



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
-----) ISCR Case No. 07-02388
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: *Pro Se*

January 28, 2008

Decision

MOGUL, Martin H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on June 13, 2007. On August 13, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on September 21, 2007, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on November 1, 2007. DOHA issued a notice of hearing on November 8, 2007, and I convened the hearing as scheduled on December 17, 2007. The government offered Exhibits (Ex.) 1 through 9, which were received without objection. Applicant testified on his own behalf and had two other witnesses testify for him. He submitted no exhibits. DOHA received the transcript of the hearing (Tr.) on January 8, 2008. I granted Applicant's request to keep the record open until December

26, 2007, to submit an additional document. On December 18, 2007, he submitted Exhibit A, without objection, and the record closed on that date. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his RSOR, Applicant admitted all of the SOR allegations 1.a., through 1.h., under Guideline G. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 49 years old. He is unmarried and has no children. He served in the United States Navy from 1976 to 1982 and again from 1989 to November 2003. Both of his discharges were honorable.

Applicant is employed as a shipping and receiving clerk by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

The Government alleges that Applicant is ineligible for clearance because he has engaged in excessive alcohol consumption. The following are the allegations as they are cited in the SOR, and to which, as stated above, Applicant admitted:

1.a. The SOR alleges that Applicant has consumed alcohol, at times to excess and to the point of intoxication, from approximately 1979 to at least early in 2006.

1.b. In March 1979, Applicant was arrested and charged with Driving Under the Influence of Alcohol (DUI). He plead guilty to the reduced charge of Reckless Driving, and he was fined. Applicant was 21 years old at the time and serving in the U.S. Navy.

1.c. Applicant voluntarily entered a U.S. Navy Alcohol Program for two weeks in 2000.

1.d. On October 31, 2003, Applicant was arrested and charged with (1) DUI, (2) Driving While Having an 0.08% or Higher Blood Alcohol, and (3) Hit-Run Driving. He plead guilty to Count (1), and he was sentenced to five days in jail with a work-release granted. Applicant was also ordered to complete a 90 Day First Offender Program, pay a fine of \$1,695, serve three years of probation, and his driver's license was restricted for 90 days. Counts (2) and (3) were dismissed. Applicant violated the terms of his probation by an alcohol related incident that occurred in June 2004, as will be discussed in 1.g., below. On October 21, 2004, his probation was reinstated and continued with the same terms and conditions as before.

1.e. Applicant attended a court appointed First Offender DUI Program from February 5, 2004, through May 7, 2004.

1.f. Applicant averred in a signed, sworn statement that he executed on June 1, 2004, that he had abstained completely from alcohol, since his DUI arrest in October 2003. He further stated that his intention was to remain alcohol free.

1.g. On July 11, 2004, Applicant was arrested and charged with DUI with a Prior Offense. He plead guilty, and he was sentenced to serve 45 days of work furlough, which was reduced to 30 days and to pay a fine of \$2,350. He was also ordered to participate in an 18 month alcohol treatment program. Finally, Applicant's driver's license was restricted for one year, and he was placed on probation until 2011. Applicant reports every month on his probation, and he is paying \$50 a month to pay off his fine. He was not sure if the probation would continue to 2009 or 2011.

1.h. Applicant attended a court appointed Multiple Offender DUI Program from November 8, 2004, through September 20, 2006, in which he was diagnosed as a "Problem Drinker."

Applicant's alcohol consumption has been extensive at times. From 1998 to October 2003, his usage increased. In 1998 he consumed six to eight beers per work week at his home, and during the weekend he consumed eight to ten beers, either at his home or at a bar. In 2003, his alcohol consumption increased to six to eight beers, two times during the week, and twelve to fifteen beers during the weekend either at home or at a bar. In July 2004, after his second DUI arrest, he reduced his consumption to six to eight beers a week at home, and he never drove after he drank alcohol.

At the hearing, Applicant testified that he had last consumed six or seven beers in November 2005, when he went on a trip with his mother to Hong Kong. After he returned he did not consume any other alcoholic beverage until the weekend before the hearing, when at a party he was offered a drink of a liqueur, which he consumed, which contradicted his express intention, as he stated in an interrogatory propounded to him by the Government and signed by him on June 13, 2007, (Exhibit 3) to remain alcohol free.

When asked if he was an alcoholic, Applicant initially answered affirmatively that he is an alcoholic, but he immediately thereafter changed his opinion and answered that he has put it behind him. He now believes it is alright to consume alcohol on special occasions. He identified the time he was on a vacation with his mother in Europe, when he consumed six or seven beers, and his recent attendance at a party, when he had one drink of liqueur, as the only special occasions on which he consumed alcohol since 2004. Although Applicant testified that on most weekends he goes to a sports bar to watch football games on television, he does not consume any alcoholic beverages when he is there.

Applicant attends Alcoholics Anonymous (AA) sporadically, but he stated that because he is shy, he has never sought a sponsor, nor has he attempted to work the 12 steps of the program.

The first witness to testify on Applicant's behalf was his real estate agent and friend. They have known each other since 2001, when Applicant purchased his condominium through her. The witness was aware of Applicant's two DUI arrests, but she was not aware of an ongoing problem with alcohol. She did know that Applicant has attended AA meetings.

The second witness was Applicant's stepmother. She testified that she has raised Applicant since he was four years old and that he is a good son who does not usually get in trouble. She added that his father died four years ago and that was a difficult blow for Applicant.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2©, the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant 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. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or

safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.”

AG ¶ 22 describes disqualifying conditions (DC) that could raise a security concern. Because of Applicant's history of excessive alcohol use, including three arrests for DUI and his consumption of alcohol, after stating that he intended to remain alcohol free, the following DC apply to this case:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; (c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

AG ¶ 23 provides mitigating conditions (MC) that apply to this case:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and (b) the individual acknowledges his alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).

Applicant has attempted to abstain from alcohol before but been unsuccessful. However, his alcohol consumption has been reduced dramatically since his heaviest usage in 2003 and 2004, and Applicant does acknowledge his previous serious alcohol problems. He now only consumes alcohol on special occasions, and as a former alcohol abuser, he now is able to use alcohol in a moderate and responsible way. Therefore, based on Applicant's extremely limited alcohol use over the last three years, I conclude that Applicant has overcome his alcohol problems.

Whole Person Concept

Under the whole person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent 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." Under AG ¶ 2 (c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on all of the factors discussed above, I find that Applicant has certainly greatly improved his situation regarding alcohol consumption, and he is a decent person, who will continue to control his alcohol issues.

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 J:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1f.:	For Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul
Administrative Judge