol or drugs.

Applicant's supervisor testified. He has known Applicant for four years and considers him to be a trustworthy and talented employee.⁽¹⁹⁾

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 a balanced decision. 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 based 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.⁽²⁰⁾ The decision to deny an individual a security clearance is not necessarily a judgment about an applicant's loyalty.⁽²¹⁾ 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.⁽²²⁾ The Directive presumes a nexus or rational connection between past proven conduct under any of the disqualifying conditions listed in the guidelines and an applicant's security suitability.⁽²³⁾

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 position of the government.⁽²⁴⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his clearance."⁽²⁵⁾

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 G's disqualifying and mitigating conditions, raising either 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. Applicant admitted he was arrested and charged in 1997 and 2003 with crimes involving the misuse of alcohol, both 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.A7.1.3.3. (*Positive changes in behavior supportive of sobriety*), and conclude it applies. In addition to being remorseful about his past behavior, Applicant expressed an appreciation of the consequences associated with the abuse of alcohol, which he learned through his encounter with the criminal justice system. As a result he has reduced his drinking considerably and decided he will not drink and drive. That evidence, along with the completion of an alcohol treatment program, a recommendation by his therapist, and the passage of two years without incident, sufficiently mitigates the security concerns related to alcohol consumption. Accordingly, Guideline G is concluded for Applicant.

I have further considered all of 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

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 January 20, 2003) at 2.
2. *Id.*
3. *Id.* at 9.
4. Tr. 25.
5. Answer to SOR, dated June 17, 2003.
6. *Id.*; Tr. 30.
7. *Id.*
8. Tr. 31.

9. Government Exhibit 1, *supra* note 1, at 1; Tr. 32.
10. Tr. 37.
11. Answer to SOR, *supra* note 5.
12. Government Exhibit 6 (Statement of Subject, dated February 25, 2005) at 3.
13. Applicant Exhibit C (Letter of Recommendation, dated February 16, 2005).
14. Tr. 37.
15. Tr. 35-36.
16. Tr. 38.
17. Tr. 33-34.
18. Tr. 19.
19. Tr. 13; Applicant Exhibit B (Performance Assessment & Development Review for 4/1/03-12/31/03).
20. Directive, Enclosure 2, ¶ E2.2.2.
21. Executive Order 10865, § 7.
22. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
23. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).
24. ISCR Case No. 01-20700 at 3 (App. Bd., Dec. 19, 2002); Directive, Enclosure 3, ¶ E3.1.15.
25. *Id.*