

DATE: December 28, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 05-12508

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

John B. Glendon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 55 years old and has worked for a federal contractor for approximately 36 years. He had three alcohol-related incidents from 1980 to 1998. He is an alcoholic and voluntarily discontinued his treatment in May 2006, and resumed drinking. Resolving his alcohol problem is taking a "back burner" to being the property manager for rental property he owns. Applicant failed to mitigate the security concerns regarding Guideline G, alcohol consumption. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. On June 30, 2006, under the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR), detailing the basis for its decision-security concerns raised under Guideline G, (alcohol consumption) of the Directive. Applicant answered the SOR in writing on July 31, 2006, and elected to have a hearing before an administrative judge. In his answer, Applicant admitted all of the allegations under Guideline G. The case was assigned to me on October 12, 2006. A notice of hearing was issued on October 27, 2006, scheduling the hearing for November 15, 2006. I conducted the hearing as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance. The Government offered five exhibits for admission in the record and were marked as Government Exhibits (GE) 1-5. The exhibits were admitted into evidence without objection. Applicant testified on his own behalf and offered no other evidence. DOHA received the hearing transcript (Tr.) on November 29, 2006.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 55 years old and has worked for the same federal contractor since approximately 1970. He is a electronics

technician group leader. He served in the Air Force for four years, prior to joining the civilian workforce, and was honorably discharged. He is married and has one grown son.

In about December 1980, Applicant was charged with operating a vehicle under the influence of liquor. He was later found guilty, received a fine and his license was suspended for 90 days. He was ordered to attend an alcohol information program as a requirement to get his license reinstated, which he did. In 1982, he was arrested and charged with operating a vehicle under the influence of alcohol. He was found guilty and required to stay out of the state where the offense was committed. On December 4, 1998, Applicant was drinking, drove his car and was involved in an accident with another vehicle. Applicant was charged and convicted of operating a vehicle under the influence of liquor. He was fined and placed on probation for one year. He was required to attend an alcohol education program, which he completed.

Applicant has attended two alcohol education programs. He also received alcohol treatment after his 1998 arrest when he realized he needed help. He admitted himself to the program because he knew he was drinking more alcohol than he could handle.⁽³⁾ He attended the inpatient program for 6 days, which was the number of days his insurance company would pay for. Upon his release he attended Alcohol Anonymous meetings, but stated drinking again.⁽⁴⁾ His supervisor later requested that he resume treatment, which he did and again was part of an inpatient program.⁽⁵⁾ Applicant resumed drinking after this treatment because, as he stated, he did not make a strong enough commitment to stop drinking. He believed he could have a couple of drinks, but would fall into the same pattern of drinking too much alcohol.⁽⁶⁾ In May 2003, he was being treated for his alcohol problem on a weekly basis by a psychologist and was diagnosed with alcoholism.⁽⁷⁾

Applicant owns rental apartments and does all the repairs on the property. In May 2006, he ceased treatment with his doctor because his schedule was too hectic with maintaining the property, and he would spend his nights and weekends working on the property. He had been reducing his alcohol intake while being treated by his doctor, but to avoid stress he is now drinking 6 beers a night and a martini.⁽⁸⁾ The night before his hearing, Applicant was having anxiety. He took some prescribed medication, but he felt it was not enough. He feels alcohol "does a better job."⁽⁹⁾ So he had three beers and a martini. Applicant drinks due to stress. He is concerned about his drinking and what it is doing to his health and would like to see his new grandson.

Applicant does not believe alcohol impaired his judgment at work, but does believe his judgment was not good when he decided on occasion to take the first drink while sitting in his car in the parking lot before going to work.⁽¹⁰⁾ He admits to having a "nip" before work and that alcohol was smelled on his breath and that was why his supervisor told him to get help. Applicant stated that at first his coworkers covered for him, but later they were concerned about him because they could smell alcohol on his breath. There was no indication that he was not doing his job properly.

Applicant stated he felt guilty about his alcohol drinking when he was consuming it 20 hours a day.⁽¹¹⁾ His wife is concerned about his drinking and has been telling him for the past 30 years that he drinks too much.⁽¹²⁾ Alcoholism runs in his family. He has no reason to doubt the doctor's diagnosis that he is an alcoholic. Due to his obligation to maintain repairs to his rental property, he feels he must put his alcohol problem on a back burner.⁽¹³⁾ He stated that as soon as he gets rid of the rental property he will get back into treatment. He believes he is an alcoholic, but only drinks at home now. He has not made a commitment to abstain from alcohol use.⁽¹⁴⁾

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of

the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁵⁾ The government has the burden of proving controverted facts.⁽¹⁶⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁷⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽¹⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁹⁾

No one has a right to a security clearance⁽²⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²¹⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²²⁾ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.⁽²³⁾ 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.

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

Guideline G-Alcohol Consumption-a security risk may exist because 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.

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

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline G.

Based on all the evidence I considered all the disqualifying conditions and especially considered 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 conclude it applies. Applicant had three alcohol related incidents, from December 1980 to December 1998. I also considered 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*) and find that although Applicant admitted to drinking before work there is no evidence he was drinking on the job or impaired, and the Government did not alleged such. In addition, I considered Applicant was diagnosed for alcoholism by a psychologist, but no evidence was provided to indicate that the psychologist was a clinical psychologist. Therefore, 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*), does not apply.

I have considered all the mitigating conditions and especially considered Alcohol Consumption Mitigating Condition (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*), and AC MC E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*). Applicant had three alcohol related incidents. He admits he is an alcoholic and has been in treatment. He deals with stress by consuming alcohol. He continues to drink, knows it is a problem, but has placed his responsibility for his rental property above his health and his alcoholism. His alcohol problem is ongoing and although he made some attempts in the past to get his alcohol problem under control he readily admits he has too

many other things to take care of first. He stopped treatment because he did not have the time and has slipped back into a regular pattern of drinking heavily. He has not made positive changes in his behavior and his attitude to deal with his alcohol problem later is a serious security concern. I find none of the mitigating conditions apply.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

The Whole Person Analysis

I considered the whole person. I considered that Applicant has loyally worked for a federal contractor for over 30 years and did not have any on the job incidents. He was very candid and honest in his testimony and has sought treatment in the past. I also considered Applicant is not committed at this time to controlling his alcoholism. He voluntarily stopped his treatment and has resumed drinking regularly. He does not grasp the gravity of his illness and has not prioritized it. I find Applicant failed to mitigate the security concerns regarding Guideline G, alcohol consumption. Therefore, I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline G is decided against 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: 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

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Carol G. Ricciardello

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960) as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.
3. Tr. 34.
4. Tr. 36.

5. Tr.35
6. Tr. 37.
7. Tr. 44.
8. Tr. 17.
9. Tr. 41.
10. Tr. 42.
11. Tr. 44.
12. *Id.*
13. Tr. 48-49.
14. Tr. 51.
15. ISCR Case No. 96-0277 at 2 (App. Bd. Jul 11, 1997).
16. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
17. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
18. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
19. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
20. *Egan*, 484 U.S. at 531.
21. *Id.*
22. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
23. Executive Order 10865 § 7.