

DATE: June 19, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 05-07440

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Candace L. Le'i, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 38-year-employee consumed alcohol and drove a car perhaps once a month from age 17 to age 37. He was arrested and convicted of Driving Under the Influence of Alcohol in June 2004, and is still on probation. He continued to consume alcohol until at least April 2005, when he entered a treatment program. Colleagues speak highly of him, but not enough time has passed to demonstrate rehabilitation. Mitigation has not been adequately established. Clearance is denied.

STATEMENT OF THE CASE

On November 23, 2005, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons why DOHA could not make the preliminary affirmative finding required under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and determine whether a clearance should be granted, denied or revoked.

On December 27, 2005, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on January 30, 2006. A Notice of Hearing was issued on February 16, 2006, setting the hearing for March 20, 2006. At the hearing, Department Counsel introduced four (4) exhibits (Government's Exhibits (GX) 1 - 4. Applicant testified, called three other witnesses and introduced four exhibits (Applicant's Exhibits (AX) A -AX D. Applicant also submitted a timely post hearing exhibit (AX E), to which Department Counsel objected to my giving any substantial "weight." The hearing transcript was received at DOHA on March 23, 2006.

FINDINGS OF FACT

Applicant is a 33-year-old employee of a defense contractor. The November 23, 2005 SOR contains three allegations

under Guideline G (Alcohol). Applicant does not specifically admit allegations 1.a. and 1.b., so they are deemed to be denials. He does admit allegation 1.c., which is accepted and incorporated herein as a Finding of Fact.

After considering the totality of the evidence, I make the following additional FINDINGS OF FACT as to the status of each SOR allegation.

Guideline G (Alcohol)

1.a. - Applicant was arrested on June 17, 2004, and charged with Driving Under the Influence (DUI). He had consumed at least ten beers. (Tr at 57) His blood Alcohol level was .12% (Tr at 58) He was convicted on December 2, 2004, sentenced to 180 days in jail, suspended for three years, fined \$2,035, ordered to complete two days of community service, ordered to attend and complete a [three month] First Offenders Program, and had his license restricted for 90 days. Note: Applicant admits the bulk of this allegation, denying only that he was sentenced to any jail time. (Response to SOR) However, in GX 3, last page, it states that he was "sentenced to 180days in jail" (Tr at 53), which I find to be a fact. In any case, this point is academic, since it has not played any part in my evaluation and decision.

As of the hearing date, Applicant was still on probation. He is still making payments on his fine (amount owing is down to \$500). (Tr at 54)

1.b. - Notwithstanding 1.a., above, Applicant continued to consume alcohol to the point of intoxication until at least April 24, 2005. Applicant denied this allegation in his Response to the SOR, and added that "after my DUI arrest, I limited my alcohol consumption immediately. I do not feel that I was ever to the point of intoxication after my arrest. This mistake [DUI] was very costly to me in many ways. I knew that being on probation, that I could be subject to a BAC [Blood Alcohol Content] exam at any time."

1.c. - Applicant attended alcohol treatment and/or counseling from about April 26, 2005 to about May 1, 2005. He claimed no consumption of alcohol since the day before beginning the program. (Response to SOR)

Applicant has received three highly positive letters of recommendation from military and civilian colleagues and friends. (AX A, AX C, and AX D) He also submitted a Certificate of Completion (dated November 16, 2005) of an 80-hour technical class. (AX B).

POLICIES

Each adjudicative decision must look at an applicant under the Directive's "whole person" concept, and also include an assessment of nine generic factors relevant to the conduct, to include (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, including knowing 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 (Directive, E.2.2.1., on page 16 of Enclosure 2). [\(1\)](#)

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons.

If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended, at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security" and against the granting of a security clearance.

CONCLUSIONS

Applicant is 38 years old. He began consuming alcohol as a teenager and has continued up to 2005. When he drank, he frequently drank to excess. Applicant agreed that the June 2004 arrest and conviction was not the only time he had consumed alcohol and drove a car. In fact, he did so "at least once a month" from age 21 to age 37; i.e., last year (Tr at 71). He was able to arrange his drinking so that it was not noticed (as far as the record shows) at work and, until 2004, did not bring him into contact with the police. His discussion of his family situation in regards to alcohol consumption suggests that it was just luck that there were not more problems/incidents during his life in which his alcohol use caused problems.

Applicant's program manager is a Navy Master Chief. He has supervised Applicant since 2003. (Tr at 29) He views Applicant's conduct as always "professional" and efficient in working with individuals from sensitive military units. There have been no complaints about Applicant's work or demeanor. (Tr at 24) The witness saw Applicant consume alcohol before his alcohol program, but not since that time, either on the job or in social settings. (Tr at 27 - 29)

A second witness has known Applicant for about ten years, as a friend and colleague. In the ten or so months prior to the hearing, Applicant has appeared to be "totally dry." (Tr at 33) Prior to that time, he did see Applicant consume alcohol on a social basis, away from work. (Tr at 34)

A third witness has known Applicant for about two years. He saw Applicant consume alcohol in the past, but not in the last 10 months. (Tr at 36, 39, 40, 41). The witness accompanied Applicant when he entered the rehabilitation program and has been impressed with Applicant's demeanor since he completed the course. (Tr at 37)

In 2005, Applicant entered a five-day "detox program" consisting of perhaps two or three individual sessions and ten group sessions. (Tr at 63) He attended one "AA" meeting while in therapy, but has not done so since that time, and has not completed the "12-step" part of the "AA program. He does not think he needs to attend such meetings (Tr at 65) When he left the program, he was advised to obtain an evaluation, and did so from a doctor's office. The recommendation was to attend an "AA or some type of program" (Tr at 66) and to abstain from alcohol. (Tr at 67) Applicant is not currently receiving any alcohol counseling or treatment except speaking with his sister (Tr at 47). Applicant keeps himself busy. (Tr at 68)

Applicant was "enlightened" by what he learned during rehabilitation (Tr at 44), including the "bad judgment" that alcohol abuse produces. (Tr at 45) As a result, it is his intention "not [to] drink anymore." (Id.) Applicant acknowledges the history of alcohol abuse in his family; e.g., his sister who has now been sober for about eight years. When he continued to drink after his DUI, his talks with her enabled him to make the decision to stop altogether. She acts as an informal but always available "sponsor" and more. They still speak about twice a week (Tr at 45 - 49). During the treatment, he used Antabuse for more than two months, and now has no desire to consume alcohol again. (Tr at 50) In the past, he has never really "tried to stop consuming alcohol" altogether. (Tr at 68)

I have carefully considered the post hearing letter from Dr. D (AX E). Although it makes a positive statement in its four lines, which appears to be based primarily on what Applicant told the writer, it does not cite the basis for the evaluation and conclusions. Accepting Applicant's sincerity, his promises of future action remain just that, promises. I have given considerable weight to the views of his colleagues and friends, taking into consideration a lack of evidence that Applicant had told them about the extent of his involvement with alcohol. Considering the length and extent of Applicant's use and abuse of alcohol, as shown by the objective record, the most that can be deduced from Applicant's evidence is that he is sincerely seeking to break his old drinking patterns.

Although Applicant has shown that he is presently on the right path, the overall record does not show that Applicant has followed through with his efforts long enough to allow a conclusion that he is not simply acting under the pressure of his continuing probation and the current security clearance adjudication. Considering that the arrest was in June 2004, I

conclude that he needs more time without a relapse to adequately demonstrate rehabilitation to the degree that he may safely be relied upon not to relapse into his old drinking habits.

GUIDELINE G - The Concern: 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.

Disqualifying Conditions (DC) 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; 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; 5. Habitual or binge consumption of alcohol to the point of impaired judgment; and 6. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program

Mitigating Conditions (MC) None that are established by the record; e.g., 1. The alcohol related incidents *do* indicate a pattern; 2. The problems have continued until relatively recently; and 3. There are positive changes in behavior supportive of sobriety, but still too recently to overcome the impact of his extensive past record;

What Applicant has done to date is certainly a positive step, but it is, as yet, insufficient to show that Applicant currently possesses the judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

In the year that must pass after this decision becomes final, at which time Applicant can reapply for a clearance, he will have the opportunity to continue his move toward rehabilitation, and place his alcohol-related problems securely in his past.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline G (Alcohol) Against the Applicant

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the 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.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. I have considered all nine factors, individually and collectively, and conclude that they point toward a determination adverse to Applicant. .