



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



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| In the matter of: |) | |
| |) | |
| SSN: |) | ISCR Case No. 07-16473 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Pro Se

October 14, 2008

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is denied.

Applicant submitted his Security Clearance Application (SF 86), on October 20, 2004. On June 19, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G and J 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 acknowledged receipt of the SOR on June 25, 2008. He submitted a notarized, written response to the SOR allegations on July 9, 2008, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on August 21, 2008. Applicant received the FORM on August 26, 2008. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response and additional evidence on September 22, 2008. DOHA assigned this case to me on September 24, 2008. The government submitted eight exhibits, which have been marked as Item 1-8 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 2. His response and attachments to the FORM are admitted into evidence.

Findings of Fact

In his Answer to the SOR, dated July 9, 2008, Applicant admitted all the factual allegations in the SOR. In his response to the FORM, he modified his answer to the allegation in ¶ 1.a of the SOR to a denial in part, with explanation. He also provided additional information to support his request for eligibility for a security clearance.¹

Applicant, who is 59 years old, works as an aircraft electrician and mechanic for a Department of Defense contractor. He has held this position since March 2001. His work teammates nominated him for team player of the month a year ago. He is their 6S program representative. A co-worker describes him as hardworking, reliable and diligent. He states that because he is their 6S representative, for five months in a row, his team aircraft received the highest ratings of the aircrafts in the plant, a difficult objective to obtain.²

Applicant married his first wife in 1969 and they divorced in 1979. They had five children who range in age from 32 to 39. His father died in 1983. He married his second wife in 1985 and they divorced in 1997. They had two children, who are 26 and 19. Applicant served in the United States Army for 28 years. During this time, he served in desert storm. In February 1991, while he was overseas, his 40-year-old sister died of cancer. He received three Army Commendation medals in the 1990s. He completed a technical training course in 1999 and plans to enroll in a local community college in January 2009.³

¹Item 2 (Response to SOR) at 1; Response to FORM at 1.

²Item 4 (Applicant's security clearance application (SF-86)) at 2; Item 8 (Interrogatories and Applicant's answer with attachments) at I-10-11, I-24).

³Item 4, *supra* note 2, at 1, 3-5, Item 8, *supra* note 2, at I-20 to I-31; Response to FORM at 2, 13-14.

In June 1988, the police arrested and charged him with injury to a child. The court sentenced him to six months probation. The record contains no other information on this incident, which Applicant admitted.⁴

In January 1993, the police arrested and charged Applicant with driving under the influence (DUI). The court fined him and sentenced him to one year of probation. He has little recall about this incident and the record contains no other information. After this arrest, Applicant used alcohol two times to intoxication. He rarely drank alcohol, but when he did, it was beer. He had no pattern of alcohol use on a regular basis, but at times used alcohol to cope with stressors in his life, particularly the death of his father and sister.⁵

In July 2006, Applicant's girlfriend and her two young children visited him from another city. He and his girlfriend drank four to five beers at his house. He then drove his girlfriend and her children around his city to show it to them. At some point, he stopped at a bar. He and his girlfriend went inside and had a beer, leaving the children in the car. Thirty minutes later they left the bar. On his way home, the police stopped him, then arrested him for DUI and placed him in jail. The police released him the next day after his bond has been paid. The grand jury indicted him for two counts of abandoning a child and two counts of DUI with a child passenger on October 4, 2006. Applicant self-reported this incident. Applicant pled guilty to the two counts of abandoning a child on April 11, 2007. In its Order dated April 11, 2007, the court deferred adjudication on Applicant's guilty plea and placed Applicant on four years of probation and fined him \$400. The court order provided an extensive list of conditions for Applicant while on probation, including attending Alcoholics Anonymous (AA) twice a week, totally avoiding the consumption of alcohol, performing 300 hours of community service within 24 months, attending an advanced DUI program, and periodic, unscheduled blood and urinalysis testing. The prosecutor filed a motion to dismiss the two DUI counts, and the court signed the Order granting the motion on April 11, 2007.⁶

In the 18 months since his court appearance, Applicant paid the \$400 fine, completed the 300 hours of community service by September 2007, and completed the repeat offender program that same month. He began attending AA on May 30, 2007 and continues to attend meetings at least twice a week. He no longer drinks and his alcohol test results have been negative. His probation officer states he is in compliance with the terms of his probation. He is hopeful for an early release from probation.⁷

⁴Item 1 (Statement of reasons (SOR)); Item 2, *supra* note 1, at 2.

⁵Item 5 (United States Department of Justice, Federal Bureau of Investigation, criminal records, dated December 22, 2004) at 3; Item 8, *supra* note 2, at I-4 - I-5; Response to FORM, at 1-2.

⁶Item 6 (Grand Jury indictment on child abandonment and court order); Item 7 (Second Grand Jury indictment and motion to dismiss with signed order); Item 8, *supra* note 2, at I-3.

⁷Item 6, *supra* note 6, at 9; Item 8, *supra* note 2, at I-10, I-13 through I-22; Response to FORM at 5-14.

On August 29, 2008, Applicant sought additional counseling with a licensed professional counselor. As part of the clinical assessment process, the counselor performed a SASSI-II test, which is a screening tool designed to evaluate chemical dependency. Based on this test and his assessment, the counselor concluded that Applicant was not chemical dependent. Rather, he fell into the substance abuse category, which indicates “a maladaptive pattern of substance use, leading to recurrent and adverse consequences.” The counselor concluded that Applicant used excessive drinking to deal with life stressors. Applicant is now working with the counselor on developing improved coping skills and strategies to deal with difficult issues. Since meeting with his counselor, Applicant has decided to enroll in college and has retained the services of a former teacher to tutor him in math and English.⁸

Applicant now attends church regularly. His finances are well-managed. He attends work daily and regularly works overtime.⁹

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,

⁸Response to FORM at 2, 4.

⁹*Id.* at 3.

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 conditions that could raise a security concern and the following disqualifying conditions may be applicable in 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; or
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.

The police arrested and charged Applicant twice with DUI, with the second charge including the additional information of driving with a child passenger. The police

also charged him with child abandonment at the time of his second DUI arrest. Applicant's drinking habits do not reflect habitual consumption of alcohol. However, his second arrest indicates binge drinking on that date. A licensed professional counselor recently diagnosed him with substance abuse related to his past alcohol consumption. The government has established its case under AG ¶¶ 22 (a), (c) and (d).

AG ¶ 23 provides conditions that could mitigate security concerns and the following mitigating conditions may be applicable in this case:

(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);

(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; or

(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 participation in meetings of 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.

Applicant has acknowledged that he used alcohol at times to cope with stressors in his life. As a result of his last DUI arrest, he began attending AA and completed the state's re-offender program. While his attendance at these programs is a requirement of his probation, he recently took an additional step to help resolve his issues with alcohol. He hired a counselor to help him with understanding the stressors in his life which compel him to use alcohol. By so doing, he has recognized the impact of alcohol in his life, an impact he wishes to change. He has already taken steps to establish long-term goals for himself by hiring a tutor so that he can return to school for further educational training. He has no history of previous treatment and relapse. He is making very satisfactory progress with his treatment and understanding of the effect of alcohol on him. He has mitigated the government's security concerns about his alcohol use identified in SOR ¶¶ 1.a to 1.c. under AG ¶¶ 23 (b) and (c).

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct, "Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations."

AG ¶ 31 describes conditions that could raise a security concern and the following may be disqualifying in this case:

- (a) a single serious crime or multiple lesser offenses;
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted; and
- (d) individual is currently on parole or probation.

Applicant has twice been charged with DUI, one including driving with a child passenger. In addition, the grand jury charged him with two counts of child abandonment at the same time it charged him with two DUI counts. He is currently on probation for his guilty plea to child abandonment. He acknowledged being charged with injury to a child in 1988 and placed on probation for six months. The government has established its case under AG ¶¶ 31(a), (c) and (d).

AG ¶ 32 provides conditions that could mitigate security concerns:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; or
- (d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

The 1988 charge of child injury occurred 21 years ago. The exact circumstances surrounding this incident are unknown. What is known is Applicant has not been charged with a similar crime since 1988 and there is little likelihood of a reoccurrence. He has mitigated the government's security concerns regarding this criminal charge under AG ¶ 32 (a).

Applicant's first DUI arrest occurred over 15 years ago. Because he has been arrested a second time for DUI, there is an appearance of a pattern of conduct which must be addressed. The large gap of time between his two arrests reduces significantly the argument that he has a pattern of conduct. His alcohol use during this 15 years was limited and sporadic. Since his last arrest, he has not consumed alcohol. He has sought to understand the reasons for his use and is making progress towards complete rehabilitation. He goes to church regularly, works every day and takes on overtime assignments. He is a good employee. He has plans to go to school in January 2009. He continues to attend AA, which lead to his seeking further understanding of his alcohol use, which is the reason for his criminal charges. He has mitigated the government's security concerns raised in allegations 2.a and 2.b of the SOR about his alcohol

consumption and its related criminal charges under AG ¶ 32 (d). Because he remains on probation, he has not mitigation the government's security concerns raised in SOR ¶ 2.c.

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) the 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 common sense 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. Applicant's first arrest occurred 20 years ago, when he was 39 years old. The circumstances surrounding this arrest are unknown, but Applicant has not been involved in similar conduct in the last 20 years. However, his use of alcohol since 1988, even though sporadic, has created additional criminal problems for him. Two years ago, he consumed beer to excess then drove his girlfriend and her minor children around his community in his car. His conduct placed the children in a situation of potential harm and showed poor judgment.

Following his indictment for this conduct and his decision to plead guilty to two counts of child abandonment, Applicant has changed his focus on alcohol consumption. Applicant has realized the seriousness of his conduct in 2006 and taken action to change both his behavior and attitude about alcohol consumption. He has complied with the terms of his probation, which includes attending AA twice a week. Because of his participation in AA, he recently hired a counselor to help him address his issues related to alcohol use. The counselor did not diagnose Applicant as alcohol dependent, but indicated that Applicant can use alcohol when stressed. Through counseling, he plans to better understand his relationship with alcohol, which will reduce and prevent a reoccurrence of his past conduct. Applicant has undergone significant behavioral changes in the last two years as related to his alcohol use. He is and has been a good employee for the last seven years, and is respected by his co-workers. His finances are well-managed. He has set new educational goals for himself. In sum, instead of allowing

his recent arrest to negatively impact his life, he has chosen to use it as a catalyst to changing his lifestyle and improving his future.

The actions taken by Applicant in the last 18 months reflect change in his behavior and attitude. He has demonstrated that he can take responsibility for his conduct. One problem continues, which impacts my ability to grant him a clearance. He still remains on probation and will for some time. He anticipates that he maybe released from probation early, but has no idea when he may be released. Thus, until he is released from probation, he has not mitigated the government's security concerns and cannot be granted a clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his criminal conduct, but has mitigated the security concerns related to his alcohol consumption.

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:

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| Paragraph 1, Guideline G: | FOR APPLICANT |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | For Applicant |
| Paragraph 2, Guideline J: | AGAINST APPLICANT |
| Subparagraph 2.a: | For Applicant |
| Subparagraph 2.b: | For Applicant |
| Subparagraph 2.c: | Against Applicant |

Conclusion

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

MARY E. HENRY
Administrative Judge