

DATE: September 29, 2006

In re:

SSN: -----

Applicant for Security Clearance

CR Case No. 06-03139

DECISION OF ADMINISTRATIVE JUDGE

MARC E. CURRY

APPEARANCES

FOR GOVERNMENT

Daniel F. Crowley, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

Applicant's seven-year history of periodically excessive alcohol consumption, in conjunction with two alcohol-related arrests that occurred between 2004 and 2005 generates a security concern. Although he testified persuasively about the insight into the potential dangers of alcohol abuse that he acquired from a court-ordered alcohol education program completed in February 2006, it is too soon to conclude, given the recency of the alcohol-related arrests, that his alcohol consumption no longer poses a security concern. Clearance is denied.

STATEMENT OF THE CASE

On March 24, 2006, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating it was unable to find that it was clearly consistent with the national interest to grant or continue a security clearance. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended (Directive). The SOR alleges a security concern under Guideline G for alcohol consumption. Applicant answered the SOR on May 9, 2006, and requested a hearing.

The case was assigned to me on June 15, 2006. I issued a notice of hearing on July 25, 2006, scheduling it for August 8, 2006. The hearing was held as scheduled. During the hearing, I received seven government exhibits, 13 Applicant exhibits, and Applicant's testimony. DOHA received the transcript on August 16, 2006.

FINDINGS OF FACT

Applicant's admissions in his answer to the SOR are incorporated in my findings of fact. In addition, I make the following findings of fact.

Applicant is a 25-year-old single man who graduated from college in 2003 with a degree in political science. He works for his employer as a policy analyst in international security affairs. His employer has entrusted him with a tremendous degree of responsibility for a junior-level employee. His job is demanding and unpredictable, requiring him to handle

multiple tasks associated with coordinating meetings between high-ranking DoD and foreign officials.⁽¹⁾ According to his supervisor, "his professional manner, communication, and interpersonal capabilities convey truthfulness and friendliness, enabling him to quickly establish and sustain effective working relations with peers and superiors alike."⁽²⁾

From 1998 to 2005, Applicant consumed alcohol, at times to the point of intoxication. On the evening of July 25, 2004, he was drinking and socializing with friends in a bar. After consuming two beers and a shot of tequila, he vomited. Two bouncers ordered him to leave, and he refused, prompting them to forcefully remove him from the bar. As they carried Applicant out of the bar, he became belligerent, protesting loudly and struggling with them. During the course of his removal, the bar's glass front door was cracked. Subsequently, the police arrived and arrested Applicant, charging him with trespass, disorderly conduct, and malicious destruction of property. The charges were later nolle prossed.

On the evening of August 6, 2005, the police stopped Applicant after he made a lane change without using his blinker. After failing a roadside sobriety test, he was arrested and charged with Driving Under the Influence of Alcohol (DUI). He had drunk approximately five beers and two shots of liquor in the five hours preceding the arrest. In October 2005, he pled guilty, and was sentenced to 180 days in jail, suspended, fined \$300, and placed on probation for one year. Also, the court suspended his license for 12 months, and ordered him to attend a 10-week, alcohol education course.⁽³⁾

The alcohol education course met once per week for two hours, and included a supplemental Alcoholic's Anonymous (AA) component that Applicant was required to attend twice. He chose to attend five AA sessions instead. By February 2006, Applicant had successfully completed the alcohol education course.⁽⁴⁾

Currently, Applicant drinks in moderation. He sold his car, and relies on public transportation exclusively. As "a central figure in [the] social grouping"⁽⁵⁾ of his friends, he has not succumbed to peer pressure to return to his old habits. Also, he frequently shares his perspective gained from the alcohol education course with his friends, encouraging them to use public transportation if they have been drinking. His probation expires in October 2006.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An administrative judge need not view the adjudicative guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision in Section E2.2., Enclosure 2, of the Directive, are intended to assist the administrative judge in reaching impartial, common sense decisions. 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.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. 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.

The following adjudicative guideline is raised:

Guideline G - Alcohol Consumption: 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 pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns, are set forth and discussed in the conclusions below.

Since the protection of national security is the paramount consideration, the final decision in each case must be reached by applying the standard that the issuance of the clearance is "clearly consistent with the national interest."⁽⁶⁾ In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The government is responsible for presenting witnesses and other evidence to establish facts in the SOR that have been controverted. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by the government, and has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship 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. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Applicant's loyalty is not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

Applicant's history of alcohol-related arrests triggers the applicability of 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 AC DC E2.A7.1.2.5 (*Habitual or binge consumption of alcohol to the point of impaired judgment*). Applicant complied with the terms of probation related to his 2005 DUI conviction. He exceeded the requirement for AA attendance, going to five sessions when only two were required. He testified persuasively about the insight gained into the risk to himself and others posed by irresponsible alcohol consumption. Also, he has restricted his drinking to moderate usage, and does not drive on the occasions he chooses to drink alcohol, opting to use public transportation. Alcohol Consumption Mitigating Condition (AC MC) E2.A7.1.3.3 (*Positive changes in behavior supportive of sobriety*) applies.

Evaluating this case in the context of the whole-person concept, Applicant's alcohol consumption was most frequent during college where heavy drinking was part of the social fabric of his university. This fact has minimal probative value because his most significant alcohol-related conduct, the arrests, occurred after he graduated. Moreover, although Applicant has only been arrested twice for alcohol-related charges, both occurred in the past three years, and the most recent one led to a conviction for which he is still serving probation. Although he appears as focused on preventing future recurrences as he is on his career, not enough time has elapsed to conclude that his alcohol consumption no longer poses a security risk. Applicant has not mitigated the alcohol consumption security concern.

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

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. Clearance is denied.

Marc E. Curry

Administrative Judge

1. Exhibit E, Affidavit of Senior Program Manager from Applicant's place of employment, executed August 2, 2006.
2. Exhibit D, Affidavit of Supervisor, executed August 2, 2006, at 1.
3. Tr. at 46; Sentencing Order, dated October 6, 2005, as listed in Exhibit 5, Miscellaneous Court Records.
4. Exhibit 6, Probation Status Report, executed February 6, 2006.
5. Exhibit B, Affidavit of a Friend and Coworker, executed August 2, 2006.
6. *See* Directive, Sec. 2.3, Sec. 2.5.3, Sec. 3.2, and Sec. 4.2.