



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



In the matter of:)	
)	
)	ISCR Case No. 07-10953
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

July 29, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 25 March 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G and E.¹ Applicant answered the SOR 4 April 2008, and requested a hearing. DOHA assigned the case to me 10 June 2008, and I convened a hearing 14 July 2008. DOHA received the transcript (Tr.) 22 July 2008.

Findings of Fact

Applicant admitted the SOR allegations. He is a 47-year-old network operations technician employed by a defense contractor since June 2006. He previously held a

¹DOHA acted 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 (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

clearance in the mid-1990s while employed with a different company, but does not currently have access to classified information.

Applicant has a 30-year history of excessive alcohol consumption, punctuated by nine alcohol-related incidents.² The most recent incident, a November 2007 DUI (.20 % B.A.C.) arrest that was still pending when the SOR was drafted, was resolved 24 March 2008. Contrary to his plea, Applicant was convicted of DUI. The pertinent portion of his sentence was a year in jail, suspended for a year, and 18 months supervised probation conditioned on 1) total abstention from alcohol, 2) drug/alcohol evaluation, testing, and treatment as directed by his probation officer, and 3) enrolment and successful completion of a program at a designated counseling center. Applicant's probation runs until 24 September 2009.

Applicant's other alcohol incidents include a February 1978 (age 16) open container offense, vehicle operation offenses in November 1980, April 1986, March 1987, January 1995, and September 2005, a November 1995 arrest for "mooning" at a football game, and a July 1998 boating while intoxicated (BWI, .249 B.A.C.). As a result of his September 2005 offense, Applicant received probation before judgment, but attended alcohol counseling from January 2006 to September 2006. He resumed alcohol counseling with a different provider in November 2007 as a result of that offense.

In January 2008, Applicant entered the state-certified and approved alcohol abusers counseling program, and began counseling sessions in February 2008. He has successfully completed requirements up to July 2008, and has tested negative on drug/alcohol screens. No diagnosis or prognosis has been given (A.E. C). He expects to have his exit interview from the program soon.

Applicant attends AA twice weekly and is working a 12-step program. He does not currently have a sponsor. He voluntarily installed an ignition interlock system in his car. He has not consumed alcohol since his November 2007 arrest. However, abstinence has been required as a condition of his probation since March 2008. In addition, in the 30 years that Applicant has abused alcohol, he has experienced gaps between alcohol-related incidents of six years, eight years, and seven years, as well as shorter, but still significant, periods.

Applicant does not consider himself an alcoholic or alcohol abuser. He has not been diagnosed as alcohol dependent or an alcohol abuser. He wants to remain sober for his five-year-old daughter.

Applicant is alleged to have falsified a May 2003 public trust application (G.E. 7) by failing to disclose the July 1998 BWI arrest and the November 1995 "mooning" arrest. Applicant testified credibly that he simply forgot these two arrests. Applicant is

²The record reflects that the arrests listed at SOR 1.f., 1.h., and 1.k. were not alcohol related. Accordingly, I find those subparagraphs for Applicant.

also alleged to have falsified his September 2007 answers to interrogatories (G.E. 4) when he denied having ever used illegal drugs. However, the record shows that Applicant last used marijuana in the mid-1980s, and he illegally possessed marijuana in January 1995.

Applicant's employment references (A.E. A, B) consider him honest and reliable. However, it is not clear how much they are aware of the SOR allegations.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.³

Analysis

The government established a case for disqualification under Guideline G, by demonstrating Applicant's 30-year history of alcohol abuse, punctuated by nine alcohol-related arrests in February 1978, November 1980, April 1986, March 1987, January

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

1995, November 1995, July 1998, September 2005, and November 2007.⁴ Applicant failed to mitigate the security concerns. The fact that his probation runs until September 2009, coupled with the fact that he has previously had multiple-year periods of sobriety, militates against concluding that he is unlikely to engage in future alcohol abuse.

Applicant meets none of the mitigating conditions under Guideline G. His alcohol abuse was recent, frequent, and not under unusual circumstances.⁵ Beyond the vaguest acknowledgment of past mistakes with alcohol, Applicant has not acknowledged his obvious alcohol abuse. His actions taken to overcome the problem seem limited to his AA attendance, the progress of which is insufficiently documented. On this record, Applicant is unable to establish either a pattern of abstinence or responsible use given his probationary status.⁶ While he is apparently making satisfactory progress in his current counseling program, he relapsed from a previous counseling program ordered as a result of his September 2005 DUI.⁷ Finally, Applicant lacks the kind of program, track record, and prognosis that would demonstrate that his alcohol problems are behind him.⁸ I cannot conclude Applicant is unlikely to abuse alcohol in the future. Accordingly, I resolve Guideline G for Applicant.

The government failed to establish a case for disqualification under Guideline E.⁹ Applicant credibly testified that he simply forgot the two arrests he omitted from his May 2003 application for a public trust position. As to his September 2007 interrogatory answers, his mid-1980s marijuana use and his January 1995 marijuana possession

⁴¶22.(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;

⁵¶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;

⁶¶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);

⁷¶23.(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;

⁸¶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, . . . 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.

⁹¶16.(a) 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, . . . [or] determine security clearance eligibility or trustworthiness. . . ; (b) deliberately providing false or misleading information regarding relevant facts to an . . . investigator . . . ;

were neither relevant nor material to a clearance determination. I resolve Guideline E for Applicant.

Formal Findings

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph a:	Against Applicant
Subparagraph b:	Against Applicant
Subparagraph c:	Against Applicant
Subparagraph d:	Against Applicant
Subparagraph e:	Against Applicant
Subparagraph f:	For Applicant
Subparagraph g:	Against Applicant
Subparagraph h:	For Applicant
Subparagraph i:	Against Applicant
Subparagraph j:	Against Applicant
Subparagraph k:	For Applicant
Subparagraph l:	Against Applicant
Subparagraph m:	Against Applicant

Paragraph 2. Guideline E: FOR APPLICANT

Subparagraph a:	For Applicant
Subparagraph b:	For Applicant

Conclusion

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 denied.

JOHN GRATTAN METZ, JR
Administrative Judge