



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-02094  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Department Counsel  
For Applicant: *Pro se*

April 13, 2010

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Questionnaire for National Security Positions on March 19, 2007. (Government Exhibit 4). On September 8, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G and E 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 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.

The Applicant responded to the SOR in writing on October 9, 2009, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on January 4, 2010. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on January 12, 2010, and he submitted no reply. The case was assigned to the

undersigned for resolution on March 11, 2010. Based upon a review of the case file and exhibits, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

The Applicant is 46 years old and has completed two years of college. He is employed by a defense contractor as a Graphic Artist, and has worked for the same company for over twenty years. He 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 each of the allegations set forth under this guideline. His long history of alcohol abuse spans almost twenty years. He has consumed alcohol at times to excess and to the point of intoxication, from approximately 1991 to at least December 2008. As a result of excessive drinking, he has been arrested and convicted on three separate occasions for drunk driving. He has undergone a series of alcohol treatment programs, including two inpatient treatment programs, and outpatient treatment about thirty times. His excessive drinking has cost him his marriage, reflected by a divorce in October 2006, and has negatively effected his job performance, reflected by a low performance appraisal. Despite these repercussions, the Applicant continues to drink. (Government Exhibit 5.)

His first arrest occurred in March 1991, wherein he was charged with (1) Under the Influence Alcohol/Drug in Vehicle and (2) .08% More Weight Alcohol Drive Vehicle. He pled guilty to Count (2), Count (1) was dismissed and he was sentenced to jail, fined, awarded probation and ordered to participate in treatment or counseling as directed. Applicant satisfied the court requirements, but continued to consume alcohol.

Applicant received alcohol rehabilitation treatment from December 2004 to April 2005. Following the treatment, he continued to consume alcohol.

Sometime in 2005, the Applicant discussed his drinking problem with a counselor from his Employer's Assistance Program who referred him to the an alcohol rehabilitation center. Applicant entered the program and received inpatient alcohol rehabilitation treatment from August 2005 to September 2005. During this treatment, he was diagnosed with Alcohol Dependence; Depressive Disorder and Nicotine Dependence. Following this treatment, he continued to consume alcohol. Admission records from the medical center indicate that the Applicant had been drinking 1 to 1½ pints of alcohol per day, off and on, for a number of years. He occasionally experiences

black outs, but denies seizures. He has had 90 days of sobriety in Alcoholics Anonymous (AA) this year, and he has a sponsor. He has been to over 200 AA meetings in total, but has not done the fourth or fifth step of the AA program yet. (Government Exhibit 8.)

While still receiving treatment, the Applicant relapsed and was arrested and charged in December 2005, with (1) Driving Under the Influence of Alcohol or Drugs and (2) Driving Under Influence of Alcohol or Drugs .08% or More Alcohol. Applicant had been drinking at home, got into his car and started driving, when the police pulled him over for squealing his tires or rapid acceleration. He pled guilty, imposition of sentence was suspended, and he was fined and order to attend a Level I Alcohol Program. (Government Exhibit 5).

The Applicant was arrested a third time in August 2006, and charged with (1) Driving Under Influence of Alcohol or Drugs, (2) Driving Under Influence of Alcohol or Drugs .08% or More Alcohol and (3) Driving When Privilege Suspended or Revoked for Driving Under the Influence. Applicant had gone to a bar after work and had six or seven vodka tonics. While driving home alone, he hit another car. Applicant registered a .26% blood alcohol level. Applicant pled guilty and was sentenced to 60 days house arrest, fined \$2,500.00, his driver's license was suspended, he was placed on probation for ten years, and required to attend and complete an eighteen month Multiple Offender Alcohol Program. (Government Exhibit 5.)

From September 2006 to October 2006, the Applicant received inpatient alcohol rehabilitation treatment, for a condition diagnosed as Alcohol Dependency, Depression, NOS. The medical intake records reflect that prior to his admission, the Applicant consumed vodka on a daily basis, and experienced two withdrawal seizures in March 2006, and July 2006. (Government Exhibit 7.)

In January 2007, the Applicant was charged with Failure to Appear for an ignition interlock hearing and a bench warrant was issued and his probation was revoked. In March 2007, a bench warrant was issued when he failed to appear to serve his jail sentence. The warrant was recalled and his probation was reinstated when the court learned that he was serving his sentence through electronic monitoring.

The Applicant indicated that although he has reported to work late, and the quality of his work has suffered from his excessive drinking, he has never reported to work under the influence of alcohol. On October 12, 2007, the Applicant stated that he had stopped drinking and had been sober for 120 days. (Government Exhibit5).

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because his conduct involves questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness and ability to protect classified information.

The Applicant admits each of the allegations set forth under this guideline. In September 2006, while in treatment for alcohol abuse, the Applicant tested positive for cannabinoids. (Government Exhibit 7). At that time, and since 2001, the Applicant has held a DoD security clearance. Applicant's medical records containing results of his history and physical examination dated September 12, 2006, indicate that Applicant used marijuana three times a month. (Government Exhibit 7.) The Applicant indicates that he has never received a written reprimand or any other disciplinary action from his employer for his conduct.

## **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;

22(d) diagnosis by a duly qualified medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

22(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

#### Conditions that could mitigate security concerns:

None.

## Guideline E (Personal Conduct)

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

### Condition that could raise a security concern:

16(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing . . . .

### Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 18-19, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature, extent, and seriousness of the conduct;
- 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 extent to which the participation is voluntary;
- f. The presence or absence of rehabilitation and other permanent 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 predicated 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 and personal conduct 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), and poor personal conduct (Guideline E). 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 Guidelines G and E of the SOR.

The Applicant's history of alcohol abuse over a period of almost twenty years includes three arrests and convictions for Driving Under the Influence. Although his most recent arrest occurred in 2006, about four years ago, he continues to consume alcohol, which has been the at the root of his problems. As a result of his most recent arrest, the Applicant was ordered to participate in and complete a Multiple Offender Alcohol Program and was placed on ten years probation. He remains on probation today. His formal diagnosis of alcoholism, numerous inpatient, outpatient and aftercare programs, followed by even more AA meetings, have not enabled him to maintain sobriety. The Applicant's past history of alcohol abuse clearly demonstrates that there has been and still is a serious alcohol problem.

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*; 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*; 22(d) *diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence*; and, 22(f) *relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program* apply. None of the mitigating conditions are applicable.

Applicant's use of marijuana while holding a security clearance demonstrates poor judgment, unreliability and untrustworthiness. Under Guideline E, Personal Conduct, Disqualifying Conditions 16(e) *personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing . . .* applies. None of the mitigating conditions apply.

Despite the severe repercussions of the Applicant's abusive drinking pattern, he continues to consume alcohol. Based upon his past, it is clear that he will more than likely drink to excess in the future and endanger the public with his drunk driving and/or subject the DoD to his careless and reckless ways. Based upon his long history of alcohol abuse and poor personal conduct and its related negative effects on the Applicant, I am unable to find him sufficiently trustworthy to safeguard classified information. Accordingly Guidelines G and E are found against the Applicant.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. The Applicant is a 46 years old alcoholic with a very serious drinking problem, and no significant period of abstinence. Under the particular facts of this case, the totality of the conduct set forth above when viewed under all of the guidelines as a whole, support a whole-person assessment of poor judgement, untrustworthiness, unreliability, an unwillingness to comply with rules and regulations, and/or other characteristics indicating that the person may not properly safeguard classified information.

I have considered all of the evidence presented, however, it does not come close to mitigating the negative effects of his excessive alcohol abuse, and poor personal conduct, and the effects that it can have on his ability to safeguard classified information. On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 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:           Against the Applicant.
- Subpara. 1.a.:    Against the Applicant.
- Subpara. 1.b.:    Against the Applicant.
- Subpara. 1.c.:    Against the Applicant.
- Subpara. 1.d.:    Against the Applicant.
- Subpara. 1.e.:    Against the Applicant.
- Subpara. 1.f.:    Against the Applicant.
- Subpara. 1.g.:    Against the Applicant.
- Subpara. 1.h.:    Against the Applicant.
- Subpara. 1.i.:    Against the Applicant.
  
- Paragraph 2:           Against the Applicant.
- Subpara. 2.a.:    Against the 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 the Applicant.

Darlene Lokey Anderson  
Administrative Judge