

DATE: November 13, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-00962

DECISION OF CHIEF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's alcohol consumption resulted in two arrests for driving under the influence (DUI) (1982 and 2005) during a 23-year span which were followed up by two court-mandated Alcohol Safety Action Programs (ASAP) and one 16-week group counseling program. His illegal use of marijuana from 1977 until 2001, and again at least in May 2005, especially after he had been granted a security clearance in 1983, reflects a high degree of questionable judgment, irresponsibility, and immature behavior. It is unclear if he has finally decided to abstain from further marijuana use, for the only evidence of such possible change in his habits pertains to his remaining "clean" since 2001, with the brief exception of 2005. Applicant has failed to mitigate or overcome the government's case. Clearance is denied.

STATEMENT OF THE CASE

On March 7, 2003, Applicant applied for a security clearance and submitted a Security Clearance Application (SF 86). (1) On December 23, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified. The SOR detailed reasons, under Guideline G (alcohol) and Guideline H (drugs), why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

In a sworn written statement, dated January 23, 2006, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on March 20, 2006. A complete copy of the file of relevant material (FORM) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. No submission was made by the April 23, 2006, deadline. The case was assigned to me on May 17, 2006.

FINDINGS OF FACT

Applicant has admitted all the factual allegations pertaining to alcohol under Guideline G (subparagraphs 1.a. through 1.d.) and drugs under Guideline H (subparagraphs 2.a. and 2.b.). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 44-year-old employee of a defense contractor, and he is seeking to obtain a security clearance, the level of which has not been specified. He was previously granted a CONFIDENTIAL security clearance in January 1983.⁽²⁾ An interim clearance was declined in July 2003.⁽³⁾ He has been employed by the same government contractor since September 2002, and currently serves as a pipefitter. With the exception of a brief period of unemployment in 1997, he has been employed as a "fitter" since at least 1995. Evidence of the quality of his work performance has not been provided.

Applicant has been married twice. His first marriage, in 1982, resulted in a divorce. His second marriage, in September 1996, resulted in a separation in about 2005, and his current marital status is not specified.

Applicant is a substance abuser whose substances of choice have been alcohol, marijuana, and cocaine. While it is not known when he first started using alcohol, and the specific quantity of his alcohol consumption has never been developed, he consumed alcohol on an almost daily basis, at times to excess and to the point of intoxication.⁽⁴⁾ Applicant has abused alcohol on at least two occasions during a period commencing in December 1982 and continuing until February 2005.

In December 1982, when he was 21 years old, Applicant was arrested and charged with driving under the influence (DUI).⁽⁵⁾ There is little evidence of the circumstances leading up to his arrest or the quantity of his consumption, except that he was initially stopped for speeding.⁽⁶⁾ A breathalyzer test was administered, and it registered .13 per cent.⁽⁷⁾ The local traffic court ordered him to attend an Alcohol Safety Action Program (ASAP).⁽⁸⁾ No specifics regarding the program have been offered.

In February 2005, he was again arrested and charged with DUI.⁽⁹⁾ Once again, the record is essentially void of meaningful evidence or information regarding the circumstances leading up to this arrest or the quantity of Applicant's consumption. Applicant was purportedly going through a difficult time in his life. He and his wife had split up and he was upset over the breakup, and his mother had recently passed away.⁽¹⁰⁾ Shortly before the arrest, he had left a bar for home at about 2 a.m.⁽¹¹⁾ Applicant was eventually found guilty and sentenced to 60 days in jail, suspended, ordered to pay a fine and court costs, his operator's license was suspended for one year, and he was required to have an interlock device placed on his vehicle for six months.⁽¹²⁾ In addition, he was again ordered to attend 10 weeks of ASAP and 16 weeks in a group counseling program.⁽¹³⁾ No specifics regarding either program have been offered.

As part of his ASAP, in June 2005, Applicant underwent an alcohol assessment and it was determined that he "met the criteria for alcohol treatment."⁽¹⁴⁾ It is unclear what those criteria are. Likewise, the record is silent as to the credentials of the individual making that assessment.

There is a vague statement by Applicant that, except for a short period in 2005, he has been "clean" since 2001.⁽¹⁵⁾ It is unclear if he was referring to illegal substances, alcohol, or both. The record is silent regarding current alcohol consumption.

As noted above, Applicant also used marijuana and cocaine. He started using marijuana in July 1977,⁽¹⁶⁾ when he was a teenager, for unspecified reasons, and continued using it on an unspecified frequency at least until May 2005.⁽¹⁷⁾ He contends he abstained from marijuana use between August 2001, when he decided to purchase a house,⁽¹⁸⁾ and May 2005,⁽¹⁹⁾ and there is no evidence to rebut his contention. Applicant's cocaine use appears to have taken place over a

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shorter period of time. He used it "once in a while," at least during July 1987, and such use resulted in his having to receive hospitalization and treatment in 1987.⁽²²⁾ No specifics regarding the hospitalization or treatment have been offered. Likewise, Applicant has presented no specific explanation for his motivation to either start or stop using cocaine.

Although Applicant possessed a security clearance from at least January 1983 until an unspecified later time, he has acknowledged using marijuana and cocaine while possessing a security clearance between August 1980 and August 2001.⁽²³⁾

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 ironclad 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 set forth in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching fair and impartial common sense decisions.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security"⁽²⁴⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded all of the standards are the same. In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. Because of this special relationship, the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and

conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

Alcohol Consumption Analysis:

Guideline G states that "[e]xcessive 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." (25) Applicant's relationship with alcohol, and the incidents arising out of that relationship, have raised, according to the government, several issues regarding his security clearance eligibility and suitability.

Commencing at some point in December 1982, or prior thereto, and continuing periodically until at least February 2005, Applicant exhibited a pattern of questionable judgment, irresponsibility, and immature behavior by abusing alcohol. His alcohol consumption resulted in two arrests for alcohol-related incidents (1982 and 2005), both of which were followed up by court action. These incidents and the conduct which contributed to the incidents fall within 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*). Because there is no evidence that alcohol had any impact on his job performance and activities, there does not appear to be any justification to apply AC DC E2.A7.1.2.2. (*alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job*).

Following both incidents, the court mandated he participate in an ASAP program, and following the most recent incident, also required 16 weeks in a group counseling program. He did so, and his most recent alcohol assessment, as opposed to evaluation or diagnosis, was that he "met the criteria for alcohol treatment." The absence, however, of evidence of any alcohol-related evaluation or diagnosis precludes application of 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*) or AC DC 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*). Moreover, the lack of evidence regarding the specific criteria for alcohol treatment or some indication as to the credentials of the individual making the alcohol assessment renders that assessment virtually meaningless.

Because of the paucity of record evidence, there is little evidence to describe Applicant's history of alcohol consumption, both as to quantity and frequency. No police records, court records, or treatment records were presented, and the lack of thoroughness or recency of Applicant's statement is disappointing. Likewise, it is unclear if there have been some changes in Applicant's alcohol consumption, and he may have, in fact, decided to avoid becoming alcohol-impaired. The only evidence of such possible change pertains to his remaining "clean" since 2001, with the brief exception of 2005, but does not address actual alcohol consumption. The absence of such evidence negates the application of Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.3. (*positive changes in behavior supportive of sobriety*). No other AC MCs apply.

Drug Involvement Analysis:

Guideline H states that "[i]mproper 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." (26) Applicant's relationship with marijuana, especially while holding a security clearance, have raised, according to the government, several issues regarding his security clearance eligibility and suitability. The government is apparently no longer concerned about his use of cocaine.

Applicant's illegal use of marijuana from 1977 until 2001, and again at least in May 2005, is of concern, especially in light of his desire to have continuing access to the nation's secrets. Marijuana use was, and remains, against the law, DoD policy, and seemingly, his corporate policy. As noted above, the Directive clearly expresses the government's concern regarding drug involvement in provision E2.A8.1.1.1. (*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). Drug abuse is defined in provision E2.A8.1.1.3. (*the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction*). Provision E2.A8.1.1.2.1. generally identifies and defines drugs, as follows (*drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens)*). Applicant's overall conduct pertaining to his illegal marijuana abuse clearly falls within Drug Involvement Disqualifying Condition (DI DC) E2.A8.1.2.1. (*any drug abuse*).

The earlier activity initially occurred when Applicant was a teenager. Had such conduct ceased and not been repeated thereafter, it would have been of limited security concern. However, Applicant continued his use for another 24 years, and after seemingly abstaining for nearly 4 years, he resumed using marijuana, this time ostensibly motivated by some anxiety and depression over his marital situation and his mother's demise. Applicant's actions, especially after he had been granted a security clearance in 1983, reflect a high degree of questionable judgment, irresponsibility, and immature behavior. He destroyed his fiduciary relationship with the government over his zeal for marijuana and placed his own drug-induced pleasures above those fiduciary responsibilities as a holder of a security clearance. His actions fall within DI DC E2.A8.1.2.5. (*failure to successfully complete a drug treatment program prescribed by a credentialed medical professional. Recent drug involvement, especially following the granting of a security clearance, or an expressed intent not to discontinue use, will almost invariably result in an unfavorable determination*).

It might be argued the most recent marijuana involvement, occurring in May 2005, was not recent, a condition recognized under Drug Involvement Mitigating Condition (DI MC) E2. A8.1.3.1. (*the drug involvement was not recent*). While the presence or absence of rehabilitation and other pertinent behavioral changes are significant factors in the overall adjudicative process, the presence or absence of one particular condition is not controlling. In this instance, I consider Applicant's marijuana use in May 2005 to be recent.

Applicant's use of marijuana during 1997-2001, and again during at least May 2005, removes his actions from the application of DI MC E2.A8.1.3.2. (*the drug involvement was an isolated or aberrational event*).

Although he participated in two ASAP programs and one 16-week group counseling program, primarily related to alcohol issues, and one cocaine treatment program, the record is silent regarding an evaluation or diagnosis related to marijuana abuse, and it is unclear if he ever participated in any therapeutic or rehabilitative marijuana abuse program. Thus, these circumstances negate any application of DI MC E2.A8.1.3.4. (*satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a credentialed medical professional*).

Once again, because of the paucity of record evidence, there is little evidence to describe Applicant's history of marijuana use, both as to quantity and frequency. No comprehensive statement by Applicant or treatment records were presented. Likewise, it is unclear if he has finally decided to abstain from further marijuana use for the only evidence of such possible change in his habits pertains to his remaining "clean" since 2001, with the brief exception of 2005. The comment but does not specify actual marijuana use. The absence of such evidence negates the application of DI MC E2.A8.1.3.3. (*a demonstrated intent not to abuse any drugs in the future*).

Whole Person Analysis:

Because the entire process is a conscientious 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. The Adjudicative Process factors which an administrative judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 pertinent 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.

Although I am underwhelmed by the quality, quantity, or thoroughness of the evidence, both from the government and Applicant, under the evidence presented, I have been able to resolve a number of issues presented. Applicant's substance

abuse commenced when he was a teenager, and continued until he was well over 40 years old. That substance abuse was illegal and against government policy, facts known to Applicant during a part of the time he was abusing marijuana, was of no concern to him. Neither was the fact that he had been granted a security clearance in January 1983. Marijuana use was more important to him. His alcohol abuse resulted in two arrests and court action in 1982 and 2005, a span separated by 13 years. The frequency of his marijuana and alcohol abuse may not be known, but the recency is.

In trying to determine the presence or absence of rehabilitation and other behavioral changes, I find there is little evidence presented to do so because Applicant has failed to present any meaningful evidence of same. I possess little confidence that Applicant's overall substance abuse is a thing of the past that will not recur. After using marijuana for 24 years and abstaining for nearly 4 years, he resumed his use of marijuana. After using alcohol for at least 23 years, undergoing two court-mandated ASAP programs and one 16-week group counseling program, it remains unclear if he has decided to abstain. There remain too many unanswered questions.

Applicant has failed to mitigate or overcome the government's case pertaining to alcohol or drugs. Accordingly, allegations 1.a. through 1.d., and 2.a. and 2.b. of the SOR are concluded against Applicant. For the reasons stated, I conclude Applicant is not eligible for access to classified information.

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:

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

Paragraph 2., Guideline H: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.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.

Robert Robinson Gales

Chief Administrative Judge

1. Item 3 (Security Clearance Application, dated March 7, 2003); Item 4 (Security Clearance Application-electronic version, dated July 3, 2003).
2. Item 2 (Response to SOR, dated January 25, 2006) at 3.
3. Item 3, *supra* note 1, at 8.
4. Item 2, *supra* note 2, at 2.

5. *Id.*

6. Item 5 (Statement, dated August 18, 2004) at 2.

7. *Id.*

8. Item 3, *supra* note 1, at 6.

9. Item 2, *supra* note 2, at 2.

10. *Id.* at 1.

11. Item 6 (Interrogatories, dated March 28, 2005) at 4. It should be noted that although the document has been characterized by DOHA as *Interrogatories Concerning Alcohol*, the individual questions refer exclusively to illegal or controlled substances/drugs without any focus on alcohol.

12. Item 2, *supra* note 2, at 2-3.

13. *Id.* at 3.

14. *Id.*

15. *Id.* at 1.

16. Item 3, *supra* note 1, at 6; Item 4, *supra* note 1, at 8.

17. Item 2, *supra* note 2, at 3.

18. Item 5, *supra* note 6, at 2.

19. Item 2, *supra* note 2, at 3.

20. Item 5, *supra* note 6, at 2.

21. Item 6, *supra* note 11, at 2.

22. *Id.* at 3.

23. Item 3, *supra* note 1, at 6.

24. The Directive, as amended by Change 4, dated April 20, 1999, uses "clearly consistent with the national interest" (Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), "clearly consistent with the interests of national security" (Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (Enclosure 2, Sec. E2.2.2.).

25. The Directive, Enclosure 2, Atch 7, Sec. E2.A7.1.1.

26. *Id.* at Atch. 8, Sec. E2.A8.1.1.1.