



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



In the matter of:)	
)	
)	ISCR Case No. 08-02233
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

September 26, 2008

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 17 June 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G, H, and J.¹ Applicant answered the SOR 7 July 2008, and requested a hearing. DOHA assigned the case to me 28 July 2008, and I convened a hearing 26 August 2008. DOHA received the transcript (Tr.) 4 September 2008.

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.

Findings of Fact

Applicant admitted the SOR allegations, except for SOR 1.b. He is a 23-year-old systems administrator employed by a defense contractor since July 2008. He has not previously held a clearance.

Applicant has a history of excessive alcohol consumption, punctuated by three alcohol-related incidents between October 2003 and October 2007. The most recent incident, an October 2007 DUI (.10 % B.A.C.) arrest that was still pending when the SOR was drafted, was resolved 27 June 2008. Two charges of DUI were dismissed before trial. A third DUI charge and an unsafe lane change charge were nolle prossed the day of trial. Applicant pleaded to, and was found guilty of, negligent driving. He paid fines and court costs of \$160. The judge's findings of fact specifically found Applicant to have not refused a proffered blood alcohol content test. A breathalyzer test given at the scene of the accident caused by Applicant registered .10 % B.A.C. He was observed by witnesses in the other two cars involved in the accident to be throwing beer cans out of his car before the police arrived.

Applicant's other alcohol incidents include an October 2003 (age 18) drunk in public/underage possession of alcohol offense in which he had a .16 % B.A.C., and a June 2006 DUI offense in which he tested .15 % and .16 % B.A.C. The pertinent portion of this latter offense was a period of alcohol abstinence and probation that expired in August 2007.

As a result of his October 2007 arrest, in early January 2008, Applicant was evaluated at a recognized alcohol treatment program recommended to him by his attorney. He was diagnosed with alcohol abuse, and recommended to attend a 48-week aftercare program, two AA/NA meetings per week, and obtain a sponsor and homegroup within 90 days. Later in January 2008, he was evaluated at a recognized alcohol treatment program closer to where he lived, and again diagnosed with alcohol abuse. However, he was not recommended for further counseling as the counselor was satisfied that he had learned his lesson about drinking and driving. Applicant claims that he now drinks 1-3 drinks at a sitting no more than five times per month. He never drinks and drives.

Applicant also has a history of drug abuse. He use marijuana frequently from January 2000 to June 2006, and used prescription painkillers about ten times between January 2000 and May 2004. After his drunk in public arrest in October 2003, a body search produced a marijuana pipe and a container with marijuana residue. Applicant's drug abuse occurred while he was at college. He stopped using marijuana in June 2006 because he knew that he would eventually want to apply for a security clearance.

Applicant's employer considers him an honest, hard worker, and he has good work evaluations. He has not been observed to be under the influence of alcohol or drugs at work. He is engaged to be married, and he and his fiancé are trying to buy a home.

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), Guideline H (Drug Involvement), and Guideline J (Criminal 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.²

Analysis

The government established a case for disqualification under Guideline G, by demonstrating Applicant's history of alcohol abuse, punctuated by three alcohol-related arrests between October 2003 and October 2007, and his subsequent diagnoses with alcohol abuse in January 2008.³ Applicant failed to mitigate the security concerns.

²See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³¶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; (e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

Applicant meets none of the mitigating conditions under Guideline G. His alcohol abuse was recent, frequent, and not under unusual circumstances.⁴ Beyond the vaguest acknowledgment of past mistakes with alcohol, Applicant has not acknowledged his obvious alcohol abuse. Although he was not recommended for further counseling, Applicant is unable to point to any other actions taken to overcome the problem. On this record, Applicant is unable to establish either a pattern of abstinence or responsible use given that his most recent charges were only resolved in June 2008.⁵ Without some kind of program, he cannot demonstrate progress in ensuring responsible drinking in the future.⁶ Finally, Applicant lacks the kind of program, track record, and prognosis that would demonstrate that his alcohol problems are behind him.⁷ It is too early to conclude Applicant is unlikely to abuse alcohol in the future. Accordingly, I resolve Guideline G against Applicant.

The government established a case for disqualification under Guideline H.⁸ However, Applicant mitigated the security concerns. Although Applicant's drug abuse was frequent during the periods he used drugs, the circumstances of that use and his two years abstinence from drug use, suggest he is unlikely to use drugs in the future.⁹ With no indication of any psychological or physical dependence on drugs, his two year abstinence from drug use is adequate to demonstrate an intent to refrain from drug use in the future.¹⁰ I conclude Applicant is unlikely to use illegal drugs in the future. Accordingly, I resolve Guideline H for Applicant.

⁴¶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;

⁵¶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);

⁶¶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;

⁷¶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.

⁸¶25.(a) any drug abuse. . . ; (c) illegal drug possession, including. . . purchase. . . ;

⁹¶26.(a) 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;

¹⁰¶26.(b). a demonstrated intent not to abuse any drugs in the future, such as; . . . (3) an appropriate period of abstinence;

The government established a case for disqualification under Guideline J by establishing Applicant's alcohol-related criminal conduct and his illegal use of drugs.¹¹ However, the gravamen of the security concerns in this case revolve around Applicant's alcohol abuse issues. Separate allegation of the criminal nature of his conduct, whether alcohol abuse or drug abuse, adds nothing of substance to the analysis of Applicant's fitness for access to classified information. I resolve Guideline J 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

Paragraph 2. Guideline H: FOR APPLICANT

Subparagraph a: For Applicant
Subparagraph b: For Applicant
Subparagraph c: For Applicant

Paragraph 3. Guideline J: FOR APPLICANT

Subparagraph a: 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

¹¹¶31.(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;