

DATE: January 14, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-08134

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez Jr., Esq., Department Counsel

FOR APPLICANT

Warren J. Borish, Esq.

SYNOPSIS

Applicant failed to report for duty on several occasions due to his abuse of alcohol and seeking treatment for that abuse. He failed to mitigate security concerns raised by his consumption of alcohol and his personal conduct. 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. On 31 August 2004, DOHA issued a Statement of Reasons ⁽¹⁾ (SOR) detailing the basis for its decision-security concerns raised under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct) of the Directive. Applicant answered the SOR in writing on 28 September 2004 and elected to have a hearing before an administrative judge. The case was assigned to me on 28 October 2004. On 14 December 2004, 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 21 December 2004.

FINDINGS OF FACT

Applicant is a 56-year-old principal member of the engineering staff of a defense contractor. He held a security clearance from 1972-88 while working for a defense contractor. He reapplied for a clearance in 2000 when he joined the defense contractor that now employs him. Applicant was granted a secret clearance on 21 August 2003. That clearance has not been suspended.

Applicant began consuming alcohol when he was 18 years old. Ex. 2 at 2, 11; Ex. 4 at 16, 22. He admits drinking to the point of intoxication on numerous occasions--even blacking out on one occasion. On 10 December 1998, his personal physician advised him to stop drinking alcohol because it was affecting his liver. Answer. In October 1999, Applicant admitted himself for detoxification and treatment at a center for alcoholism and chemical dependence. His blood-

alcohol level was .38. Ex. 2 at 34. He successfully completed the treatment program and was referred to an outpatient treatment facility. *Id.* at 35. He received treatment at the outpatient facility from October 1999 until June 2000. From 2000-03, Applicant was treated for alcoholism by his personal physician.

Applicant failed to go to work the week of 25 August 2003. He was not on leave and, contrary to company policy, had not informed his supervisors of his absence. Ex. 5. On 2 September 2003, Applicant drank 6-12 beers. Ex. 4. He failed to report to work that day and failed to notify his supervisors he would not be present. Ex. 7. The following morning he consumed one-half bottle of an alcohol-based mouthwash. Three hours later, he admitted himself for detoxification to a hospital rehabilitation unit complaining of alcohol dependence. He was not on leave and had not informed his supervisors he would be absent from work. Although Applicant claimed his last drink had been on 29 August, his blood-alcohol level on admittance was .192. He was diagnosed as alcohol dependent. Ex. 4. Applicant insisted on leaving the facility at 0220 on 5 September, prior to the completion of his treatment and against the advice of the facility's staff. Ex. 4 at 19; Ex.5. He failed to get authority for his absence from work or to advise his employer that he was in a treatment facility.

Applicant failed to report for duty on four days in the week of 23 February 2004. He was not on leave and had did not report his absence to his supervisors. On 2 March 2004, Applicant met with a supervisor to discuss Applicant's absences and failure to report those absences. Applicant was informed of the seriousness of the violation and that disciplinary action would be taken. Applicant failed to report for duty the week of 14 March 2004 and did not notify his supervisors of his absence. Exs. 8, 10.

On 18 March 2004, Applicant re-admitted himself to the hospital for detoxification and treatment of his alcohol dependence. At the time, he was suffering from severe tremors. Ex. 6 at 15. At his discharge on 22 March 2004, Applicant was diagnosed as alcohol dependent by the treating physician. Ex. 6 at 2.

When Applicant returned to duty on 24 March 2004, he was suspended without pay for five days starting 28 March for "repeatedly failing to provide notification of your absence in accordance with established practice and policy." Ex. 8. On 6 April 2004, Applicant was notified his continued employment was based on his meeting special conditions because of his two attempts to deal with his alcohol problem. Specifically, it provided that Applicant's entry into another alcohol detoxification/rehabilitation program any time in the future would be "cause for immediate termination from employment." Ex. 9.

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 has restricted eligibility for access to classified information to United States citizens "whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Or. 12968, *Access to Classified Information* § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.

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 that the applicant has not met the strict guidelines the President and the Secretary of Defense have established 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. *See Egan*, 484 U.S. at 531. The Directive presumes a nexus or rational connection between proven conduct under any of

the disqualifying conditions listed in the guidelines and an applicant's security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15. 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.

CONCLUSIONS

Guideline G--Alcohol Consumption

In the SOR, DOHA alleged Applicant consumed a liter of vodka a week from 1996-99 (¶ 1.a), consumed two pints of vodka or a half bottle of wine daily from ay-Oct 1999 (¶ 1.b), was advised by a physician in December 1998 to stop drinking (¶ 1.c), was admitted to an in-patient rehabilitation program in October 1999 with a BAC of .38 (¶ 1.d), received alcohol counseling from October 1999-June 2000 (¶ 1.e), terminated this counseling against medical advice (¶ 1.f), was diagnosed as alcohol dependent in 1999 (¶ 1.g), was treated by a physician for alcoholism from 2000-2003 (¶ 1.h), drank to the point of intoxication on occasion from 2000-2004 (¶ 1.i), suffered at least one blackout in 2003 due to alcohol consumption (¶ 1.j), was admitted to a hospital for detoxification and rehabilitation in September 2003 (¶ 1.k), checked himself out of the hospital against medical advice (¶ 1.l), entered an alcohol rehabilitation program in October 1999 (¶ 1.m), admitted himself to a hospital for detoxification and rehabilitation in March 2004 (¶ 1.n), failed to report for work from 25 August-2 September 2003 (¶ 1.o), began consuming alcohol when he was 18 years old (¶ 1.p), consumed 12 beers a day from 1967-March 2004, with the exception of 1983-87 (¶ 1.q). 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.

The Government established by substantial evidence most of the allegations in the SOR. *Infra*, Formal Findings. Although Applicant may quibble with some of the details, the evidence of record demonstrates potentially disqualifying conditions under Guideline G. Applicant has a history of alcohol incidents away from work--he failed to report for work on several occasions and then immediately thereafter checked himself into an alcohol detoxification/rehabilitation program. DC E2.A7.1.2.1. This evidence is sufficient to infer Applicant's failure to report for duty was caused by his consumption of alcohol. On several occasions, Applicant was diagnosed by credentialed medical professionals with alcohol dependence. DC E2.A7.1.2.3. Applicant admitted to counselors and doctors in the treatment programs that for many years he drank 6-12 beers an evening and at times one-half bottle of vodka. Such habitual and binge consumption of alcohol caused intoxication to the point of impaired judgment. DC E2.A7.1.2.5. He continued to consume alcohol subsequent to his diagnosis of, and treatment for, alcohol dependence in 1999. The only listed mitigating condition that applies to Applicant's case is that he has made positive changes in behavior supportive of sobriety. MC E2.A7.1.3.3. He seems to have finally come to grips with his problem. But Applicant has not demonstrated sobriety for a sufficient time to tell whether he will be able to stick with the program. Under all the circumstances, I conclude Applicant has not mitigated the security concerns raised by his alcohol consumption.

Guideline E--Personal Conduct

In the SOR, DOHA alleged Applicant failed to report for work or contact his employer from 25 August-2 September 2003 (¶ 2.a), from 23-27 February 2004 (¶ 2.b), and from 14-21 March 2004 (¶ 3.c). 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.

The Government's evidence constitutes substantial evidence of potentially disqualifying conditions under Guideline E. Applicant has a demonstrated pattern of rule violations; he failed to get proper approval for the absences listed in the three allegations in ¶ 2 or even to notify his supervisors of his location and condition. DC E2.A5.1.2.5. Applicant is not a young, inexperienced, or uneducated. He knew the rules and failed to follow them--not once, but on several occasions. I found his excuses to lack credibility and his testimony disingenuous. ⁽²⁾ I find against Applicant.

FORMAL FINDINGS

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

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: Against Applicant

Subparagraph 1.c: Against Applicant

Subparagraph 1.d: Against Applicant

Subparagraph 1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: Against Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: Against Applicant

Subparagraph 1.k: Against Applicant

Subparagraph 1.l: Against Applicant

Subparagraph 1.m: Against Applicant

Subparagraph 1.n: Against Applicant

Subparagraph 1.o: Against Applicant

Subparagraph 1.p: Against Applicant

Subparagraph 1.q: For Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: Against Applicant

Subparagraph 2.c: 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

1. Pursuant to Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive).
2. Applicant testified that, "[a]s a matter of fact, I may be one of the few people that never had a drink before I was 21." Tr. 22. Yet the records of his hospital admissions note he started drinking at age 18. Ex. 2 at 2, 11; Ex. 4 at 16.