

DATE: November 21, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 05-03305

DECISION OF ADMINISTRATIVE JUDGE

JACQUELINE T. WILLIAMS

APPEARANCES

FOR GOVERNMENT

Braden M. Murphy, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 56-year-old employee of a defense contractor since March 1999 working as a claims processor. Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1969 to at least 2001. In 1981, 1984, 1996, and 2001, he was arrested for operating a motor vehicle while intoxicated. He received court-ordered counseling in the Addictive Disorders Treatment Program of a hospital from May 1996 to June 1996, and again from August 2002 to March 2003. In the latter treatment program, his condition was diagnosed as Alcohol Abuse/Dependence. Applicant has not provided evidence to show that he is no longer abusing alcohol. Eligibility for an ADP I/II/III position is denied.

STATEMENT OF THE CASE

On May 29, 2003, Applicant applied for a determination of eligibility for assignment to sensitive positions and completed a Public Trust Position Application (SF-85P).⁽¹⁾ On October 26, 2005, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the basis for its preliminary determination that Applicant was not eligible for assignment to an Information Systems Position designated ADP I/II/III.⁽²⁾ The SOR alleges trustworthiness concerns under Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct).

In a sworn, written statement, dated November 7, 2005, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.⁽³⁾ Department Counsel prepared the Government's written case on July 14, 2006. The case was assigned to me on September 12, 2006.

MOTION

A complete copy of the file of relevant material (FORM)⁽⁴⁾ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. In the FORM, Department Counsel moved to amend the SOR to change the wording of allegation subparagraph 1.g under Guideline G to read as

follows:

1.g. You received treatment from August 2002 to March 2003 at the Veteran Administration Hospital, Addictive Disorders Treatment Program, for a condition diagnosed as Alcohol Abuse/Dependence.

Applicant did not respond to the FORM nor did he raise objections to Department Counsel's request to amend allegation subparagraph 1.g of the SOR. In the absence of an objection, Department Counsel's request to amend allegation subparagraph 1.g of the SOR is granted.

FINDINGS OF FACT

Applicant admitted the factual allegations pertaining to alcohol consumption under Guideline G, subparagraphs 1.b through 1.g, but denied subparagraphs 1.a and 1.h. Applicant denied the factual allegations pertaining to personal conduct under Guideline E, subparagraph 2.a. Applicant's admissions are incorporated herein. After a thorough and careful review of the record, I make the following findings of fact:

Applicant is a 56-year-old employee of a U.S. government contractor. He has worked for this contractor since March 1999 as a claims processor. He was a medical technician in the Navy from 1969 to 1973. (5)

Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1969 to at least 2001. He indicated that he started drinking after he joined the Navy in 1969.

On December 21, 1981, Applicant was arrested and charged with operating a motor vehicle while intoxicated. He was found guilty, and sentenced to fines and court costs of about \$147.00.

On January 13, 1984, Applicant was arrested and charged with operating a motor vehicle while intoxicated. He was convicted and sentenced to five days in jail.

In 1996, Applicant was arrested and charged with operating a motor vehicle while intoxicated. Subsequently, he received court-ordered treatment from May 13, 1996 to June 13, 1996, in the Addictive Disorders Treatment Program of a hospital.

Applicant was arrested on October 20, 2001 and charged with operating a motor vehicle while intoxicated and having an elevated blood alcohol content. He pled no contest to operating a motor vehicle while intoxicated and was sentenced to alcohol assessment, forfeiture/fine one-day credit (\$75.00) applied to a fine and court costs, leaving a balance of \$1109, jail for 10 days, and revocation of his driver's license for 18 months. The other charge was dismissed.

From August 2002 to March 2003, Applicant received treatment in the Addictive Disorders Treatment Program of a hospital, for a condition diagnosed as Alcohol Abuse/Dependence. The diagnosis was made by a psychologist. (6) Applicant admits that his condition was diagnosed as "Irresponsible Use of Ethol & Borderline Abuse." The language of either of the aforementioned diagnoses is the same as the other.

Applicant denies that he continued to consume alcohol, notwithstanding his treatment in August 2002 to March 2003 for Alcohol Abuse/Dependence. He did not provide evidence to refute that he no longer abuses alcohol.

A medical record progress note indicates Applicant's visited a doctor on September 4, 2003 as a follow-up assessment and recites:

PT REPORTED FOR HIS 12 MONTH F/U. PATIENT HAD MISSED HIS 6 MONTH F/U. PT REPORTS ONLY 2 BEERS IN MAY FOR THE LAST 6 MONTHS.

NO MORE SCHEDULED F/U'S FOR THIS PATIENT. (7) (Capital letters in original.)

The medical record progress note indicated Applicant had two beers in May 2003, after his diagnosis of Alcohol Abuse/Dependence.

POLICIES

To be eligible for assignment to sensitive duties, an applicant must meet the security guidelines contained in the Regulation. "The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security."⁽⁸⁾ Appendix 8 of the Regulation sets forth the personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance."⁽⁹⁾ Each eligibility determination must be a fair, impartial, and commonplace decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Regulation.⁽¹⁰⁾ *An administrative judge should consider: (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 the 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.*⁽¹¹⁾

DoD contractor personnel are afforded the right to the procedures contained in DoD Directive 5220.6 before any final unfavorable determination may be made.⁽¹²⁾ *In trustworthiness determination cases, the Government initially must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible to occupy an ADP position.*⁽¹³⁾ *Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.*⁽¹⁴⁾ *An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."*⁽¹⁵⁾ *"Any doubt as to whether access to classified information is clearly consistent with national interest will be resolved in favor of the national security."*⁽¹⁶⁾ *The same rules apply to trustworthiness determinations for access to sensitive positions.*

CONCLUSIONS

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.

Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1969 to at least 2001, a period of more than 32 years. Moreover, in 1981, 1984, 1996, and 2001, he was charged with operating a motor vehicle while intoxicated. From May 1996 to June 1996 he received court-ordered counseling in the Addictive Disorders Treatment Program of a hospital to deal with his alcohol problem. In the 2001 incident, he also had his driver's license suspended for 18 months. Subsequently, in August 2002 to March 2003, he once again received treatment in the Addictive Disorders Treatment Program for a condition diagnosed as Alcohol Abuse/Dependence. Consequently, this establishes Alcohol Consumption Disqualifying Conditions (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)); and AC DC E2.A7.1.2.5 (habitual or binge consumption of alcohol to the point of impaired judgment).

Various conditions can mitigate alcohol consumption security concerns. Applicant has a long history of drinking alcohol that spans at least three decades, as he started drinking at age 19. In 1981, 1984, 1996, and 2001, he was convicted of operating a motor vehicle while intoxicated. The three earlier convictions could, standing alone, be considered as not recent and mitigated by time. However, they do indicate a pattern. The conviction in 2001 is more recent and supports a conclusion that the three prior incidents should not be negated by time because Applicant continued his pattern in 2001 of driving after overindulging in alcohol. Moreover, he continued to drink alcohol after

his diagnosis of Alcohol Abuse/Dependence. Applicant has failed to provide evidence that he no longer continues to use alcohol or how long he has been alcohol-free. Thus, the Alcohol Consumption Mitigating Conditions (AC MC) E2.A7.1.3.1 (the alcohol-related incidents do not indicate a pattern), AC MC E2.A7.1.3.2 (the problem occurred a number of years ago and there is no indication of a recent problem), AC MC E2.A7.1.3.3 (positive changes in behavior supportive of sobriety), and AC MC E2.A7.1.3.4 (following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program) do not apply. Applicant has not mitigated the Government's case. Accordingly, allegations 1.a through 1.h of the SOR are concluded against Applicant.

Personal Conduct

Personal conduct is always a trust concern because it asks the central question whether the person's past conduct justifies confidence the person can be trusted to properly fulfill the fiduciary requirements of an ADP position.

A medical record progress note indicates Applicant had two beers in May 2003, which occurred after his March 2003 diagnosis of Alcohol Abuse/Dependence. Although Applicant denies that he continued to consume alcohol after his treatment in March 2003, the record evidence does not support his contention. Therefore, Personal Conduct Disqualifying Condition E2.A5.1.2.1 (reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances) applies. None of the available Personal Conduct Mitigating Conditions applies. Applicant has not mitigated the Government's case. Accordingly, allegation 2.a of the SOR is concluded against Applicant.

I have considered all the evidence in this case. I have also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. Applicant is a mature individual, who has had a problem with alcohol spanning more than 30 years. He has received court-ordered treatment for his alcohol problem at least twice. Not only was his driver's license revoked for 18 months based on the arrest in October 2001, he received a sentence for 10 days in jail. Under these circumstances, Applicant has not mitigated the Government's case under either the alcohol consumption or personal security guidelines. Accordingly, I conclude that it is not consistent with the national interest to grant a trustworthiness determination to Applicant.

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 (Alcohol Consumption): 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

Paragraph 2. Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to make or continue a trustworthiness determination for Applicant. Eligibility is denied.

Jacqueline T. Williams

Administrative Judge

- 1. Item 4 (Public Trust Position Application, initially signed on May 29, 2003 and re-initialed on December 11, 2003). While this matter was pending, DOHA received an updated investigation file from the Office of Personnel Management. That file contained a more recent SF-85P and an updated FBI Identification Record. Those documents are included herein as Items 5 and 8, respectively.*
- 2. This action was taken under Executive Order 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). The procedural rules set out in the Directive for security clearance cases are applied to ADP trustworthiness determinations. The adjudicative guidelines set out in Department of Defense Regulation 5200-2R, Personnel Security Program (Jan. 1987), as amended and modified (Regulation), are used to make ADP trustworthiness determinations.*
- 3. Item 3 (Applicant's Answer, signed November 7, 2005).*
- 4. The Government submitted 11 exhibits (Items 1-11) in support of the allegations in the SOR.*
- 5. Item 9 (Medical Records, dated August 19, 2003 through September 4, 2003) at 3.*
- 6. Item 9, supra, note 5.*
- 7. Item 9, supra, note 5.*
- 8. Regulation ¶ C6.1.1.1.*
- 9. Regulation Appendix 8.*
- 10. Id.*
- 11. Id.*
- 12. Regulation ¶ C8.2.1.*
- 13. Directive, ¶ E3.1.14.*
- 14. Directive ¶ E3.1.15.*
- 15. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).*
- 16. Directive ¶ E2.2.2.*