

DATE: July 31, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-04845

DECISION OF ADMINISTRATIVE JUDGE

LEROY F. FOREMAN

APPEARANCES

FOR GOVERNMENT

Michael Lyles, Esq., Department Counsel

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While in the U.S. Navy, Applicant received nonjudicial punishment for alcohol-related misconduct, was convicted of driving while impaired, and was arrested for alcohol-related domestic violence. He successfully completed inpatient rehabilitative treatment in the Navy but was discharged as a rehabilitative failure before he could complete his aftercare program. After his discharge, he obtained personal and marital counseling, attended anger management training, attended Alcoholics Anonymous meetings for more than two years, and has abstained from consuming alcohol for almost four years. He has mitigated the security concern based on alcohol consumption. Clearance is granted.

STATEMENT OF THE CASE

On December 28, 2005, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. ⁽¹⁾ The SOR alleges security concerns under Guideline G (Alcohol Consumption).

Applicant answered the SOR in writing on February 10, 2006, admitted the factual allegations in the SOR, and requested a hearing. The case was assigned to me on March 20, 2006. On March 23, 2006, DOHA issued a notice of hearing setting the case for May 15, 2006. The case was heard as scheduled. DOHA received the transcript (Tr.) on May 25, 2006.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 31-year-old field technician for a defense contractor, supporting sonar system upgrades on U.S.

submarines. He has worked for his current employer since August 8, 2003. He served in the U.S. Navy from August 1992 to March 2003, and held a security clearance while in the Navy.

From 1994 to 1999, Applicant consumed alcohol three or four times a week. The quantity varied, from two beers to a case of beer at a time. His drinking was confined to off-duty time. ⁽²⁾

In 1995, he received nonjudicial punishment for underage drinking after an incident in which he urinated on a laundry bag while sleepwalking. ⁽³⁾ In November 1998, he was arrested by state police for driving while intoxicated. He had consumed about 18 beers during an eight-hour period, and his blood alcohol level was .15. He pleaded guilty to a lesser offense of driving while impaired. He was fined \$300, his driver's license was suspended for three months, and he was ordered to attend an alcohol awareness program. After this incident, the Navy placed him in a 30-day rehabilitation program, which he successfully completed. He remained sober for about three and a half years. ⁽⁴⁾ He received a letter of appreciation and a medal for military achievement during this period of sobriety. ⁽⁵⁾

In August 2002, Applicant's marital life became troubled. On September 3, 2002, he went drinking with friends and consumed about 12 beers. His wife hid his car and then confronted him about his drinking, and he responded by choking her. After hiding in a park for about 90 minutes, he surrendered to local police, who held him over the weekend and then released him to the Navy.

Applicant has not consumed any alcohol since September 3, 2002, the night he was arrested for assaulting his wife. ⁽⁶⁾ He attended marriage counseling and daily substance abuse rehabilitation sessions for two months, successfully completing the Navy rehabilitation program in November 2002. While in treatment, he was diagnosed by a Navy psychologist as alcohol dependent. ⁽⁷⁾ When he completed the treatment, the program director recommended the following aftercare and continuing care: (1) participation in a command-monitored substance abuse program for at least one year; (2) weekly meetings with the command representatives, (3) a minimum of three Alcoholics Anonymous (AA) meetings per week, (4) a minimum of 24 aftercare group sessions; (4) identifying an AA home group and sponsor within 30 days; and (5) anger, stress management, and assertiveness workshops. ⁽⁸⁾

Applicant attended 14 aftercare group sessions but was unable to complete the recommended 24 sessions, because he was discharged from the Navy as a rehabilitative failure in March 2003, based on his record of alcohol-related incidents. ⁽⁹⁾ After he was discharged, he received marriage counseling and family counseling from a civilian psychologist and attended anger management classes from mid-November 2002 until mid-February 2003. ⁽¹⁰⁾ He began attending AA meetings after his DUI arrest in November 1998 but stopped after about three years. ⁽¹¹⁾ He resumed AA participation after his discharge, attending about three or four meetings a week until November 2005, when he stopped in order to spend more time with his wife and newborn son. ⁽¹²⁾ He relies on his wife and father, both of whom are in AA, for support in his continued sobriety. ⁽¹³⁾

Applicant's current supervisor highly recommends him for a security clearance. He regards him as a person with "a high degree of integrity, responsibility, and ambition," who has "demonstrated maturity and self-assurance in himself." His supervisor also has observed him in his role as a "proud parent and homeowner." ⁽¹⁴⁾ An experienced field engineer who worked with Applicant on a daily basis for three years described him as "one of the best employees that I've seen us come up with." ⁽¹⁵⁾ A friend who has known Applicant since they were both in the Navy verified his continued sobriety during their frequent socializing and described him as "a really great guy" who interacts well with their children and is "always there" when his friends need help. ⁽¹⁶⁾

Applicant's father, who has been a recovering alcoholic for 26 years, ⁽¹⁷⁾ has credentials as a certified addiction specialist and a substance abuse professional. ⁽¹⁸⁾ Applicant and he talk on a regular basis about a variety of issues. ⁽¹⁹⁾ He believes Applicant is "a responsible father, responsible husband, responsible parent, responsible worker." ⁽²⁰⁾

Applicant's spouse testified they discovered they were both recovering alcoholics shortly after they met. ⁽²¹⁾ She has

been a recovering alcoholic for about 12 years. She testified that when Applicant completed the Navy rehabilitation program, "he was like the person [she] had first met."⁽²²⁾ She testified their relationship has grown stronger, and Applicant is determined never to return to his former lifestyle.⁽²³⁾

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 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 (Feb. 20, 1960), as amended and modified. 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 (App. Bd. Dec. 19, 2002).

The Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions (DC) and mitigating conditions (MC) for each guideline. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, and the factors listed in the Directive ¶¶ 6.3.1. through 6.3.6.

In evaluating an applicant's conduct, 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 applicant'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. Directive ¶¶ E2.2.1.1. through E2.2.1.9.

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, 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.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. "[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the Criteria listed therein and an applicant's security suitability." ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993)).

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; *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 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.

CONCLUSIONS

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. A disqualifying condition (DC 1) may arise from "[a]lcohol-related incidents away from work, such as driving under the influence." Directive ¶ E2.A7.1.2.1. Applicant's conviction of driving while impaired and his arrest for alcohol-related domestic violence establish DC 1.

A disqualifying condition (DC 2) also may arise from "[a]lcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job." Directive ¶ E2.A7.1.2.2. Although Applicant's nonjudicial punishment was for conduct that occurred while he was sleepwalking, there is nothing showing whether he was ashore or at sea or whether it occurred when he should have been working. He testified he only drank off-duty. I conclude DC 2 is not established.

A disqualifying condition (DC 3) may arise from a diagnosis of alcohol abuse or alcohol dependence by "a credentialed medical professional." Directive ¶ E2.A7.1.2.3. Applicant's record of treatment in the Navy rehabilitation program reflects a diagnosis of alcohol dependence. He testified his evaluation was by a Navy psychologist. I conclude DC 3 is established.

"Habitual or binge consumption of alcohol to the point of impaired judgment" is a disqualifying condition (DC 5). Directive ¶ E2.A7.1.2.5. Applicant admitted his early drinking ranged from two beers to a case of beer at a time. He had consumed about 18 beers on the night he was arrested for DUI. He had consumed about 12 beers before the domestic violence in September 2002. "Binge drinking" is "the consumption of five or more drinks in a row on at least one occasion."⁽²⁴⁾ I conclude DC 5 is established.

Security concerns under this guideline may be mitigated by evidence that "[t]he problem occurred a number of years ago and there is no indication of a recent problem" (MC 1). Directive ¶ E2.A7.1.3.1. There are no "bright line" rules for determining when conduct is "recent." The determination must be based "on a careful evaluation of the totality of the record within the parameters set by the directive." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." *Id.* Applicant's last alcohol-related incident was almost four years ago. He has not consumed alcohol since that date. He obtained personal and marital counseling after being discharged from the Navy. He changed his focus from off-duty carousing to quality time with his family and newborn son. I conclude MC 1 is established.

"Positive changes in behavior supportive of sobriety" also are a mitigating condition (MC 2). Directive ¶ E2.A7.1.3.2. For the reasons set out above under MC 1, I conclude MC 2 also is established.

Finally, a mitigating condition (MC 4) may be established if, "[f]ollowing 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." This mitigating condition is only partially established in this case. Applicant successfully completed an inpatient rehabilitation program before being discharged from the Navy, but he completed only 14 of the recommended 24 group counseling sessions, because he was discharged before he could complete them. However, after being discharged, he obtained individual and marital counseling and attended anger management classes for about three months. He attended AA meetings three or four times a week until November 2005, when he stopped to spend more time with his family. He has not received a favorable diagnosis from a credentialed medical professional or licensed clinical social worker. His father has professional credentials but does not meet the requirement of MC 4. Although MC 4 is not fully established, Applicant has taken many steps to strengthen his marriage and maintain his sobriety. He has established a personal support structure with his father and spouse, both of whom are also recovering alcoholics.

Under the general adjudicative guidelines, I have also considered that the marital stress that provoked Applicant's last alcohol-related misconduct is no longer present. Directive ¶ E2.2.1.2 (circumstances surrounding the conduct). Applicant is older, more mature, and has greater family responsibilities than he had in the Navy. Directive ¶ E2.2.1.4 (age and maturity). He recognizes his vulnerability and the devastating consequences of reverting to his former lifestyle. He has taken significant steps to provide himself a support structure. Directive ¶ E2.2.1.6 (rehabilitation and behavioral changes). His family and supervisors are aware of his past problems, thereby removing the "potential for pressure, coercion, exploitation, or duress." Directive ¶ E2.2.1.8.

The consequences of Applicant's alcohol-related misconduct appear to have made a significant impression on him. After the DUI arrest in 1998, he abstained from drinking for more than three years. The domestic violence in September 2002 shocked both Applicant and his spouse into taking positive steps to restore their marriage. Applicant has become a devoted husband and father and a dependable employee. I conclude that the likelihood of a recurrence of his alcohol-related misconduct is low. Directive ¶ E2.2.1.9. After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concern based on alcohol consumption.

FORMAL FINDINGS

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

Paragraph 1. Guideline G (Alcohol Consumption): FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Subparagraph 1.c: For Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: For Applicant

Subparagraph 1.f: For Applicant

Subparagraph 1.g: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

LeRoy F. Foreman

Administrative Judge

1. 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).

2. Government Exhibit (GX) 2 at 2.

3. *Id.*

4. *Id.*; GX 3 at 3.

5. Applicant's Exhibits D, E.

6. Tr. 43.

7. Tr. 60.

8. Applicant's Exhibit (AX) B.

9. Tr. 47; GX 2 at 2-3; GX 3 at 3; GX 4 at 3.

10. Tr. 47-48.

11. Tr. 50.

12. Tr. 41, 52.

13. Tr. 50, 53, 58.

14. Applicant's Exhibit (AX) A.

15. Tr. 77.

16. Tr. 84-85.

17. Tr. 88.

18. Tr. 91.

19. Tr. 98.

20. Tr. 90.

21. Tr. 103.

22. Tr. 109.

23. Tr. 113.

24. U.S. Dept. of Health & Human Services, Substance Abuse and Mental Health Services Administration, *The National Household Survey on Drug Abuse: Binge Drinking Among Underage Persons*, Apr. 11, 2002, available at <http://www.oas.samhsa.gov>.