

DATE: December 29, 2006

In re:

SSN: -----

Applicant for ADP I/II/III Position

P Case No. 06-12901

DECISION OF ADMINISTRATIVE JUDGE

SHARI DAM

APPEARANCES

FOR GOVERNMENT

Julie R. Edmunds, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 22 years old and works for a company that administers government health care benefits. From approximately 2000 until 2005, he consumed alcohol on numerous occasions to the point of intoxication and smoked marijuana, resulting in ten arrests for related criminal behavior. He participated in two substance abuse programs and was diagnosed as alcohol dependent and for cannabis abuse. He mitigated the trustworthiness concerns raised by his alcohol consumption, drug involvement and criminal conduct. His eligibility for assignment to a sensitive position is granted.

STATEMENT OF THE CASE

On November 11, 2004, Applicant submitted a public trust position questionnaire (SF-85P). The Defense Office of Hearings and Appeals (DOHA) declined to grant an ADP I/II/III position for Applicant. As required by Department of Defense Regulation 5200.2-R, (Jan. 1987), as amended (Regulation), and Department of Defense Directive 5220.6, ¶ E3.1.2 (Jan. 2, 1992), as amended (Directive), DOHA issued a Statement of Reasons (SOR) on August 17, 2006, detailing the basis for its decision-trustworthiness concerns under Guideline G (alcohol consumption), Guideline J (criminal conduct) and Guideline H (drug involvement) of the Directive.

In a sworn statement, dated September 5, 2006, Applicant responded to the SOR allegations and requested a hearing. On October 16, 2006, this case was assigned to me. A Notice of Hearing was issued on November 9, 2006, setting the case for hearing on November 29, 2006. At the hearing Department Counsel introduced Government Exhibits (GX) 1-5 into evidence without objections. Applicant testified in his case-in-chief and called one witness. The record was left open until December 15, 2006, to give Applicant time to submit additional information. On December 12, 2006, I received additional documents that I marked Applicant Exhibits (AX) A-G and admitted into evidence without objections. DOHA received the hearing transcript (Tr.) on December 8, 2006.

PROCEDURAL ISSUES

Prior to the commencement of the hearing Department Counsel filed a Motion to Amend the SOR as follows:

Delete the language "paragraph 3-614, Department of Defense Regulation 5200.2-R and" from the first paragraph of the SOR. Applicant did not object to the Motion and I granted it.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR and at the hearing, I make the following additional findings of fact:

Applicant is 22 years old. After high school he completed two semesters of college. Since November 2004, he has worked as a claims processor for a company that administers a government health insurance plan. (Tr. 13) He and his girlfriend have a five-month-old daughter. He participates in the care and support of the child. (Tr. 27)

Applicant admitted his criminal history started in high school in 1998 when he was 14 years old and was charged with making Annoying Phone Calls to a classmate. He subsequently began consuming alcohol and marijuana, which lead to ten separate arrests for related criminal conduct. In July 2000, he was arrested and charged with "Violate Absolute Sobriety" after he and his friends consumed alcohol and were stopped for speeding. He pled No Contest to the misdemeanor, was fined \$113, and ordered to undergo an alcohol assessment. His driver's license was suspended for three months. He was 16 years old. (Tr. 14-15) In May 2002, he was arrested and charged with Underage Drinking and Possession of Marijuana after being stopped by the police who found liquor in the car. He was found guilty and fined. (Tr.16). In July 2002, he was arrested and charged with Underage Drinking and Possession of Alcohol. He was found guilty and fined \$286. In August 2002, he was arrested and charged with Underage Drinking along with some friends at a campground. He pled No Contest and was fined \$349. A month later he was charged with Disorderly Conduct and Underage Drinking. He and his friends were arrested after being involved in a physical altercation. He was fined a total of \$324 on both charges. He was 18 years old at the time of those arrests in 2002. About a year later, in July 2003, he and his friends were arrested for Underage Drinking at a birthday party. He was found guilty and paid a \$102 fine. (Tr. 17)

Pursuant to a court order, Applicant entered an outpatient substance abuse program in October 2003. While in treatment for two months, he participated in classes and individual therapy, and was prohibited from consuming alcohol. He received a diagnosis of Alcohol Abuse and a recommendation to abstain from alcohol consumption while in treatment. (Tr. 19)

In January 2004, one month after leaving treatment, he and his friends left a restaurant without paying their bill. The police were called and he was charged with Theft-Defraud Innkeeper and fined \$305. He had been drinking before the incident. In February 2004, he consumed alcohol and was involved in another physical fight. He was arrested and charged with Underage Alcohol Possession and Disorderly Conduct. He paid a \$452 fine. In April 2004, he was fined \$705 after he pled guilty to Operating Motor Vehicle While Intoxicated, Operating with a Prohibited Blood Alcohol Content (BAC), and Speeding. His BAC was .19. (Tr. 33) He had been drinking to celebrate his 20th birthday when the police stopped him in the early morning. His license was suspended for nine months and another alcohol assessment was recommended. (Tr. 20-21)

Two months later, in August 2004, he consumed alcohol to the point of intoxication and became embroiled in a serious physical altercation. He was stabbed several times, resulting in a period of hospitalization. He subsequently pled guilty to Disorderly Conduct and received a deferred prosecution sentence. He was ordered to perform 50 hours of community service and undergo another alcohol and drug assessment. (Tr. 22-23) He was 20 years old. Applicant believes that the incident altered his life and is the reason he no longer consumes alcohol. While recovering in the hospital, he realized he needed to change his life or he would die. (Tr. 23; 39)

In accordance with his plea agreement, Applicant entered another substance abuse program in May 2005. While in treatment, he participated in eight individual psychotherapy sessions, attended classes and had three consecutive negative urine drug screens. In November 2005, he was discharged with a diagnosis of alcohol dependent and cannabis abuse (both in early full remission). Applicant admitted he used marijuana from 2002 to at least 2003. According to the

Discharge Summary, he continued to use it in 2005, admitting that he used it three times in the early months of treatment, but also "reported two months of abstinence from marijuana at his last individual session." (AX B). The Summary noted that "he appeared internally committed to long term abstinence from alcohol due to the problems alcohol has caused in his life in the past." (*Id.*) It indicated the successful completion of the treatment plan goals and a good prognosis. The program counselor recommended that he "continue his abstinence from alcohol and to follow his harm reduction plan regarding marijuana . . . and continue to increase his sober support system." (AX B)

Applicant began drinking beer on weekends while in high school at the age of 16, and later started using marijuana. (Tr. 28-29) He acknowledged his substance abuse has created significant problems in his life over the course of a few years. However, he firmly believes he has changed since August 2004. He stated "I've changed my life a lot since then. Got a girlfriend now. Just had a baby five months ago. I've been working. I've kept this job and I'm very serious about the job. My life has just changed and I don't have time to go back to my old ways, so I don't even want to try to have a beer here or there, because as I was - learned in treatment, that, I mean, it could be one beer and I could be right back." (Tr. 27) He no longer associates with his previous friends. (Tr. 27) Since leaving treatment, he has not participated in any form of a program supportive of sobriety. (Tr. 25)

Applicant's father thinks the August 2004 assault was a "life changing event" that caught his son's attention. (Tr. 40) He has not seen him drink or smoke since that time and believes his son is a "changed person." (Tr. 42) Applicant and his younger brother live with their parents. (Tr. 44)

Applicant's performance evaluations over the past two years document steady improvement, particularly in the area of attendance. He is meeting the company's expectations. (AX D-G)

Applicant denied the criminal allegation contained in SOR ¶ 2.b and the Government did not produce evidence to support it.

POLICIES

Positions designated as ADP I or ADP II are classified as sensitive positions. Regulation ¶ AP10.2.1. ADP III positions are nonsensitive positions. Regulation AP102.3.1. By memorandum dated November 19, 2004, the Deputy under Secretary of Defense for Counterintelligence and Security directed DOHA to resolve all contractor cases submitted for trustworthiness determinations, including ADP I, II, and III, under the Directive. Thus, even though they are nonsensitive positions, ADP III cases are treated in the same way and adjudicated under the same guidelines and procedures as ADP I and II cases.

"The standard that must be met for . . . assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that . . . assigning the person to sensitive duties is clearly consistent with the interests of national security." Regulation ¶ C6.1.1.1. Appendix 8 of the Regulation sets forth the adjudicative policy, as well as the disqualifying conditions (DC) and mitigating conditions (MC) associated with each guideline. DoD contractor personnel are afforded the adjudication procedures contained in the Directive. Regulation ¶ C8.2.1.

CONCLUSIONS

I considered all of the facts in evidence and the application of the appropriate legal standards, including the "whole person" concept, and concluded the following with respect to the allegations set forth in the SOR:

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 an unauthorized disclosure of classified or sensitive information due to carelessness.

Based on Applicant's admissions and ten arrests related to alcohol consumption and intoxication, the Government established a potential disqualification under Alcohol Consumption Disqualifying Condition (AC DC) 1: *Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other*

incidents related to alcohol use, and AC DC 4: Habitual or binge consumption of alcohol to the point of impaired judgment.

The Government having raised a trustworthiness concern, the burden shifted to Applicant to mitigate or rebut the allegations. After reviewing the mitigating conditions under this guideline, I conclude two apply: (1) Alcohol Consumption Mitigating Condition (AC MC) 2: *The problem occurred a number of years ago and there is no indication of a recent problem.* The last alcohol related incident occurred in August 2004, more than two years ago, and there is no evidence of any since that time. (2) AC MC 3: *Positive changes in behavior supportive of sobriety.* Applicant successfully completed an alcohol treatment program in November 2005. The Discharge Summary documented his continuing commitment to abstaining from the use of alcohol and noted his disease was in "early full remission." His father, with whom Applicant lives, corroborated Applicant's behavioral changes and the absence of alcohol or drugs. He has noticed a significant change in his son since the August 2004 assault and believes he is committed to a new lifestyle.

Guideline J: Criminal Conduct

A trustworthiness concern may exist when a pattern of criminal activity creates doubt about a person's judgment, reliability, and trustworthiness.

The Government raised a potential disqualification under Criminal Conduct Disqualifying Condition (CC DC) 2: *A single serious crime or multiple lesser offenses.* Applicant admitted the eleven arrests and charges set forth in the SOR. After reviewing all mitigating conditions, in particular Criminal Conduct Mitigating Condition (CC MC) 5: *There is clear evidence of successful rehabilitation,* I conclude it applies. The last criminal offense occurred in August 2004, when Applicant was seriously injured after consuming alcohol. His assertion that he has not consumed alcohol since that time is credible given the circumstances underlying his reason for no longer drinking. In addition to his father's testimony, Applicant's performance evaluations verify a steady improvement in his work and attendance, all of which signify rehabilitation.

Guideline H: Drug Involvement

A trustworthiness concern arises when an individual is involved with the improper or illegal use of drugs, raise questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

The Government raised a potential disqualification under Drug Involvement Disqualification Condition 1: *Any drug abuse, which includes marijuana.* Applicant admitted that he used marijuana for a period of time during the time he was consuming. His November 2005 Discharge Summary also confirmed his use of it three times while in the early part of treatment in 2005.

In mitigation of the disqualification, the Discharge Summary also noted that Applicant began abstaining from the use of marijuana during his later phase of his outpatient program (more than a year ago), and that his drug problem was in "full early remission" when he left the program. During the hearing he recognized the improvements in his life since completing treatment, abstaining from drugs, and changing friends. Based on his testimony, his father's observations, and the Discharge Summary, he established some mitigation under Drug Involvement Mitigating Condition (DI MC) 3: *A demonstrated intent not to abuse any drugs in the future.*

Whole Person Analysis

In addition to evaluating the disqualifying and mitigating conditions under each guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. Directive ¶ E.2.2.2. describes the essence of scrutinizing all appropriate variables in a case as the "whole person concept." In evaluating the disqualifying and mitigating conduct of the applicant, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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 the totality of the evidence in view of the "whole person" concept, including Applicant's young age now and at the time of his arrests, his candid testimony about his irresponsible alcohol consumption and marijuana use for approximately five years, and his abstinence from marijuana over the last year and alcohol consumption over the past two years. I gave significant weight to his father's testimony that the 2004-stabbing incident was "life altering" and the last time Applicant consumed alcohol to his knowledge. I also considered the fact that Applicant is not participating in an ongoing program to support sobriety. While it would be prudent for him to do so in view of his former counselor's recommendation, I believe he is fully aware of the consequences that future alcohol or marijuana use will have on his job and potentially his life. His maturity during the last two years and present commitment to a new life provide assurances that similar conduct will not recur in the future. Hence, Applicant mitigated those security concerns raised by his alcohol consumption, drug involvement and criminal conduct. Accordingly, Guidelines G, J and D are concluded for him.

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 as follows:

Paragraph 1: Guideline G (Alcohol Consumption) FOR APPLICANT

Subparagraphs 1.a - 1.k: For Applicant

Paragraph 2: Guideline J (Criminal Conduct) FOR APPLICANT

Subparagraphs 2.a - f: For Applicant

Paragraph 3: Guideline E (Drug Involvement) FOR APPLICANT

Subparagraphs 3.a - 3.c: For Applicant

DECISION

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for assignment to sensitive duties. His application for eligibility is granted.

Shari Dam

Administrative Judge