



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-04900  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

June 16, 2009

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on November 27, 2006. (Applicant’s Exhibit 8). On October 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G and H 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.

The Applicant responded to the SOR in writing on November 4, 2008, 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 April 7, 2009. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on April 29, 2009, and he submitted no reply. The case was assigned to the

undersigned for resolution on June 11, 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 45 years old and is employed for a defense contractor. 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 has a history of excessive alcohol abuse that has continued off and on from 1983 until at least January 2007. During this twenty-five year period, the Applicant was charged, arrested and convicted of Driving Under the Influence of Alcohol on three separate occasions, two of which involved accidents. Following each arrest, the Applicant participated in and completed a court ordered alcohol rehabilitation program. He also entered a voluntary lock-down half-way house facility after his most recent arrest. There is no evidence in the record that he has ever been formally diagnosed with alcoholism, but his pattern of drinking clearly indicates that he has a serious alcohol problem. The following facts outline each arrest.

The Applicant was arrested on 1986, and charged with (1) Driving Under the Influence of Alcohol. Applicant was interviewed by an investigator on January 18, 2007. During that interview the Applicant explained that prior to his arrest, he had consumed two to three beers at a college basketball game before driving home. On his way home, he had an accident with another car. Applicant was attempting to make a left turn through his lane from the opposite lane when the accident occurred. He believes that the reason he was at fault was because his blood alcohol level was above the legal limit. He pled no contest to the charge. The court sentenced him to three weekends of community service, placed him on probation for one year, fined him \$500.00 and sentenced him to participate in an alcohol treatment program. Applicant completed all of the court ordered sentencing requirements. (Government Exhibit 6).

Applicant second arrest occurred on July 16, 1989. Applicant had been consuming alcohol with his sister at a pub before attempting to drive his vehicle to his sister's house. Applicant was pulled over for speeding. The officer smelled alcohol on the Applicant's breath and he was given a sobriety test which he failed. He was charged with Driving Under the Influence of Alcohol. He pled guilty, was sentenced to two days in jail, was fined \$1,300.00 and required to participate in an alcohol counseling program. Applicant completed all of the court ordered sentencing requirements. (Government Exhibit 6).

Applicant's third arrest took place on May 23, 1999. He was charged with (1) Felony Driving Under the Influence, and (2) Felony Driving Under the Influence with BAC above .08%. Applicant stated that he began drinking in the early afternoon with his friend and consumed at least nine beers over the course of the day. While driving home, he hit a motorcyclist head on while trying to make a left turn. The motorcyclist and his female passenger flew or rolled over the top of his car before landing on the street with minor injuries consisting of scrapes. Applicant was arrested and administered a blood alcohol test which showed him over the legal limit. He pled no contest, the court found him guilty, he was sentenced to three years probation, his license was suspended for one year, he was fined \$3,000.00 and required to participate in a one year alcohol rehabilitation program. Applicant completed all of the court ordered sentencing requirements. (Government Exhibit 6).

He currently consumes alcohol one to two times a week in social gatherings where he has about three to four beers on average.

Paragraph 1 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he abuses illegal drugs.

The Applicant started using marijuana in high school, in 1980, and smoked it about once every two weekends. This pattern of use continued until he began attending college, at which time he started smoking it once a month. This use continued until he finished college. He then started smoking it about once a week. This pattern continued for about five months when he started smoking it once every few months. In July 2006, he decided to stop using marijuana altogether. He has not used marijuana since then. In total, the Applicant used marijuana at least 100 times from about January 1980 until about July 2006. He usually used it in small groups at friends homes or in outdoor settings. At times he purchased it and other times his friends provided it for his use.

On one occasion in 1983, when he was at a public park consuming alcohol with friends, he was approached by police officers and searched. Applicant has a marijuana cigarette on his person. He was cited and charged with possession of marijuana. He pled guilty and was fined \$100.00.

The Applicant also used cocaine at least ten times from about June 1981 until about January 2000. Applicant used it with friends at their homes. He eventually decided that he did not like the stressful feeling it gave him and so he stopped using it and has not used it since January 2000.

### **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 H (Drug Involvement)

24. *The Concern.* 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.

Condition that could raise a security concern:

25. (a) any drug abuse.

Condition that could mitigate security concerns:

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 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 and drug 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) and drug abuse (Guideline H). 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 H of the SOR. Applicant failed to submit any respond in mitigation to the evidence presented in the FORM.

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. None of the mitigating conditions are applicable.

The Applicant's twenty-five year history of alcohol abuse includes three arrests and convictions for Driving Under the Influence of Alcohol. Although his most recent arrest occurred in 1999, over ten years ago, there is no evidence in the record that the Applicant has stopped drinking or reduced his drinking for any period of time that would establish a pattern of abstinence or responsible use as required by the DoD Directive.

Although there is no formal diagnosis in the record of alcohol dependence, the Applicant's pattern of alcohol abuse is clearly indicative of a serious alcohol problem. Based upon his long history of alcohol abuse and its related effects on the Applicant there is insufficient evidence in the record to show that he is sufficiently trustworthy for access to classified information at this time. Accordingly Guideline G is found against the Applicant.

Under the particular facts of this case, Applicant's illegal drug use is just as serious. His illegal drug use began as a teenager and continued as an adult. He contends that he stopped his illegal drug use in 2006, about three years ago. But, he has presented no convincing evidence that would demonstrate that he has clearly stopped this long time habit. Under Guideline H, Drug Involvement, Disqualifying Conditions, 25(a) *any drug abuse*, apply. None of the mitigating factors apply. Accordingly, I find against the Applicant under Guideline H, Drug Involvement.

I have also considered the "whole person concept" in evaluating the Applicant's eligibility for access to classified information. 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.

Considering all of the evidence presented, it does not come close to mitigating the negative effects of his alcohol problem and drug use above, and the impact that they 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.

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

### **DECISION**

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