



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-01200
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Department Counsel
For Applicant: *Pro Se*

August 29, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On March 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines G and H. 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 answered the SOR in writing on April 3, 2008, and requested an Administrative Decision by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on April 29, 2008. Applicant filed a response to the FORM on May 19, 2008. The case was assigned to me on June 27, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 34 years of age. He has worked for the same defense contractor since 1996. He has been married since 2001 and has three children.

Applicant began consuming alcohol in college in the 1990s. While there, he drank once or twice a week and became intoxicated once or twice a month. After he left college, he would consume six to eight drinks at a time about once a week. From 2003 to 2006 his alcohol consumption gradually increased. By July 2006, he was consuming six alcoholic beverages a day. This continued until March 20, 2007, when he consumed "6 vodka drinks . . . went semi-conscious," and then "experienced a feeling that [he] had a problem and must stop drinking."¹ Thinking that he needed professional help to stop drinking, he saw a psychiatrist about eight times from April to June 2007. According to applicant, he was diagnosed with alcoholism and prescribed a drug to help him stop drinking. He stopped the counseling and the drug because he stopped craving alcohol. Applicant states he has not consumed any alcohol since the March 20, 2007 incident.

In 2003, applicant drove into a tractor trailer while he was under the influence of alcohol. He was arrested and ultimately convicted of Operating Motor Vehicle Impaired by Alcohol. He was fined \$375.00 and his license was suspended for six months.

In April 2007, shortly after he last used alcohol, applicant used marijuana on three occasions. In May 2007, he snorted a line of cocaine once and used Xanax without a prescription once. In his SOR Response, applicant stated the following about this drug use:

During [April and May 2007] I attended some parties and was offered the use of these particular substances. At the time, I was new to my 12 step recovery program (AA) and did not understand the implications of trying other "experiments." I quickly realized through my own interpretations and my support group that this is not an alternative to alcohol. That my "experimentation" should be stopped immediately, and that is what I did. I no longer have relations with those who use illegal substances and do not attend parties where there is use.

During an interview with an OPM investigator in November 2007, applicant stated he attended AA meetings weekly. In a February 2008 response to interrogatories sent to him by DOHA, and in his response to the FORM, applicant stated he attends AA daily. He further stated in his response to the FORM that he does not intend to consume alcohol or use illegal drugs in the future.

Policies

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding*

¹Exhibit 4, page 3.

Classified Information Within Industry (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

Analysis

Guideline H: Drug Involvement

The security concern for drug involvement is set forth in Paragraph 24 of the AG, and is as follows:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.

Paragraph 25 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 25.a., “any drug abuse” may be disqualifying. This disqualifying condition is applicable.

Paragraph 26 of the AG sets forth conditions that could mitigate security concerns. Under Paragraph 26.a., it may be mitigating if “the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or

good judgment.” Under Paragraph 26.b., it may be mitigating if there is “a demonstrated intent not to abuse any drugs in the future,” such as “disassociation from drug-using associates and contacts,” and “an appropriate period of abstinence.” Applicant used these drugs shortly after he stopped drinking. He realized he made a big mistake, stopped all use, stopped attending parties where drugs are used, and stopped associating with drug users. Given these facts, his one year of abstinence, and his credibly stated intention not to use illegal drugs in the future, both mitigating conditions are applicable.

Guideline G: Alcohol Consumption

The security concern for alcohol consumption is set forth in Paragraph 21 of the AG, and is as follows:

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.

The AG note several conditions that could raise a security concern. Under Paragraph 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,” may be disqualifying. Under Paragraph 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,” may be disqualifying. Under Paragraph 22.d., “diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence” may be disqualifying. Applicant’s history of consuming alcohol to excess in general, and his alcohol-related driving conviction in 2003 and March 20, 2007 drinking episode in particular, require application of the first two disqualifying conditions. The fact he was diagnosed with “alcoholism” by a psychiatrist requires application of the last disqualifying condition.²

Paragraph 23 of the AG sets out potentially mitigating conditions. I have carefully reviewed them and conclude the only one applicable is 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).”

“Whole Person” Analysis

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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

²The diagnosis of “alcoholism” was reported by applicant. It is reasonable to assume that the psychiatrist’s actual diagnosis was alcohol abuse or alcohol dependence.

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 Paragraph 2c, the ultimate determination of whether to grant 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 began abusing alcohol while in college when he was relatively young. Had it ended when he graduated in 1998, his alcohol consumption would have no current security significance. But it didn't. Applicant not only continued to abuse alcohol, he actually increased the frequency of his excessive alcohol consumption to the point that by July 2006, he was consuming six alcoholic beverages on a daily basis. This daily abuse occurred long after his serious alcohol-related driving incident in 2003, and lasted for many months. These facts, together with his diagnosis of "alcoholism," suggest that applicant's alcohol problem is severe, and will require a significant period of abstinence - much longer than the approximately 15 months of abstinence he has to date - to safely conclude his abuse of alcohol, and the poor judgment associated with it, is unlikely to recur. Accordingly, Guideline G is found against him.

Applicant's illegal drug use certainly reflects poorly on his judgment. Fortunately, he realized relatively quickly that he was making a big mistake by trying to trade one addiction for another. He has taken credible actions to ensure he will not repeat the conduct, and given his one year of abstinence, it appears his actions have worked. Because I conclude he is unlikely to abuse illegal drugs in the future, Guideline H is found for applicant.

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
Paragraph 2, Guideline H: FOR 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.

JOSEPH TESTAN
Administrative Judge