

DATE: December 29, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-02573

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Security concerns persist over Applicant's alcohol issues and personal conduct. While he has finally decided to abstain from alcohol, he delayed making that decision until after he had a serious medical diagnosis in June 2006. He has a diagnosis of alcohol abuse, and he has not met the mitigation guideline as he has no favorable prognosis nor twelve months of abstinence. He failed to disclose the full extent of his alcohol issues and treatment on his 2004 security form. While he has two misdemeanor arrests in 1998 and 2001, he has no recent incidents in the past five years and has mitigated concerns over his past criminal conduct. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on June 19, 2006. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. ⁽¹⁾ The SOR alleges specific concerns over alcohol consumption (Guideline G), personal conduct (Guideline E), and criminal conduct (Guideline J). Applicant responded to these SOR allegations in an Answer dated July 5, 2006, and requested a decision be made without a hearing. Subsequently the Department Counsel prepared a File of Relevant Material (FORM) on September 25, 2006. The FORM was forwarded to Applicant on September 28, 2006, with instructions to respond and supply information within 30 days of receipt. He received the FORM on October 23, 2006. Applicant did not object to any of the documents offered in evidence by Department Counsel, so all were admitted. In response Applicant submitted a letter dated November 14, 2006. (Exhibit A) Department Counsel did not object to this document so Exhibit A was admitted into evidence. The case was assigned to me on December 20, 2006.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following findings of fact:

Applicant, 55 years old, has been employed by a defense contractor in State #1 as a senior customer trainer since June 1981. He completed a Security Clearance Application (SF-86) which he signed in August 2004. He was previously granted a Secret clearance in May 1994. (Items 3, 5) Applicant studied at a community college from 1978 to 1979. Applicant married in 1971. (Items 3, 5) Applicant served in the military from 1969 to 1978. He has two children, ages 30 and 33. (Item 7)

Alcohol, Personal Conduct, and Criminal Conduct

Applicant's alcohol-related arrests and treatment were detailed in an Office of Personnel Management (OPM) Report of Investigation (ROI)⁽²⁾ based on an interview conducted under oath on November 1, 2005. (Item 4)

- SOR 1.a., 2.b., 3.a. Applicant admitted he was arrested in March 1998, charged with Operating a Motor Vehicle While Intoxicated, pled guilty to a reduced charge of Operating a Motor Vehicle While Impaired (DWAI), and was fined \$500. (Items 2, 4, 6, 7) He admitted he deliberately failed to disclose this arrest on his security form as he had been informed a DWAI conviction was "no worse" than a parking ticket. (Items 2, 4)
- SOR 1.b., 2.a. Applicant admitted he attended alcohol treatment in 1998 for twelve weeks where he watched videos and was told to "watch his drinking." He admitted he deliberately failed to disclose the information on his security form. (Items 2, 4)
- SOR 1.c., 3.a. Applicant admitted he was arrested in January 2001 and charged with Driving While Intoxicated (DWI), was convicted and was given a \$750 fine; his license was revoked. He reported to OPM that after he had seven beers and a double shot of whiskey, he drove and clipped the rear bumper of a truck whose driver contacted police who stopped him. After detecting alcohol on his breath, the office gave him a field sobriety test that led to his arrest. He had a BAC of .22. On his SF-86 he did disclose this DUI and penalty. (Items 2, 4, 6)
- SOR 1.d. Applicant admitted he was evaluated in May 2001 prior to his court date and was diagnosed with 303.9 Alcohol Dependence and recommended to seek treatment. (Items 2, 4, 7)
- SOR 1.e., 2.a. Applicant admitted he attended alcohol abuse treatment in 2001 and was diagnosed with 303.90 Alcohol Dependence; he completed the program. Although the program referred him to Alcoholics Anonymous (AA), he decided after attending two meetings that he did not need their help. He admitted he deliberately failed to disclose this treatment information on his security form. (Items 2, 4, 7, 8)
- SOR 1.f. Applicant admitted he was evaluated in March 2003 to obtain his driver's license, diagnosed with 305.00 Alcohol Abuse, recommended to abstain from alcohol, seek treatment, and attend AA. He was then consuming alcohol on a monthly basis. He declined to follow the recommendations to attend AA or seek treatment. (Items 2, 7, 8)
- SOR 1.g. Applicant admitted he was evaluated in March 2006 for DOHA, diagnosed with 305.00 Alcohol Abuse, and his prognosis was guarded. In February 2006 he had one beer and reported he continued to drink on a monthly basis. In March 2006 he reported that he drank six times per year and has two drinks per session. (Items 2, 7)
- SOR 1.h. Applicant stated to OPM that he drank on a daily basis for 30 years until April 2001. In July 2006 he stated he had not been intoxicated from alcohol in the past five years. However, he continued to drink one to two drinks on a monthly basis. (Items 2, 7, 8) In November 2006 he stated that he stopped drinking after a June diagnosis that he needs a liver/kidney transplant due to Familial Amyloidosis. (Items 4, 8; Exhibit A)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below:

Guideline G - Alcohol Consumption

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.

Guideline E - Personal Conduct

The Concern: 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 information.

Guideline J - Criminal Conduct

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Alcohol Consumption

The Government established security concerns over Applicant's long-standing problem drinking and his alcohol-related arrests in 1998 and 2001. Thus, Applicant's conduct falls within DC 1-(3): Alcohol-related incidents away from work. In addition, Applicant has been assessed and diagnosed-(4), initially in 2001 with Alcohol Dependence. While he sought treatment and completed a program in November 2001, nevertheless, he continued to drink. Subsequently, Applicant was diagnosed in 2003 and again in 2006 with Alcohol Abuse, yet continued to drink until he was diagnosed with a serious medical condition in June 2006 when he contended he stopped drinking.

To his credit after his 2001 arrest and conviction, Applicant complied with treatment after he was diagnosed with an alcohol abuse problem. However, he did not follow the advice to attend AA and continued to drink. When seeking his license, in 2003 he was diagnosed with Alcohol Abuse, but declined treatment. He was again diagnosed in April 2006 with Alcohol Abuse with a guarded prognosis. Thus, Applicant has failed to mitigate the alcohol-related security concerns as he provided insufficient evidence to demonstrate that he falls within mitigating condition (MC) 3-(5) (positive changes in behavior supportive of sobriety).

Further, after a diagnosis of Alcohol Abuse, Applicant must meet a higher standard that he has failed to establish because he did not again seek treatment to demonstrate he has successfully completed inpatient or outpatient rehabilitation along with after-care requirements, participated 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 a licensed clinical social worker who is a staff member of a recognized alcohol treatment program. While Applicant stated he has now changed and decided to abstain from alcohol after a serious medical diagnosis, he has not established twelve months of abstinence nor a favorable prognosis after treatment.

Also, in evaluating the relevance of an individual's conduct, I have considered the following "whole person" factors-(6):

first, it is unlikely that Applicant will continue to drink after he was given a serious medical diagnosis in June 2006 that he needs a liver/kidney transplant due to Familial Amyloidosis. However, I note that he was repeatedly advised in 2001 to attend AA and he chose not to follow that path and continued to drink against medical advice. Again, he was advised in 2003 to seek treatment; but, unaccountably, he did not despite his maturity and past history. Thus, despite his age and maturity, concerns remain over the seriousness of his having continued to abuse alcohol contrary to medical advice and his long delay in confronting these issues.

In sum, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 1.a. through 1.h. under SOR Paragraph 1.

Personal Conduct

Security concerns persist over Applicant's failure to disclose⁽⁷⁾ all of his past alcohol treatment and all of his alcohol offenses on his 2004 SF-86. To his credit, he did disclose substantial adverse information in his SF-86 about a more serious 2001 DUI incident where he was convicted and his license revoked. However, he failed to disclose his treatment that stemmed from the 2001 conviction and his diagnosis of Alcohol Dependence.

While I conclude he had no intent to falsify in his 2004 SF-86 with respect to his omitting the 1998 alcohol-related incident which he considered a minor traffic incident, he did deliberately fail to disclose the required information on his alcohol treatment.⁽⁸⁾ After looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.b., but against him under 2.a. under SOR Paragraph 2.

Criminal Conduct

The government provided evidence to support security concerns⁽⁹⁾ over criminal conduct as Applicant had two misdemeanor arrests and convictions in 1998 and 2001. These arrests and convictions suggest a pattern which might be disqualifying.

To his credit, Applicant took corrective action⁽¹⁰⁾ and completely complied with treatment after his 2001 alcohol-related arrest as detailed in my Findings. Thus, I conclude that under mitigation condition (MC) 1, that the criminal behavior was not recent. Also, since he completed the required treatment program in November 2001, he falls under mitigation condition 6, there is clear evidence of successful rehabilitation with respect to his criminal conduct. There have been no succeeding incidents in the subsequent five years. With respect to the allegations that his omissions on his security form equate to a felony violation under 18 U.S.C. Section 1001, I conclude that there is sufficient evidence of Applicant's intent to falsify to sustain this allegation.

Thus, after looking at the whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant under SOR Paragraph 3 as he mitigated the allegations in SOR subparagraphs 3.a. but not under 3.b.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

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

Subparagraph 1.f.: Against Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Paragraph 2. Guideline E AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: For Applicant

Paragraph 3. Guideline J: AGAINST APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: Against 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 the Applicant. Clearance is denied.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. Applicant did not object to Item 4, the OPM ROI which Department Counsel contended was admissible even though it was an ROI as Applicant chose an administrative determination and thus alleviated that authentication requirement of Paragraph 20 of the Additional Procedural Guidance. Since Applicant did not object to this evidence, I do not have to rule on the soundness of this argument.
3. **E2.A7.1.1.2. Conditions that could raise a security concern and may be disqualifying include:** E2.A7.1.1.2.1. 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.
4. E2.A7.1.1.2.3. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence; E2.A7.1.1.2.4. 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. **E2.A7.1.1.3. Conditions that could mitigate security concerns include:** E2.A7.1.1.3.1. The alcohol related incidents do not indicate a pattern; E2.A7.1.1.3.2. The problem occurred a number of years ago and there is no indication of a recent problem; E2.A7.1.1.3.3. Positive changes in behavior supportive of sobriety; E2.A7.1.1.3.4. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with after-care 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.
6. E.2.2. Adjudication Process: In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors: E.2.21.1. The nature, extent, and seriousness of the conduct;

E2.2.1.2. The circumstances surrounding the conduct, to include knowledgeable participation; E2.2.1.3. The frequency and recency of the conduct; E2.2.1.4. The individual's age and maturity at the time of the conduct;

E2.2.1.5. The voluntariness of the participation; E2.2.1.6. The presence or absence of rehabilitation and other pertinent behavioral changes; E2.2.1.7. The motivation for the conduct; E2.2.1.8. The potential for pressure, coercion, exploitation, or duress; and E2.2.1.9. The likelihood of continuation or recurrence.

7. Conditions that could raise a security concern and may be disqualifying also include: 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.

8. E2.A5.1.3. Conditions that could mitigate security concerns include: E2.A5.1.3.1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; E2.A5.1.3.3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; E2.A5.1.3.4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided; E2.A5.1.3.5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; E2.A5.1.3.6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; E2.A5.1.3.7. Association with persons involved in criminal activities has ceased.

9. E2.A10.1.2. Conditions that could raise a security concern and may be disqualifying include: E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged; E2.A10.1.2 .2. A single serious crime or multiple lesser offenses.

10. E2.A10.1.3. Conditions that could mitigate security concerns include: E2.A10.1.3. 1. The criminal behavior was not recent; E2.A10.1.3. 2. The crime was an isolated incident; E2.A10.1.3.3. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life;

E2.A10.1.3. 4. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur; E2.A10.1.3. 5. Acquittal; E2.A10.1.3. 6. There is clear evidence of successful rehabilitation.