

DATE: December 29, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-08340

DECISION OF ADMINISTRATIVE JUDGE

THOMAS M. CREAN

APPEARANCES

FOR GOVERNMENT

Caroline H. Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 46 years old and has worked as a machinist for a defense contractor for over 23 years. He held a security clearance for most of this time. In those 23 years, he had six driving while intoxicated offenses, one drunk in public offense, and one leaving the scene of an accident offense where he had been drinking alcohol before the accident. He attended and completed three alcohol treatment programs and was diagnosed as a problem drinker and alcohol dependent. He drank alcohol after each of the treatments and diagnosis. The last alcohol-related incident was in January 2004. He regularly attends Alcoholics Anonymous. He did not include all of his alcohol-related criminal conduct on his security clearance application. He has not mitigate security concerns for alcohol consumption, criminal conduct, or personal conduct. Clearance is denied.

STATEMENT OF THE CASE

On January 19, 2006, the Defense Office of Hearing and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive). Applicant acknowledged receipt of the SOR on January 25, 2006. The SOR alleges security concerns under Guideline E (Personal Conduct), Guideline G (Alcohol Consumption), and Guideline J (Criminal Conduct) of the Directive.

Applicant answered the SOR in writing on March 16, 2006. He did not address the allegations under either Guideline E or Guideline J. He admitted all but one of the allegations under Guideline G. He provided an explanation as noted below. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on October 11, 1006. Applicant received a complete file of relevant material (FORM) on October 13, 2006, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. He submitted a timely response, received on

November 22, 2006, and Department Counsel had no objection to consideration of the material. The case was assigned to me on December 1, 2006.

FINDINGS OF FACT

After a thorough review of the pleadings, exhibits, and information provided by Applicant in response to the FORM, I make the following essential findings of fact.

Applicant is 46-years-old and worked as a machinist for a defense contractor for 23 years. He served in and was honorably discharged from the United States Air Force. He was divorced in 1997, and had two children from this marriage. He remarried in 2001, to a woman who is also a recovering alcoholic, and has two children from this marriage. He held a security clearance since at least 1992, and submitted a security clearance application for renewal of his clearance on March 9, 2004. [\(1\)](#)

Applicant was charged with driving while intoxicated and reckless driving on March 30, 1980. The reckless driving charge was reduced to improper driving, and Applicant was sentenced to a fine of \$50. The driving while intoxicated offense was dismissed by payment of court costs and completion of an alcohol safety action program. After this offense, Appellant admits he received Level III alcohol related treatment from May 30, 1980 to April 22, 1981, and was diagnosed as a problem drinker. [\(2\)](#)

Applicant was arrested and charged with driving while intoxicated and reckless driving on November 24, 1983. He was found guilty of the driving while intoxicated offense. He was sentenced to a fine, a suspended jail sentence, his license was restricted for six months, and ordered to complete an alcohol safety action program. Applicant attended Level III alcohol related treatment from February 24, 1984, to October 8, 1984, and again was diagnosed as a problem drinker. [\(3\)](#)

Applicant admits, and court records confirm, he was arrested and charged with driving under the influence and reckless driving on August 15, 1988. He was found guilty of driving while intoxicated, was sentenced to a fine, revocation of his drivers license (suspended), and ordered to attend an in-patient alcohol treatment program. Applicant attended the in-patient treatment program from August 21, 1988 to September 21, 1988. He continued out-patient treatment for an additional 12 weeks. He was diagnosed as alcohol dependent by a medical doctor. [\(4\)](#)

Applicant admits, and court records confirm, he was arrested and charged with leaving the scene of an accident and reckless driving on May 23, 1990. He had consumed alcohol before the incident. He was found guilty of one charge of reckless driving. He was sentenced to a fine, his license was suspended, and he was ordered to traffic school. [\(5\)](#)

Applicant admits, and court records confirm, he was arrested and charged with driving while intoxicated (first offense), reckless driving, and failure to stop at the scene of an accident on June 19, 1998. He was found guilty of the driving while intoxicated offense, and sentenced to a suspended jail time, to pay a fine and court costs, and his license was suspended. [\(6\)](#)

Applicant admits and court records confirm, he was arrested and charged with driving while intoxicated on September 4, 1998 (second offense within five years). He was convicted of improper driving and sentenced to a fine and court costs. [\(7\)](#)

Applicant admits, and court records confirm, Applicant was arrested on August 9, 2000, and found guilty on September 7, 2000, of public drunkenness. He was fined. [\(8\)](#)

Applicant admits, and court records confirm, he was arrested and charged with driving while intoxicated on January 9, 2004. He was found guilty and sentenced to a fine, his license was restricted, and he was ordered to attend an alcohol safety program. [\(9\)](#)

Appellant answered "yes" on his March 9, 2004, security clearance application and listed his 1998 driving while intoxicated conviction in response to question 24 which asked if he had ever been charged with or convicted of and

offense involving alcohol or drugs. He did not list the other alcohol-related convictions noted above. [\(10\)](#)

In response to the SOR, Applicant stated:

"I . . . admit that I am guilty of all charges.

I am a greatfully (sic) recovering alcoholic who now lives one day at a time. I cannot change the past but only look to the future! These many incidents of the past twenty years or so are facts, I cannot deny! I do deny that I deliberately failed to list charges 2B, 2D, 2F, 2J, 2H, as listed on the statement of reasons. I truthfully did not remember these and could not find them on DMV or criminal records for dates and dispositions. I did not list charge 2L." [\(11\)](#)

In response to interrogatories from DOHA, Applicant noted he struggles with the disease of alcoholism. He has been in counseling and that his last counselor has been very help to him in overcoming his alcoholism. He learned that Alcoholics Anonymous is a good program and to live one day at a time. He has not had a drink of alcohol in two years. He realizes he is an alcoholic. He further notes that he did not list some of the alcohol-related charges because "I did not feel that the government should know about my personal problems." [\(12\)](#)

Applicant noted in his response to the FORM, that he could not account for his prior driving while intoxicated offenses. He did not considered his driving while intoxicate offenses criminal in nature, particularly the 2004 incident. In that incident, he was involved in an accident not his fault, but was arrested for driving while intoxicated because he had been drinking before the accident. His blood alcohol level when tested was at the legal limit. Since the divorce from his first wife, Applicant has not had access to his records and did not recall all of his alcohol-related incidents. Applicant states he is remorseful for his past actions which were the result of his alcoholism. He understands through his new religious beliefs how he must take responsibility for his actions and guide his own recovery. He is now on the road to recovery and he tries to live his life according to the guidelines of Alcoholic Anonymous. He is patriotic and would not take any actions against the interests of the United States. [\(13\)](#)

POLICIES

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." [\(14\)](#) Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. [\(15\)](#)

The Directive sets out the adjudicative guidelines for making decisions on security clearances. Enclosure 2 of the Directive sets forth adjudicative guidelines for determining eligibility for access to classified information, and it lists the disqualifying conditions and mitigating conditions for each guideline. Each clearance decision must be fair, impartial, and a 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.

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. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. [\(16\)](#) 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 of recurrence. [\(17\)](#)

A person granted access to classified information enters into a special relationship with the government. 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. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. [\(18\)](#) It is merely an indication that 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 present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.⁽¹⁹⁾ Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.⁽²⁰⁾ An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."⁽²¹⁾ The government is under no duty to present evidence to disprove any Adjudicative Guideline mitigating condition, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.⁽²²⁾ "[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."⁽²³⁾ "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security."⁽²⁴⁾

Based upon a consideration of the evidence, I find the following adjudicative guidelines most pertinent to the evaluation of the facts in this case:

Guideline E - 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.

Guideline G - 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 J - A history or pattern of criminal activity creates doubt about a person's judgment, reliability, or trustworthiness.

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

CONCLUSIONS

I carefully considered all of the factors in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

The government raises security concerns under Guideline E (personal conduct) because of Applicant's false or incomplete answers on his security clearance application pertaining to his police record for the use of alcohol. His failure to list all of his alcohol-related arrests and convictions raises 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*). Applicant was arrested and/or convicted for alcohol-related incidents at least eight times, but he only listed one incident on his security clearance application.

The security concern under personal conduct is a deliberate act in providing false information to the government with the intent to deceive. None of the Personal Conduct Mitigating Conditions apply to the factual circumstances of this case. Applicant states in his responses to the SOR and the FORM, that he did not deliberately provide false information because he either did not remember the offenses or could not locate records concerning the offense. The information supplied by Applicant is inconsistent. He states he did not remember the incidents yet he sought out but could not find either motor vehicle or criminal records concerning the events. Since he sought the records, he must have known he had alcohol-related incidents. He also stated he did not believe the government should know about his personal problems, a further indication he knew of the events and deliberately did not list them on the form. Applicant failed to provide sufficient information that he did not intentionally provide false information. I find that he failed to mitigate the security concern raised by his personal conduct.

The government raises security concerns for Guideline G (Alcohol Consumption) based on the six driving while

intoxicated arrest and/or convictions, a drunk in public conviction, and a leaving the scene of an accident after he had been drinking alcohol. Applicant's admission to these alcohol-related incidents raises Alcohol Consumption Disqualifying Conditions (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*). Driving while intoxicated is one of the examples used for an alcohol-related incident away from work. He was arrested and/or convicted six times over a 24-year period for driving while intoxicated, once for drunk in public, and once for leaving the scene of an accident which happened after he had been drinking alcohol. Applicant did not respond to the allegation that at times he consumed alcohol to excess and to the point of intoxication from approximately 1977 to at least January 9, 2004. Applicant's first admitted driving while intoxicated arrest was in March 1980, and his last in January 2004. I find from these arrests that Applicant did consume alcohol at various times to the point of intoxication from at least March 1980 to January 2004. These incidents establish the alcohol related incidents away from work.

Applicant admits he participated in three alcohol treatment programs: (1) from May 30, 1980 to April 22, 1981 where he was classified as a problem drinker; (2) from February 24, 1984 to October 8, 1984 again diagnosed as a problem drinker; and (3) August 21, 1988 to September 21, 1988 as an inpatient and for 12 weeks of follow-up out-patient care. This time he was diagnosed as alcohol dependent. Applicant's participation in these programs raises 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*). Applicant's continued arrests and/or convicted of alcohol-related incidents after the diagnosis and completion of the related rehabilitation programs raises AC DC E2.A7.1.2.6 (*consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional, and following completion of an alcohol rehabilitation program*).

Applicant raised, in his response to the SOR and FORM, Alcohol Consumption Mitigating Conditions (MC) E2.A7.1.3.1 (*the alcohol related incidents do not indicate a pattern*); MC E2.A7.1.3.2 (*the problem occurred a number of years ago and there is no indication of a recent problem*); and MC E2.A7.1.3.3 (*positive changes in behavior supportive of sobriety*). Applicant admits he has an alcohol problem. The record indicates a repeated scenario of driving while intoxicated, attending and completing alcohol-related rehabilitation programs, then returning to alcohol-related incidents. This establishes a pattern of alcohol-related incidents. The latest incident was in January 2004, which is recent. Applicant contends he has not drunk alcohol since the January 2004 incident, and there is no information to determine otherwise. Applicant's second wife, also a recovering alcoholic, supports his sobriety. He attends Alcoholic Anonymous regularly, and his religious beliefs help him understand and deal with his alcohol problems. However, based on his extensive record of alcohol-related incidents, almost three years of no alcohol-related incidents is insufficient time to indicate positive changes in behavior supportive of sobriety. In the past, Applicant drank alcohol and then engaged in conduct that demonstrated questionable judgment, trustworthiness, and reliability. He is sober for a time and relapses to alcohol-related conduct. Applicant has not established sufficient positive changes supportive of sobriety. Applicant has not met his burden to mitigate the security concerns for alcohol consumption.

Applicant's convictions for eight alcohol-related criminal offenses and his deliberate action to provide false information on his security clearance application in violation of 18 United States Code § 1001 are criminal conduct and raise Criminal Conduct Disqualifying Conditions (CC DC) E2.A10.1.2.1 (*Allegations or admissions of criminal conduct, regardless of whether the person was formally charged*), and CC DC E2.A10.1.2.2 (*a single serious crime or multiple lesser offenses*). All of the Criminal Conduct Mitigating Conditions (CC MC), especially CC MC Ea.A10.1.3.1 (*the criminal behavior was not recent*), CC MC E2.A10.1.3.2 (*the crime was an isolated incident*), and CC MC E2.A10.1.3.6 (*there is clear evidence of successful rehabilitation*), have been considered, but do not apply. The latest crime was a 2004 driving while intoxicated offense and is recent. There are numerous alcohol-related incidents over 24 years and Applicant provided false information about them. The incidents are similar and connected so they are not isolated. While Applicant is sober and attempting to remain sober, there is no clear sign he has been successfully rehabilitated. Applicant has failed to mitigate the security concerns for criminal conduct.

The determination of Applicant's security worthiness requires a very careful and full analysis of his conduct under the "whole person" concept. The adjudication of security worthiness is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. The whole person examination is a weighing of a number of variables. All available, reliable information about the person past and present, favorable and unfavorable, should be considered in reaching an overall common sense determination based on the careful

consideration of: (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 or 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*. I considered Applicant's admission he is an alcoholic and his good intentions to remain alcohol free. I considered his commitment to Alcoholics Anonymous and his religious beliefs which provides him support to overcome his alcohol problems. I also considered his significant relapse alcohol problems over the years which indicates he has not yet resolved his alcohol dependence. The allegations in the SOR, taken together with a consideration of the "whole person," indicate a trustworthiness, reliability and judgment problem. Applicant admits alcohol abuse is a problem for him. After drinking alcohol, he drove while under the influence on numerous occasions. This is criminal conduct. It shows unreliability, questionable judgment, and untrustworthiness. He has not mitigated the alcohol consumption or criminal conduct security concerns. He provided false information on his security clearance application again showing unreliability, questionable judgment, untrustworthiness, and criminal conduct security concern. His past history of exercising poor judgment after drinking alcohol and providing false information about his alcohol-related incidents raises a concern that he may engage in conduct that does not safeguard classified information. Applicant's conduct indicates he is a security risk. I conclude he is not eligible for access to classified information.

FORMAL FINDINGS

Formal findings for or against Applicant on the allegations et forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive are;

Paragraph 1, Guideline E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Paragraph 2, Guideline G: AGAINST APPLICANT

Subparagraphs 2.a. thru 2.l.: Against Applicant

Paragraph 3, Guideline J: AGAINST APPLICANT

Subparagraphs 3.a. and 3.b.: Against Applicant

DECISION

In light of all of the circumstances in 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.

Thomas M. Crean

Administrative Judge

1. Item 5.

2. Item 4.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* at 3.

7. *Id.* at 3 and 6.

8. *Id.* at 6.

9. *Id.* at 3.

10. Item 5, at 6.

11. Item 4, at 5.

12. Item 6, at 6.

13. Response to FORM, dated November 21, 2006.

14. *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

15. Directive ¶ E2.2.1.

16. *Id.*

17. Directive ¶¶ E2.2.1.1 through E2.2.1.9.

18. *See* Exec. Or. 10865 § 7.

19. Directive ¶ E3.1.14.

20. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

21. ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

22. ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

23. ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting ISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

24. *Egan*, 484 U.S. at 531; *see* Directive ¶ E2.2.2.