

DATE: June 30, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-00416

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

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

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a long-standing alcohol consumption problem. After a couple of attempts at rehabilitation, it appears he is on the road to sobriety. But he does not have a sufficient record of recent sobriety to grant him a clearance. The evidence is insufficient to support allegations under personal conduct and criminal conduct that he deliberately misled the security investigator. 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. As required by Department of Defense Directive 5220.6 ¶ E3.1.2 (Jan. 2, 1960), as amended, DOHA issued a Statement of Reasons (SOR) on 11 August 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 19 September 2005 and elected to have a hearing before an administrative judge. The case was assigned to another judge, but reassigned to me on 14 February 2006. On 26 April 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 (R.) on 5 May 2006.

On 20 January 2006, Department Counsel moved to amend the SOR by adding subparagraphs 1.f-1.h. Applicant had no objection, and the motion was granted.

FINDINGS OF FACT

Applicant is a 51-year-old staff hardware engineer for a defense contractor. He has held a security clearance since 1983. Before that, he held a clearance with another federal agency.

Applicant began consuming alcohol while he was in high school. He continued using alcohol in college and after he was graduated. During this time, he did not drink often. He drank to the point of intoxication on only a few occasions. He

becomes more belligerent when he drinks.

In 1973, Applicant married. The couple had four children. Between 1981 and 1991, he did not consume alcoholic beverages. In 1991, Applicant's parents moved nearby, and he started drinking with them on a daily basis after work. By 1998, he started to drink to the point of intoxication on occasion and by 2000, he was using alcohol as a "stress and anxiety reliever." Ex. 4 at 2. He abstained from consuming any alcohol for two weeks over Christmas 2000, but resumed after the new year. He had an argument with his wife and children and they left the home. He sought help from a psychiatrist who diagnosed him with social anxiety disorder (SAD) and alcohol dependence, and recommended he enter an inpatient alcohol treatment program. He spent a couple of days in a hospital inpatient program that concentrated on detoxifying him. He was diagnosed with alcohol dependence. When he was discharged, he was told not to drink again, to get outpatient treatment, and to enroll in Alcoholics Anonymous (AA). He attended an outpatient program, attended some AA meetings, and continued to see his psychiatrist.

By June 2001, Applicant began to think he could drink again as long as he continued to take the medication for his SAD. He started to consume wine again. In October 2001, the psychiatrist again recommended Applicant abstain from consuming alcohol. R. 53.

Applicant and his first wife separated and eventually divorced. Although he claims it was not due to his drinking, he admitted that he "got into a particularly bad argument with [his] wife" after consuming two bottles of wine. Ex. 4 at 2. His wife "said she didn't like [his] behavior when [he] drank." In December 2003, Applicant and his girlfriend (now his wife) were drinking wine when they got into an argument. He threw wine, flour, oatmeal, coffee grounds, and ice tea on her and she called the police. Ex. 4 at 2; Ex. 5 at 2. When police came to the house, they detected a strong odor of alcohol about Applicant's person and slurred speech. Applicant became belligerent and argumentative and refused to sit down as instructed by the police. He was arrested for resisting arrest/search//transportation, cited for assault by offensive contact, and taken to jail. Ex. 5 at 2-3. He pled no contest to evading arrest/detention.

In January 2004, approximately a month after his arrest, Applicant was interviewed by an agent of the Defense Security Service (DSS). She asked Applicant about his alcohol consumption. Applicant admitted he was still drinking alcohol and never thought he was an alcoholic. Applicant stated as follows: "Although Dr. [K] has recommended I abstain from alcohol, I feel that my alcohol use will remain the same because I feel like I can control it and it is not a problem." Ex. 4 at 5-6.

In May 2005, while being treated for depression, his psychologist instructed him to quit drinking. He was only able to do so for a couple of weeks. She recommended intensive treatment for his alcohol dependence, but he claims he was too busy at work to do so. R. 37. Finally, in August 2005, he realized he could not control his drinking and entered an inpatient program and then transitioned to an outpatient treatment program. R. 39. He has not had any alcohol since August 2005. His doctors prescribed naltrexone, a drug that is supposed to block the parts of the brain that "feel" pleasure when the patient uses alcohol.

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 (Jan. 6, 1993). 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 the point of intoxication from 1968 to at least June 2004 (¶ 1.a); received treatment for his excessive alcohol consumption in January 2001 (¶ 1.b), from January 2001 to October 2003 (¶ 1.c), in August 2005 (¶ 1.e), from August to September 2005 (¶ 1.f), and since September 2005 (¶ 1.h); he was convicted of evading arrest/detention for an incident that occurred in December 2003 after he had consumed alcohol (¶ 1.d); he continues to consume alcohol (¶ 1.e); has been attending AA almost daily since 13 September 2005 (¶ 1.i); and his abuse of alcohol has led to poor judgment including missing work and financial difficulties (¶ 1.j). Applicant admitted ¶¶ 1.a-1.e, with explanation, and ¶¶ 1.f and 1.g without explanation. He denied ¶¶ 1.h-1.j, 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. The Government's evidence established potentially disqualifying conditions under Guideline G. Applicant was involved in an alcohol-related incident away from work (DC E2.A7.1.2.1)-assaulting his girlfriend by throwing wine, ice tea, and food on her. He was diagnosed by credentialed medical professionals with alcohol dependence (DC E2.A7.1.2.3) and continued to consume alcohol after being diagnosed with alcoholism and completing an alcohol rehabilitation program (DC E2.A7.1.2.6).

An applicant may mitigate alcohol consumption security concerns by demonstrating the alcohol-related incidents do not indicate a pattern (MC E2.A7.1.3.1), and he has made positive changes supportive of sobriety (MC E2.A7.1.3.3). I conclude both of these mitigating conditions apply. Nevertheless, Applicant does not have a sufficient history of sobriety-less than one year-to convince me that he has his alcohol dependence under control. I find against Applicant on ¶¶ 1.a-1.d and 1.f-1.g. I find for Applicant on ¶ 1.e and 1.h-1.j. That Applicant no longer consumes alcoholic beverages and is attending AA and receiving treatment for alcohol abuse on a recurring basis is not disqualifying. They establish mitigating conditions.

Guideline E-Personal Conduct

In the SOR, DOHA alleged that, during interviews with an authorized security investigator on 12 and 15 January 2004, Applicant deliberately omitted material facts by failing to disclose he had been arrested in December 2003 (¶ 2.a). Applicant admitted the allegation, with explanation.

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. Deliberately providing false or misleading information concerning relevant and material matters to a personnel security investigator is a security concern and may be disqualifying. DC E2.A5.1.2.3. Information is material if it would affect a final agency decision or, if incorrect, would impede a thorough and complete investigation of an applicant's background. ISCR Case No. 01-06870, 2002 WL 32114535 (App. Bd. Sep. 13, 2002). An applicant's criminal and alcohol consumption histories are matters that could affect a final agency decision on whether to grant the applicant a clearance and his failure to disclose it would impede a thorough investigation of the applicant's background.

After reviewing all of the evidence, I am not convinced the evidence is sufficient to conclude he deliberately provided misleading information to the investigator by failing to advise her that he had been arrested in an alcohol-related incident. Applicant admitted that the main focus of the investigator's questions was his consumption of alcohol, but it is not clear from the signed, sworn statement whether he was asked if he had ever been arrested for an alcohol-related offense. Although I did not find credible Applicant's testimony minimizing his consumption of alcohol and his culpability in his arrest for resisting arrest, there is no clear statement of fact in his affidavit that is sufficient to conclude he deliberately misled the DSS agent. I find for Applicant.

Guideline J-Criminal Conduct

In the SOR, DOHA alleged Applicant was convicted evading arrest/detention during a December 2003 incident (¶ 3.a) and violated 18 U.S.C. § 1001 by deliberately failing to disclose material facts to a security investigator during January 2003 interviews (¶ 3.b). Applicant denied each of the allegations, with explanation.

A history or pattern of criminal activity creates doubt about an applicant's judgment, reliability, and trustworthiness. Directive ¶ E2.A10.1.1. Conditions that could raise a security concern and may be disqualifying include: (1) allegations or admissions of criminal conduct (DC E2.A10.1.2.1); and (2) a single serious crime or multiple lesser offenses (DC E2.A10.1.2.2). The Government established Applicant committed the offense of resisting arrest/search/transportation, a minor criminal offense.

It is a criminal offense to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation or knowingly make or use a false writing in any matter within the jurisdiction of the executive branch of the Government of the United States. 18 U.S.C. § 1001. *See Egan*, 484 U.S. at 527. Security clearances are within the jurisdiction of the executive branch of the Government of the United States. Information is material if it would affect a final agency decision or, if incorrect, would impede a thorough and complete investigation of an applicant's background. ISCR Case No. 01-06870, 2002 WL 32114535 (App. Bd. Sep. 13, 2002). An applicant's failure to fully advise investigators of his arrest for an alcohol-related incident would impede a thorough security investigation and affect a final agency decision. A violation of 18 U.S.C. § 1001 is a serious offense-it carries a maximum sentence that includes confinement for up to five years.

I conclude the evidence is insufficient to establish Applicant knowingly and willfully made a materially false representation to the DSS agent. His statement to the DSS agent that alcohol is not a problem is more a statement of opinion than a statement of fact. There is no evidence that he was asked a question that would require him to describe the incident in his affidavit. I find for Applicant on ¶ 3.b.

As I found Applicant committed only one, minor criminal offense. DC E2.A10.1.2.1 applies. Applicant committed a criminal offense. An Applicant may mitigate such conduct by establishing the criminal behavior was not recent (MC E2.A10.1.3.1) and the crime was an isolated incident. With the evidence available, I find both mitigating conditions apply. I find for Applicant on ¶ 3.a.

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: For Applicant

Subparagraph 1.f: Against Applicant

Subparagraph 1.g: Against Applicant

Subparagraph 1.h: For Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: For Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Paragraph 3. Guideline J: FOR APPLICANT

Subparagraph 3.a: For Applicant

Subparagraph 3.a: For 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