



ISCR Case No. 08-04232

August 4, 2009

## Decision

Applicant acknowledged receipt of the SOR on January 8, 2009. He answered the SOR in writing on January 27, 2009, and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on March 5, 2009. A notice of hearing was issued on April 8, 2009, and the matter was scheduled for hearing on May 20, 2009. The Applicant did not appear at the hearing due to a failure to receive notice of the hearing. A continuance was granted. The case was assigned to the undersigned Administrative Judge on May 26, 2009. A notice of hearing was issued on June 2, 2009, and the matter was scheduled for June 24, 2009. At the hearing, the Government presented four exhibits, referred to as Government Exhibits 1 through 4, which were received without objection. The Applicant called one

witness and presented nine exhibits, referred to as Applicant's Exhibits A through I, which were received without objection. The Applicant also testified on his own behalf. The record remained open until July 8, 2009, to allow the Applicant to submit additional documentation. The Applicant submitted one Post-Hearing exhibit, consisting of eight enclosures that was admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 2, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

The Applicant is 49 years old. He has a Bachelor of Science Degree in Material Logistics Management. He is employed by a defense contractor as a Software 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.

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant began consuming alcohol in 1980, at the young age of eighteen while attending his first year of college. At first, he drank socially. As time passed, his circle of friends were heavy drinkers, and his desire to fit in caused him to drink excessively and engage in criminal conduct. On many occasions, over the past twenty-nine years, he has driven a vehicle while intoxicated and was not arrested. On six separate occasions, he was arrested and convicted for Driving Under the Influence (DIU). Each of those arrests are discussed below.

In March 1985, the Applicant had been drinking beer with friends at a bar. While driving home, he was pulled over by the police. He was arrested and charged with DUI. He pled guilty and was fined. A year later, in April 1986, he was arrested again, and charged with DUI. Again, he had been drinking beer with friends at a bar. He remembers consuming between two and four beers before driving. This time, he was driving to the airport when he was pulled over by police. He pled guilty and was sentenced to a fine and community service. Two months later, in June 1986, he was arrested and charged with DUI. He pled guilty and was sentenced to an Educational Alcohol Awareness class and was fined. Four years later, in March 2000, he was charged with (1) DUI with Alcohol/Drugs and (2) DUI with .08 or More. The Applicant explained that he had attended his fathers birthday party where he drank too many beers. As he was driving home, he was attempting to stop at a stop sign when he bumped a car. He pled Nolo Contendere to Count (2) and was sentenced to five years probation, 180 days confinement, suspended, a first offender special alcohol program, and a fine. (Government Exhibits 3(b) and 4).

At this point, the Applicant did not believe that he was alcohol dependent or that his drinking was abusive. He just thought that he was unlucky. Although he stopped drinking alcohol for several months following this arrest, he eventually started drinking again. (Tr. p. 67-68). Three years later in May 2003, the Applicant was arrested and charged with (1) DUI with Alcohol/Drugs and (2) DUI with .08 or More. The Applicant explained that he had been at a bar consuming alcohol with a friend. On his way home, he did not have his car lights on and was pulled over by the police. He pled No Contest to Count (2) and was sentenced to 365 days confinement, 361 days suspended, five years probation, a fine, and an alcohol counseling program for a year.

In July 2003, the Applicant was arrested and charged with (1) Lewd Act to a Child, (2) Indecent Exposure, (3) Giving False Information to a Peace Officer (4) Cruelty to a Child by Endangering Health, and (5) DUI with Alcohol/Drugs, Prior DUI within 7 years. The Applicant explained that he had been consuming alcohol for much of the day and was intoxicated when he walked into a public restroom that is known for "cruising". (Tr. p. 27). In the restroom, he patted a minor on the buttocks. He then drove home. Sometime later, the police arrived at his home to arrest him. (Tr. p. 73). The Applicant pled guilty to Counts (4) and (5). He was sentenced to five years probation, 120 days confinement, Substance Abuse Assessment, Multiple Conviction Program and a fine. Counts (1), (2) and (3) were dismissed. (Government Exhibits 3(a) and 4, and Applicant's Exhibit A).

At this point, the Applicant realized that he had to do something about his excessive drinking and driving. He attended Alcoholic Anonymous (AA) meetings for eighteen months and completely abstained from alcohol during this period. (Tr. p. 85). He testified that he found the counseling to be helpful but eventually went back to consuming alcohol in 2005. (Tr. p. 92). He contends that he has not been intoxicated since his last arrest.

The Applicant completed each of the sentences imposed by the court as a result of each conviction. Each time, he attended some type of alcohol awareness or alcohol counseling program. (Tr. p. 90). Despite this, he still continues to consume alcohol. He testified that he enjoys drinking with friends about once or twice a month and has a glass of wine with dinner on occasion. He indicates that he no longer drinks to the point of intoxication. (Tr. p. 54). He states that he has severed his friendship with his heavy drinking friends, and now regularly associates with tennis players, who do not partake in the habit.

On June 19, 2009, the Applicant sought out and obtained an alcohol and drug evaluation. The results of the report indicate that the Applicant does not meet the diagnostic criteria for alcohol dependence. It states,

His typical drinking pattern prior to 2003 was to drink 1 or 2 times a week on weekends. When he did drink, he typically drank more than four drinks per occasion. Since 2003, he has not had any further problems with alcohol. He has changed his social network so he no longer socializes with heavy drinkers. In the previous 12 months he reports no alcohol binges, where a binge is defined as more than 4 drinks on one occasion. He also reports that he normally drinks per occasion about four times per

week which is within the not-at-risk limits recommended by the National Institute of Alcohol Abuse and Alcoholism (NIAAA). He also reports that this has been his typical drinking pattern since his last DUI in 2003.... Based on the clinical interview and testing, Mr. Pilarski meets the lifetime criteria for a diagnosis of alcohol abuse but not for alcohol dependence. Since his drinking has been non-problematic for more than 5 years, his current diagnosis is alcohol abuse in sustained full remission. (Applicant's Exhibit D).

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

The Government alleges that during an interview with a DoD contract investigator on January 31, 2008, the Applicant deliberately omitted material facts and revealed only that he was arrested for a Lewd and Lascivious act with a minor in July 2003, and was offered to pled guilty to a DUI instead. He did not reveal that he was charged with Cruelty to a Child by Endangering Health.

The Government also alleges that when the Applicant completed his Questionnaire for National Security Positions dated November 27, 2007, he deliberately falsified material facts. In response to Question 23 which asks whether the Applicant has ever been charged with or convicted of any felony offenses, the Applicant responded that "a L and L act charge in July 2003 was dropped". He did not disclose that he pled guilty to a Cruelty to a Child by Endangering Health charge.

It is not credible to believe that the Applicant deliberately omitted the lesser charge of Cruelty to a Child by Endangering Health, a misdemeanor, when he revealed the more serious felony charge of Lewd and Lascivious act with a minor that was dropped. Clearly he did not deliberately attempt to conceal any material information from the Government concerning the arrest during his interview with the DoD investigator or in his responses on the security clearance application. Accordingly, Guideline E is found for the Applicant.

### **Mitigation.**

A long time neighbor and friend of the Applicant testified that he considers the Applicant to be upright and honest. The witness has seen a dramatic change in the Applicant. Specifically, a change in his circle of friends and that he does not consume alcohol as much as he used to. The Applicant now plays tennis, works out at the gym and bikes. (Applicant's Exhibits G and H).

A letter of recommendation from the Section Vice President of the company indicates that the Applicant is regarded as a key team member by the client. He is considered reliable and stable and his work ethic and job performance have been outstanding. (Applicant's Exhibit B).

Character references from coworkers, friends and neighbors of the Applicant consider him responsible, honest and trustworthy and completely deserving of a security clearance. (Applicant's Exhibit C and Applicant's Post-Hearing Exhibit).

Performance appraisals of the Applicant for the rating periods from May 2000 through March 30, 2007, reflect that his work performance consistently either "far exceeds" or "exceeds most" in every category. (Applicant's Exhibit F).

## **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:

None.

### **Guideline J (Criminal Conduct)**

30. *The Concern.* Criminal activity creates a 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.

Conditions that could raise a security concern:

31.(a) a single serious crime or multiple offenses;

31.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Condition 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.

Conditions that could raise a security concern:

None.

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, extent, 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 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 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, criminal conduct and/or dishonesty 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), dishonesty (Guideline E), and Criminal Conduct (Guideline J). 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 J of the SOR.

The Applicant's twenty-nine year history of alcohol abuse and criminal conduct includes at least six arrests and convictions for Driving Under the Influence of Alcohol. Although his most recent arrest occurred in 2003, over six years ago, he continues to consume alcohol, which has been at the root of his criminal problems. He has tried on numerous occasions to abstain from the use of alcohol, but has always returned to using it. Although his recent alcohol assessment does not diagnose him with alcohol

dependence, his past history of alcohol abuse clearly demonstrates that there has been a serious 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* and, 22(d) *diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence* apply. None of the mitigating conditions are applicable.

Under Guideline J, Criminal Conduct, Disqualifying Conditions, 31.(a) *a single serious crime or multiple lesser offenses* and 31.(c) *allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted* apply. None of the mitigating conditions are applicable.

Despite participating in a number of alcohol awareness programs, regular AA meetings, and their recommendation that he completely abstain from the use of alcohol, the Applicant continues to consume alcohol. It is not clear from his past record that he will not again return to his old ways. Based upon his long history of alcohol abuse and criminal conduct, its related negative effects on the Applicant are such that I am unable to find him sufficiently trustworthy to safeguard classified information. Accordingly Guidelines G and J are found against the Applicant.

Under Guideline E, Personal Conduct, I do not find that the Applicant deliberately omitted, concealed or falsified any material facts during his interview with the DoD investigator or on his security clearance application. Accordingly, I find for the Applicant under this guideline.

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. The Applicant is a 49 year old, intelligent, successful, well respected, and a long time employee of the defense industry. 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 his criminal 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. Paragraph 3 is found for the Applicant.

### **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.

Paragraph 2:           Against the Applicant.  
Subpara. 2.a.:       Against the Applicant.

Paragraph 3:           For the Applicant.  
Subpara. 3.a.:       For the Applicant.  
Subpara. 3.b.:       For 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