



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-04108

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel

For Applicant: Pro Se

August 11, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on December 7, 2005. On March 25, 2008, 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, 1960), 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 requested a hearing before an Administrative Judge. I received the case assignment on June 13, 2008. DOHA issued a notice of hearing on June 24, 2008, and I convened the hearing as scheduled on June 30, 2008. The Government offered Exhibits (GE) 1 through 7, which were received without objection. Applicant testified on his own behalf and presented the testimony of one witness. DOHA received the transcript of

the hearing (Tr.) on July 9, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted to the allegations in ¶¶ 1.a- 1.h in the SOR under Guideline G. The admissions are incorporated as findings of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 37-year-old employee of a defense contractor. He graduated from high school in 1989 and attended college for several years. He is divorced with two children. Applicant served in the U.S. Navy from 1993 until 1997 (GE 2). Applicant held a security clearance from 1997 until the present. He has been with his current employer since 2005.

Applicant started drinking alcohol while in high school. He was 17 years old and spent the time with older friends drinking beer on the weekends (Tr. 32). Applicant continued his drinking in the Navy on weekends. He would drink when he was on shore leave when he was deployed overseas. Applicant drank hard liquor when he visited foreign ports (Tr. 35). He sampled different beer and alcohol in various countries.

In August 1996, Applicant received a Captain's Mast under Article 15 of the Uniform Code of Military Justice (UCMJ) for fighting and drunkenness after returning from shore leave. He received a restriction for 30 days. He claimed he did not realize that the 12 ounce can that held his drink was straight vodka. He admitted he consumed too much (Tr. 24-25)

In 1997, Applicant was in another foreign port. He was drinking and fought with a friend of his in the Navy (GE 3). He received a Captain's Mast for the offense of drunkenness, suspended for six months and restriction for 30 days. In 1998, Applicant completed a sworn statement expressing remorse for his drinking and the trouble that it caused him. He stated that he was mature and learned not to abuse alcohol (*Id*). However, he continued to consume alcohol.

In 1999, Applicant self referred to a 13-week program (outpatient) and attended Alcoholics Anonymous (AA) twice a week. He was drinking three or four mixed drinks each weekend evening. If he was stressed, he drank two drinks on a weekday evening (Tr. 41). His diagnosis by his therapist was alcohol abuse. After completion of the program, Applicant abstained from alcohol for approximately nine months (Tr. 43).

In the early years of his marriage, Applicant drank hard liquor frequently. He would have a shot of whiskey. He became belligerent when he drank according to his own assessment.

On December 7, 2004, Applicant was returning from a fishing trip. He had consumed six to eight beers (Tr. 28). He was arrested for Driving under the Influence (DUI) and failure

to take a breath test (GE 6). Applicant pled guilty to the charge of DUI at court on March 15, 2005. He was sentenced to 30 days in jail and a one year restricted driver license. He was ordered to attend the driver safety program for counseling. He had court costs and fines of \$550. He completed the alcohol classes in February 2006 (GE 4 and 5).

In 2005, his court ordered therapist recommended continued abstinence and involvement with AA (GE 7). He was diagnosed as alcohol dependent with a good prognosis. Applicant still consumes alcohol. He does not usually drink hard liquor. He has beer or a glass of wine (Tr. 27). He is confident that he has control over alcohol. He does not consider himself to be alcohol dependent.

Applicant's manager at work testified to his long time association with Applicant. He hired him in 1999. He attests to Applicant's good character and professionalism at work. He knew Applicant when he was going through a difficult time in his marriage and knows about his drinking (Tr. 63) He sees Applicant every day at work. He praises Applicant's generosity and ability to help others. He recommends him for a security clearance (Tr. 68).

Applicant testified at the hearing that his current drinking depends on his activity. On weekends, he drinks two, three or four drinks each weekend evening. If there is a social gathering, it would be different. On New Year's eve, he had a shot of hard liquor. He is confident that the 2004 DUI was his wake up call and drinking is not an issue in his life. He does not drink and drive (Tr. 48).

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(c), 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

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors, I conclude the following with respect to the allegations set forth in the SOR:

Guideline G(Alcohol Consumption) The Concern: *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.*

In this matter, the government provided substantial evidence that Applicant was arrested in 2004 for an alcohol related driving incident. He received two Captain's Masts while in the Navy in 1996 and 1997 for drinking. He was diagnosed as alcohol dependent by a therapist. Consequently, Alcohol Consumption Disqualifying Condition (AC DC) AG ¶22(a) (*alcohol-related incidents away from work, such as driving 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*) applies. Applicant admitted that he consumed alcohol, at times to excess and to the point of intoxication from 1988 until the present. Thus, AC DC AG ¶22(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*) applies.

Applicant received treatment for alcohol problems in 1999. He was diagnosed as an alcohol abuser. Therefore, AC DC AG ¶22(d) (*diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*) applies in this case. In 2005, Applicant received a diagnosis of alcohol dependence after his 2004 DUI. He was diagnosed by a licensed clinical counselor affiliated with a treatment program. Thus, AC DC AG ¶22(e) (*evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*) applies.

Applicant still consumes alcohol, albeit in a more controlled setting. His treatment plan in 2005 recommended that he continue with AA and abstinence. However, he completed the program. AC DC AG ¶22(g) (*failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence*) does not apply.

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. I considered the Alcohol Consumption Mitigating Condition (AC MC) AG ¶23(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*). There are no "bright line" rules for determining when conduct is "recent." The determination must be based on "a careful evaluation of the totality of the record within the parameters set by the directive." If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." AC MC ¶23(a) has some applicability in this case. Applicant was found guilty of DUI in 2004. He has not had another alcohol-related driving incident. However, he continues to drink beer and on New Year's eve had a shot of liquor. He does not receive full credit under this mitigating condition.

Applicant does not believe he has a problem with alcohol. He does not believe he is alcohol dependent. He has modified his drinking but did not follow a recommendation for abstinence. Thus, AC MC ¶23(b) (*the individual acknowledges his or her 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)*) does not apply in this case.

Applicant voluntarily completed an alcohol treatment program in 1999 and a court ordered one in 2005. He completed both programs. He attended AA for a period of time and he remained abstinent for a period of time. He now believes his drinking is under control and he has no need for treatment or abstinence. He does not drink and drive. AC MC ¶23(d) (*the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participating in Alcoholics Anonymous or a similar organization*)

and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program) does not fully apply.

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 potential disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. When these problems first began, Applicant was a young man, still in high school. Since that time, Applicant continued his drinking which led to some problems while he was in the Navy. He received treatment in 1999. After a period of abstinence and going to AA, he decided that he could drink again.

In 2004, Applicant was arrested and then convicted for a DUI. He completed a treatment program. His prognosis is good. However, Applicant did not follow a recommendation to remain abstinent or to attend AA. Granted, he has not had any more alcohol-related driving incidents since 2004. He does not drink and drive. He claims he has modified his consumption of alcohol.

Applicant has a good career record. He has had a security clearance for many years without incident. He was candid in his testimony at the hearing. However, he had a diagnosis twice for alcohol issues and he does not acknowledge any problems with alcohol. I have doubts as to his judgment in this area. He stated in 1999 that he matured and recognized a problem but now years later he has changed his attitude. This leaves me with doubts and questions as to his judgment and reliability. For all these reasons, I conclude that Applicant has not mitigated the security concerns under the alcohol consumption guideline.

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-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge