

DATE: March 30, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-12764

DECISION OF ADMINISTRATIVE JUDGE

MARC E. CURRY

APPEARANCES

FOR GOVERNMENT

Caroline H. Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's continued consumption of alcohol despite multiple diagnoses of alcohol dependence over the years, in addition to his intentional omission of past cocaine use from a 2002 security clearance application, generates security concerns that he failed to mitigate. Clearance is denied.

STATEMENT OF THE CASE

On August 3, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating it was unable to find it clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive). Applicant answered the SOR on September 19, 2006, and requested a hearing.

The case was assigned to me on January 17, 2007. I issued a notice of hearing on February 16, 2007, scheduling it for March 2, 2007. The hearing was held as scheduled. During the hearing, I received six government exhibits, four Applicant exhibits, and Applicant's testimony. DOHA received the transcript on March 14, 2007.

FINDINGS OF FACT

Applicant admitted all of the SOR allegations except for subparagraph 2.b. I have incorporated them into my findings of fact. In addition, I make the following findings.

Applicant is a 51-year-old man. He has a 16-year-old son from a marriage that ended in divorce in 1994. He served in the U.S. Navy from 1978 to 1984. He received an honorable discharge. In 1997, he obtained an associate's degree in computer information systems.

For the past ten years, Applicant has worked as an information technician. His supervisor characterizes him as a model

employee who "has been the recipient of more accolades from [their] customers than any single technician under [his] supervision." ⁽¹⁾

Applicant began drinking alcohol as a teenager in the early 1970s. In 1983, he was arrested and charged with driving under the influence of alcohol (DUI). Subsequently, he was not prosecuted. In March 1989, he was arrested and charged again with driving while intoxicated. He had consumed ten beers before being stopped by the police. ⁽²⁾ He was later sentenced to three years of supervised probation, fined \$500, and required to enter a DUI monitoring program. ⁽³⁾ Consistent with the program's requirements, he met with a program monitor once a month for 18 months. Upon completion of the monitoring program, the sentence was changed to unsupervised probation.

Applicant was not arrested for DUI in October 1989, as alleged in SOR subparagraph 1.i. Although the record indicates he was sentenced after a DUI conviction during this time frame, this sentence actually stemmed from an arrest that occurred six months earlier, as alleged in subparagraph 1.j., not an additional arrest. I find in his favor with respect to SOR subparagraph 1.i.

In 1991, Applicant was arrested and charged with DUI. ⁽⁴⁾ After pleading guilty, the court extended his supervised probation for three additional years, and fined him \$500.

Realizing by that time that he had a drinking problem, Applicant voluntarily entered a 30-day inpatient program in late 1991. At the conclusion of the program, a physician diagnosed him with alcohol dependence, and recommended that he attend Alcoholic's Anonymous (AA) meetings. ⁽⁵⁾ Applicant attended AA meetings, as the physician recommended, and completed probation without incident.

From approximately 1992 through 1994, Applicant remained sober. ⁽⁶⁾ He relapsed in 1995. One evening in November 1995, after consuming ten beers, Applicant was stopped by police, and charged with DUI. ⁽⁷⁾ He was found guilty, sentenced to 36 hours in jail, fined \$500, and placed on supervised probation for three years. Also, the court revoked his license for a year. ⁽⁸⁾

At the time of the arrest, Applicant was drinking alcohol on a near daily basis, consuming approximately six to seven beers per sitting. In response to his relapse and the corresponding arrest, Applicant again sought alcohol treatment. After completing the treatment, he remained sober for four years. ⁽⁹⁾

Applicant, however, experienced another relapse followed by a DUI arrest in 1999. The court sentenced him to 60 days in jail, 36 months of probation, and fined him \$555. After the DUI arrest, Applicant returned to the treatment center where he was treated earlier. His relapse counselor diagnosed him with alcohol dependence. ⁽¹⁰⁾

Consistent with his counselor's recommendations, Applicant attended AA classes for approximately three years after his discharge, and remained sober. ⁽¹¹⁾ He resumed alcohol consumption in 2002. Currently, he continues to drink alcohol. ⁽¹²⁾ Although he does not drink as much as he did in 1999, he has, on one or two occasions, drank more than six beers in a single setting. ⁽¹³⁾

Over the years, Applicant has used cocaine and marijuana. He began using cocaine in 1986 and used it sporadically through 1999. ⁽¹⁴⁾ In 1999, during his last visit to an alcohol treatment facility, he was diagnosed with cocaine dependence. He last used cocaine in 2000 or 2001. ⁽¹⁵⁾

Applicant used marijuana from 1993 to 2001. ⁽¹⁶⁾ Excluding a two-year period of abstinence from 1995 to 1997, he smoked it approximately once per month. ⁽¹⁷⁾

Applicant completed a security clearance questionnaire (SF 86) in April 2002. In response to Question 24 requiring him to list, among other things, any alcohol-related arrests, he listed the 1999 DUI arrest, but failed to list his DUI arrests of 1983, 1989, 1991, and 1995. Also, he failed to disclose his use of cocaine in response to Question 27, requiring

applicants to list any drug use within seven years of the completion of the SF 86.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (disqualifying conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (mitigating conditions).

An administrative judge need not view the adjudicative guidelines as inflexible rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching impartial, common sense decisions.

Because the entire process is a scrutiny of a number of variables known as the "whole-person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future.

The following adjudicative guidelines are raised:

Guideline G - Alcohol Consumption: 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 H - Drug Involvement: Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information.

Guideline E - Personal Conduct: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions pertaining to these guidelines that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."⁽¹⁸⁾ The government is responsible for presenting evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

CONCLUSIONS

Alcohol Consumption

Applicant's history of alcohol abuse and alcohol-related arrests, in tandem with his multiple diagnoses of alcohol dependence, triggers the applicability of 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*), AC DC E2.A7.1.2.3 (*Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*), AC DC E2.A7.1.2.5 (*Habitual or binge consumption of alcohol to the point of impaired judgment*), and AC DC E2.A7.1.2.7 (*Consumption*

of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program). I have considered all of the mitigating conditions and conclude none apply. Not only does Applicant still drink alcohol despite his extensive history of alcohol abuse and multiple diagnoses of alcohol dependence, he sometimes drinks in excess of six beers per sitting.

Drug Involvement

Applicant's history of drug abuse and diagnosis of cocaine dependence trigger the application of Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1 (*Any drug abuse*), DI DC E2.A8.1.2.2 (*Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution*), and DI DC E2.A8.1.2.3 (*Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence*). He has not used marijuana or cocaine since approximately 2001. Drug Involvement Mitigating Condition E2.A8.1.3.1 (*The drug involvement was not recent*) applies.

Personal Conduct

Applicant's security clearance omissions raise the issue of whether Personal Conduct Disqualifying Condition (PC DC) E2.A5.1.2.2 (*The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. In response to Question 24, Applicant listed the one DUI arrest that occurred within seven years of the SF 86 date. This bolsters the credibility of his contention that he thought he only was supposed to list DUI arrests that occurred within seven years of the completion of the SF 86. I conclude that these omissions were based upon a reasonable but mistaken interpretation of the question. PC DC 2 does not apply to Applicant's response to Question 24 of the SF 86.

Conversely, I remain concerned with his omission of his past cocaine use, particularly in light of the 1999 diagnosis of cocaine dependence. PC DC 2 applies to Applicant's response to SF 86 Question 27 without mitigation.

Whole Person Concept

Because of the length of time that has elapsed since Applicant last abused illegal drugs, I conclude it no longer poses a security concern. I remain concerned with his continued alcohol consumption and his SF 86 falsification. Applicant deserves credit for seeking treatment over the years for his alcohol problem. He has repeatedly failed, however, to remain abstinent. Moreover, his integrity was compromised by his intentional omission of his past cocaine use from his SF 86. Evaluating his security clearance eligibility in conjunction with the whole person concept, particularly the nature, extent, and seriousness of the conduct,⁽¹⁹⁾ its frequency and recency,⁽²⁰⁾ and the likelihood of continuation or recurrence,⁽²¹⁾ I conclude that the security concerns remain unmitigated.

FORMAL FINDINGS

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: Against 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

Paragraph 2-Guideline H: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Paragraph 3-Guideline E: AGAINST APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: Against 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 Applicant. Clearance is denied.

Marc E. Curry

Administrative Judge

1. Exhibit D, Supervisor's Reference Letter, dated February 28, 2007.
2. Exhibit 3, Signed, Sworn, Statement, dated March 23, 2005, at 2.
3. *Id.* at 3.
4. *Id.*
5. Exhibit 4, Medical Discharge Summary, dated December 24, 1991, at 2.
6. Tr. 62.
7. *See* note 2 at 5.
8. *Id.* at 6.
9. *Id.* at 7.
10. Exhibit 5, Medical Discharge Summary, dated October 5, 1999, at 2.
11. Tr. 35.
12. Tr. 75.
13. Tr. 71.

14. *Id.* at 8; *See* note 10 at 4.

15. Tr. 39.

16. Tr. 36-37.

17. *See* note 2 at 7.

18. *See* Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.

19. Directive ¶E2.2.1.1.

20. Directive ¶ E2.2.1.3.

21. Directive ¶E2.2.1.9.