



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-07325
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

September 22, 2009

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on a date uncertain. On March 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 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.

Applicant answered the SOR in writing on March 31, 2009, and requested a hearing before an Administrative Judge. The matter was assigned to another Administrative Judge on April 16, 2009, and then transferred to a second Administrative Judge on May 4, 2009. The matter was transferred to the undersigned Administrative Judge on May 19, 2009. Notices of hearings were issued on May 6, 2009, and July 13, 2009, and the matter was scheduled for hearing on August 18, 2009. The Government

presented four Exhibits, referred to as Government Exhibits 1 through 4, which were received without objection. The Applicant presented two Exhibits, referred to as Applicant's Exhibits A and B, which were received without objection. Applicant also testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on August 25, 2009. The record remained open until close of business on August 25, 2009, to allow the Applicant the opportunity to submit additional documentation. The Applicant submitted nine Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits 1 through 9, which were received without objection. 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 49 years old and has a Master's Degree in Business. He is employed by a defense contractor as a Business Development Manager, 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 the allegations set forth in the SOR under this guideline. (See Applicant's Response to SOR). The Applicant is an honorably discharged veteran of the United States Navy. (Applicant's Post-Hearing Exhibit 7). He has held a security clearance for thirty years with no security violations.

The Applicant has been working for the current defense contractor for about twenty years. During this period he has never violated security policy or procedures of the company, even though he has abused alcohol at times. Applicant testified that he started drinking alcohol at the age of seventeen. He usually drank beer or wine on the weekends. After graduating from high school, he joined the Navy and his consumption of alcohol increased. In the Navy, he typically drank three nights a week when he was not at sea, consuming three to six beers or more at each sitting. As time passed, the Applicant realized that his drinking had steadily increased to the point where he was consuming alcohol every night. He believed that he was turning into an alcoholic, so he sought out professional help.

From December 2002, to March 2003, the Applicant voluntarily participated in a three month outpatient treatment program for alcohol abuse. (Government Exhibit 4). He found the program to be very helpful. During the treatment, the Applicant was diagnosed as alcohol dependent. He learned from this program that he had evolved over time to be an alcoholic. The program provided him with tools and procedures to

help him discontinue his alcohol consumption. Following this treatment program, the Applicant did not consume alcohol for several years. (Tr. p. 27). The Applicant was eventually confronted with stressful situations involving a transfer to a more difficult job in the company on a troubled program. His personal relationship was troubled, among other things, and so he started drinking again to relieve the stress. He phased into drinking, and before long, found himself drinking a half of bottle of wine or more every night.

Again, the Applicant did not like his excessive drinking and in February 2005, the Applicant voluntarily entered an alcohol rehabilitation treatment program. (Government Exhibit 4). He was again diagnosed with alcohol dependence. The Applicant stated that this second treatment program has more of an emphasis on relapse and how to prevent it from happening. (Tr. p. 30). Following this treatment program, the Applicant reduced his drinking to almost nothing, but had a few glasses of wine at parties or social events. In March 2009, he decided to quit drinking completely. (Tr. p. 31).

The Applicant testified that he has made some drastic changes in his life that have helped him with his sobriety. For one, he is no longer single. He got married in May 2008, to a woman who is a social drinker, but has not consumed alcohol since they got married, due to a nerve condition. Applicant is now very busy and has no desire to drink. He exercises, rebuilds cars, trucks and motorcycles, bike rides and goes fishing. (Tr. P. 45). Although his consumption of alcohol has never caused him any problems at work or in the public (except for a ticket he received for an open container as a youth many years ago), he now realizes the serious dangers involved in alcohol abuse and wants no part of it. If he finds a problem staying sober, he will join Alcoholics Anonymous and become involved. (Tr. p. 45).

Letters of recommendation from the Applicant's Manager, Security Lead, wife and other professional colleagues and friends, who know the Applicant well, attest to his professionalism, technical knowledge, trustworthiness, strong moral character, high integrity, consciousness and honesty. His meticulous attention to detail and thoroughness in protecting classified information is specifically noted. He is recommended for a position of trust. (Applicant's Post-Hearing Exhibits 3, 4, 5, 6, 8 and 9).

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.

Condition that could raise a security concern:

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.

Condition that could mitigate security concerns:

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 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature 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 voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent 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 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(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”* applies. However, given the isolated nature of the Applicant’s alcohol abuse, Mitigating Condition 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 applies.

The Applicant’s thirty year history of alcohol abuse includes the fact that he has been diagnosed as being alcohol dependent. Following his last treatment program in 2005, he significantly reduced his drinking. He no longer drinks irresponsibly and has not done so for at least four years. In March 2009, he decided to discontinue his use of alcohol altogether. He states that he will never drink again. This case is unique in that the Applicant has never had any problems related to his consumption of alcohol, either at work or in public. When his drinking became abusive to him, he voluntarily entered into treatment to address it. This self awareness is unusual, and the Applicant is commended for it. The Applicant has decided that alcohol no longer has a place in his life and he has been completely sober for five months. He plans to continue his sobriety. I have found the Applicant to be forthright, candid and sincere throughout the proceeding. Based upon his convincing testimony, demeanor, and commitment to remain alcohol free in the future, along with the evidence in mitigation, as reflected by the favorable statements from his professional colleagues and friends, as well as his past record of security worthiness, there is sufficient evidence in the record to show that he is sufficiently trustworthy at this time. The likelihood of his misconduct in the past being repeated is nil.

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 under all of the guidelines viewed as a whole, support a whole person assessment of good judgement, trustworthiness, reliability, candor, a willingness to comply with rules and regulations, or other characteristics indicating that the person may properly safeguard classified information. Accordingly Guideline G is found for the Applicant. In the event that the Applicant continues to abuse alcohol, his security clearance will be in serious jeopardy.

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.

CONCLUSION

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