



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-17037
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Department Counsel
For Applicant: *Pro Se*

September 23, 2008

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 5, 2008. On May 21, 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 acknowledged receipt of the SOR on June 3, 2008. He answered the SOR in writing on June 10, 2008, and requested a hearing before an Administrative Judge. The matter was assigned to this Administrative Judge on July 9, 2008. A notice of hearing was issued on July 14, 2008, and the matter was scheduled for hearing on August 7, 2008. The Government presented four Exhibits, referred to as Government Exhibits 1 through 4, which were received without objection. The Applicant presented five Exhibits, referred to as Applicant's Exhibits A and E, which were received without objection. He also testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on August 14, 2008. I granted Applicant's request to keep the record open until close of business on August 20, 2008, to submit additional documentation.

The Applicant submitted one Post-Hearing Exhibit, consisting of two pages, that was received without objection. The record closed on August 20, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

The Applicant is 24 years old and has a Bachelors of Science in Information Systems Technology. He is employed by a defense contractor as a Junior Systems Engineer, and is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant admitted the allegation set forth in the SOR under this guideline. (See Applicant's response to SOR). He began consuming alcohol during his sophomore year of college in 2004. He drank beer on Friday and Saturday nights at social gatherings. He normally had about three or four beers during these events. His drinking continued throughout his junior year and on average he drank to the point of intoxication about once a month. During his senior year, his drinking decreased to the point where he was only drinking two to three beers on the weekends. Besides the arrest described below, there were two or three other occasions where he drank alcohol to the point of intoxication and drove a vehicle but was not arrested.

On March 28, 2007, Applicant was arrested for Driving Under the Influence of alcohol. (See Government Exhibit 4). He testified that he was consuming alcohol at a bar with a friend while watching a band. He and his friend split two to three pitchers of "woodchuck" which is a concoction of apple cider and beer. After drinking, the Applicant waited about an hour before he left the bar to drive home. He accelerated his engine too loud and a police officer pulled him over. The officer smelled alcohol on his breath and took the Applicant to the hospital for a blood test. The Applicant's blood alcohol level was .12 percent and he was arrested and charged accordingly. He completed a pretrial diversion program and was eligible to petition the court to have his charge dismissed on June 26, 2008. (See Applicant's Exhibit 3). A motion to expunge the matter was filed by the Applicant's attorney. They are awaiting the order from the court. (See Applicant's Exhibit A).

Since the incident, the Applicant's lifestyle has drastically changed. He is no longer a college student. He now has a full time job and is committed to his career. He indicates that although he still consumes alcohol at a decreased level, he no longer drinks and drives. He has seen the horrors of drinking and driving and what it can do. He has learned from his past experience and that it was a one time mistake and not a refection of his everyday behavior. In the future, if he is consuming alcohol, he will make sure that he has a designated driver.

Performance reviews of the Applicant, albeit self-input reviews, over from the period January 1, 2007 through December 31, 2007, indicate that he is meeting all of his employment objectives. (See Applicant's Post-Hearing Exhibit).

Letters of recommendations from the Applicant's roommate, professional associates and friends indicate that the Applicant is a responsible, hardworking and trustworthy person. (See Applicant's Exhibits C, D, and E).

Policies

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline G (Alcohol Consumption)

21. *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.

Conditions that could raise a security concern:

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;

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.

Conditions that could mitigate security concerns:

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).

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct

- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

Conclusion

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in alcohol abuse that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation

or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in alcohol abuse (Guideline G). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline G of the SOR.

Under Alcohol Abuse, Guideline G, Disqualifying Conditions 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”* and, 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”* apply. However, given the isolated nature of the Applicant's alcohol abuse, Mitigating Condition 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)* also applies.

The Applicant's history of alcohol abuse is fairly recent as he started drinking during college in 2004. He drank to the point of intoxication on a monthly basis, until at least 2006, and then continued to drink excessively on an intermittent basis. However, since his arrest in March 2007, for Driving Under the Influence, he has significantly reduced his drinking. He no longer drinks irresponsibly and states that he will never drink and drive again. His reckless college life is over and he is now a career minded individual. He has matured and understands the important responsibilities associated with holding a security clearance. It appears that this aberration or defect in judgment was an isolated one. Based upon his relatively short history of alcohol abuse, his one alcohol related incident that is being expunged, along with the evidence in mitigation, as reflected by the favorable statements from his professional colleagues and friends, there is sufficient evidence in the record to show that he is sufficiently trustworthy at this time. The likelihood of his misconduct in the past being repeated is nil. Accordingly Guideline G is found for the Applicant. In the event that the Applicant continues to abuse alcohol, his security clearance will be in serious jeopardy.

On balance, it is concluded that the Applicant has come overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the SOR.

Formal Findings

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: For the Applicant.
Subpara. 1.a.: For the Applicant.

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey-Anderson
Administrative Judge