



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-06793
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: Alan V. Edmunds, Attorney At Law

April 7, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on October 30, 2005. On June 10, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G 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 on July 15, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on September 2, 2009. A notice of hearing was issued on October 19, 2009, scheduling the hearing for November 19, 2009. The Applicant requested that the venue be changed from Hawaii to Woodland Hills, California. The case was then rescheduled and set for November 10, 2009. At the hearing the Government presented

four exhibits, referred to Government Exhibits 1 to 4, which were admitted without objection. The Applicant presented twenty-one exhibits, referred to as Applicant's Exhibits A through U, which were admitted without objection. The Applicant testified on his own behalf. The official transcript (Tr.) was received on November 19, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

FINDINGS OF FACT

The Applicant is 35 years old and has a Master's Degree in Business Administration with an emphasis in Finance. He is employed by a defense contractor as a Program Manager and Consultant, 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.

The Applicant admitted to each of the allegations set forth in the SOR, with some qualifications. From 1995 to 2004, the Applicant served on active duty in the United States Navy. After separating from the military in 2004, he began working as a consultant for a defense contractor. He is currently assigned overseas. He has held a security clearance for the past eleven years and has never been cited or charged with any security violation. In 2005, he enrolled in a graduate program and obtained his Master's Degree in Business Administration in 2007.

His history of excessive alcohol abuse to the point of intoxication has continued off and on from February 2000, until at least December 2005. He described his regular drinking pattern during this period, on average, as once or twice a week, one to four beverages, preferably beer or vodka tonic, mostly on the weekends until 2005. During this period of excessive drinking, the Applicant was charged, arrested and convicted of three alcohol related offenses, among other misconduct. The following facts outline each arrest.

On February 27, 2000, the Applicant was charged with (1) Driving Under the Influence of Alcohol, and (2) DUI with a Blood Alcohol Level of .08 or more (.13). The Applicant explained that he had just returned from a six month overseas deployment to the States. He went to a friend's house with acquaintances from the military and from college where he consumed eight to ten beers over a three to four hour period. On his way home, he was pulled over for speeding, and the officer detected alcohol on the Applicant's breath. (Tr. p. 45.) The Applicant was administered a field sobriety test and arrested. Applicant was held in jail for about eight hours and then released on his own recognizance. He pled no contest to Count 2 and Count 1 was dismissed. He was

sentenced to summary probation, with a 180 day jail sentence that was suspended for five years. He was fined about \$1,250.00 and ordered to attend substance abuse classes. His driver's license was suspended for one year. Applicant stated that he attended substance abuse classes, one to two courses per month for two to three months between March and May 2000. (Government Exhibit 4.)

Applicant's second arrest occurred on June 15, 2003, while assigned overseas. He was charged with violating Article III (Drunken Driving) and Article 92 (Failure to Obey a Lawful Order and Failure to Identify) of the Uniform Code of Military Justice. Applicant explained that he had met his girlfriend for dinner and then consumed four cocktails. On his way home he was stopped at a check point and the police smelled alcohol on the Applicant's breath. The Applicant did not have his identification or driver's license with him at the time. He refused to make any statement or admit fault without a lawyer present, so he requested an attorney. The authorities misunderstood the Applicant's request and thought he had misidentified himself. The authorities drove to the Applicant's house to get his identification, and then arrested him. He was then turned over to the military police. The Applicant received non-judicial punishment and was found to be in violation of Article 107 (False Official Statement) and Article 133 (Manner Unbecoming an Officer) of the UCMJ. He was not found culpable of Drunken Driving. Applicant was verbally reprimanded and degraded. (Government Exhibit 4.)

On December 6, 2005, the Applicant was again arrested while overseas. He was charged with Prohibition of Drunken Driving (a violation of Korean traffic laws), with Operating a Vehicle with a Suspended License and Failure to Obey Law Enforcement Personnel (violations of U.S. Forces Korea regulations). The Applicant explained that he was at a wine bar with a girlfriend where they had split a bottle and a half of wine. On the way home, the Applicant was stopped at a check point and arrested. At the time, he was driving with a suspended drivers license. He was found guilty and ordered to attend alcohol counseling classes. His driver's license was suspended for one year and he was fined about \$3,000.00. (Government Exhibit 4.) For this offense, the Applicant attended a two hour group alcohol counseling class in February 2006. His driver's license was suspended from the date of the offense until he completed the course. (Government Exhibit 4.)

Following his arrest in 2005, although he still consumes alcohol, the Applicant states that he no longer drinks and drives. He states that he has significantly reduced the amount of alcohol he consumes, now drinking between one and two drinks per sitting, and only at social or business occasions. (Tr. p. 57.) He last drank to the point of intoxication on New Years Even 2007. (Tr. p. 58.) He indicates that he has greatly matured since his last arrest. He has been married for the past year and a half, and has a child on the way. (Applicant's Exhibit T.) His wife does not consume alcohol, and he no longer associates with the individuals with whom he used to drink. (Tr. p. 59.)

The Applicant agrees that he has made some bad decisions as a young, single professional, and takes full responsibility for his actions. He has satisfied all of the court requirements related to each criminal offense. He has paid fines, served suspended sentences, attended classes and suffered personal embarrassment. He more fully

understands the seriousness of his infractions and has drastically improved his lifestyle for the better over the past five years.

The Applicant submitted a statement of intent never to abuse alcohol again, which this court takes very seriously, indicating that should there be a future violation with regard to alcohol use, he consents to have his security clearance automatically revoked. (Applicant's Exhibit U.)

Letters of recommendation submitted on behalf of the Applicant from individuals who have worked with the Applicant and know him well attest to his professionalism, dedication to the job and high performance, intelligence, attentiveness to details, and strong leadership skills. He is described as honest, trustworthy and an individual with high integrity. He is considered to be an asset to the company. (Applicant's Exhibits A, B, N, O, P, and Q.) Applicant submitted numerous certificates of completion for courses and training he has received. (Applicant's Exhibit D, E, F, H, K, I, J, K.)

Applicant received the Navy and Marine Corps Achievement Medal, Navy Overseas Service Ribbon, Korean Defense Service Medal and the National Defense Service Medal. (Applicant's Exhibits L and S.)

Applicant received a Certificate of Appreciation for his professional and dedicated service for his work in the United States Forces Korea. (Applicant's Exhibit M.)

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:

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;

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).

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 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; and
- 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 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). 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 introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guideline G of the SOR. 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. However, Mitigating Conditions 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;* and 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) also apply.

The Applicant's history of alcohol abuse over a five year period from 2000 to 2005, resulted in three arrests for Driving Under the Influence of Alcohol, and other related misconduct. 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. Following his last arrest that occurred five years ago, in 2005, he has significantly reduced his alcohol consumption and has had no reoccurrence. He has attended court ordered alcohol counseling and understands the negative effects of alcohol and recognizes that he has an alcohol problem. Although he has not completely abstained from the use of alcohol, he has provided to this court a statement of intent that indicates that if he abuses alcohol again, he is consenting to have his security clearance immediately revoked. Under the particular facts of this case, sufficient time has passed to demonstrate that the Applicant is in rehabilitation and will not relapse in the future. In the event that he does, his security clearance will be subject to immediate revocation. Accordingly Guideline G is found for 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 highly respected professional who has demonstrated that for at least the past five years he has successfully battled his alcohol problem and has promised never to abuse alcohol again. Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole, support a whole person assessment of good judgement, trustworthiness, reliability, a willingness to comply with rules and regulations, and/or other characteristics indicating that the person may properly safeguard classified information.

Considering all of the evidence presented, it mitigates the negative effects of his alcohol problem and the impact that it can have on his ability to safeguard classified information. On balance, it is concluded that the Applicant has overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 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:	For the Applicant.
Subpara. 1.a.:	For the Applicant.
Subpara. 1.b.:	For the Applicant.
Subpara. 1.c.:	For the Applicant.
Subpara. 1.d.:	For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Darlene Lokey-Anderson
Administrative Judge