



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-09898
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

August 30, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) dated May 13, 2008. (Government Exhibit 1.) On December 23, 2009, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR on February 23, 2010, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on March 23, 2010. A notice of hearing was originally issued on March 29, 2010, scheduling the case for May 17, 2010. An amended notice of hearing was issued on May 12, 2010, and the hearing was rescheduled for May 20, 2010. At that hearing the Government presented eight exhibits referred to as Government Exhibits 1 through 8, which were admitted into evidence without objection. The Applicant presented seven exhibits, referred to as

Applicant's Exhibits A through G, which were admitted without objection. He called three witnesses and testified on his own behalf. After the record was closed, the Applicant submitted additional documentation that was not admitted into evidence, but is noted for the record. The official transcript (Tr.) was received on June 9, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

FINDINGS OF FACT

The following Findings of Fact are based on the Applicant's Answer to the SOR, the testimony and the exhibits. The Applicant is 55 years old and has a Bachelors Degree in Architecture. He is employed by a defense contractor as a Project Manager and is seeking to obtain 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). After a complete and thorough review of the evidence in the record, and upon due consideration of the same, 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 1973, until at least September 2008. Over the past sixteen years of a thirty five year period, the Applicant was charged, arrested and convicted of Driving Under the Influence of Alcohol on three separate occasions, and once for being Drunk in Public. Following at least two of his arrests for DUI, including his most recent arrest of 2008, the Applicant participated in and completed a court ordered alcohol rehabilitation program.

The Applicant started consuming alcohol shortly after high school. At that time, he drank mostly beer and wine at social settings. His drinking continued on a daily basis over the years without interruption. He usually has a beer or two when he gets home from work, and a glass of wine with dinner. He considers himself a social drinker without an alcohol problem. He last had a drink of alcohol the night before the hearing to relax. There is no evidence in the record that he has ever been formally diagnosed with alcoholism, but his pattern of drinking, involving multiple alcohol related offenses, indicates a serious alcohol problem. The following statement of facts outline each arrest.

In 1992, the Applicant was arrested and charged with Driving Under the Influence of Alcohol. He explained that he was going through a divorce with his wife and went out to a bar. He had consumed several mixed drinks before leaving the bar. He was followed home by the police. (Government Exhibits 2, 3, 4 and 5.) He pled guilty and was fined. He remembers attending two or three Alcohol Awareness classes and one

Alcoholics Anonymous meeting as a result of this conviction. Following this DUI, he refrained from drinking and driving for over a year. (Tr. p. 41.)

In December 2000, the Applicant was charged with Drunk in Public. (Government Exhibit 6.) The Applicant explained that he had been consuming alcohol at a party before he drove to a restaurant where he fell asleep in the booth. (Tr. p. 47.) He was transported and booked into the jail. Following this arrest, the Applicant curtailed his drinking. Rather than having two mixed drinks, he went to one glass of wine. (Tr. p. 53.)

In July 2002, he was arrested and charged with Driving Under the Influence of Alcohol. He stated that he had been celebrating at a bachelor party where he had consumed three shots of bourbon, beer and some champagne before driving. He then went to a hotel and slept for four hours before driving home. While driving home, he ran a red light and was pulled over. He pled guilty to Wet Reckless. In 2006, he was sentenced to a fine and three years probation. As of January 2009, his fine had not been satisfied, and his probation was extended to August 2010. During his interview with the DoD investigator, he learned that a warrant had been issued for his arrest. He indicated that he would immediately contact the court and pay the outstanding fine. (Government Exhibits 2, 3, 4 and 5.)

In August 2008, he was arrested and charged with, (1) Driving Under the Influence of Alcohol and (2) Driving While having a 0.08% or Higher Blood Alcohol. The Applicant explained that he had been at a good friend's home celebrating his friend's birthday during a barbeque where he had consumed beer and shots of tequila. On his way home, he was pulled over for land drifting. He pled guilty to Count 1 and was sentenced to five days jail, 90 days Driving Under the Influence 1st Offenders Program, fined and placed on 36 months probation. Count 2 was dismissed. Following this incident, he states that he curtailed his drinking. The Applicant remains on probation for this arrest. (Tr. p. 70.) His drivers license was suspended until he finished the 13 week alcohol awareness course. (Government Exhibits 2, 3, 4, and 5). He has completed his substance abuse program and his drivers license has been reinstated. (Applicant's Exhibit A.)

Since his last arrest, the Applicant states that he no longer drinks and drives. The Applicant stated,

Well, the cornerstone of my case, sir, is that drinking and driving has been the problem that I've been concerned with and not necessarily the alcoholism because I seriously looked at that when I had to go to the AA meetings for this last conviction and talked to some of the alcoholics there and asked them, you know, what is it ? I really wanted to know if I had a problem. And after six weeks of AA meetings, 13 weeks of the Alcohol Classes, I came away with the idea that just really needed to focus in on not driving while I'm consuming alcohol. (Tr. p. 31.)

The Applicant plans to continue to drink in the future. He does not believe he is an alcoholic, but that he has a problem with drinking and driving. (Tr. p. 65.) He believes that he functions in and contributes to society very well. (Tr. p. 50.) He also believes that he is simply an unlucky person who has been caught drinking and driving on three separate occasions. (Tr. p. 56.) When asked whether he would consume alcohol the night of the hearing, he stated that he believed that he would have a couple of drinks. (Tr. p. 69.)

He testified that he has worked for his current employer for about three years and his job performance is "above average" to "average." The Applicant's supervisor testified that the Applicant has worked for him for about nine months. He believes the Applicant to be an honest, patriotic, trustworthy individual that would do nothing to jeopardize the national interest. (Tr. pp. 86-87.)

A friend of the Applicant testified that he is trustworthy, honest, loyal and a man of his word. He considers him an individual who would do nothing to jeopardize the national interests. (Tr. p. 88.) The Applicant's son testified that his father instilled the sense of working hard, patience, and the larger tasks will be completed a little at a time. (Tr. p. 92-94.)

Letters of recommendation from the Applicant's current supervisor, a project manager, coworkers, and a former supervisor attest to his professionalism, honesty and integrity. Since working for his current employer, he has been a valuable member of the team. He is always reliable and dependable, and has proven himself time and time again to be of upstanding character. He has an excellent attendance record and normally works beyond the normal business day to complete his assigned tasks and projects. He is highly recommended for a position of trust. (Applicant's Exhibits B, C, D, E and 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.

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 behavioral 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 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). 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 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. None of the mitigating conditions are applicable.

Over the past sixteen years of a thirty-five year history of alcohol consumption, the Applicant has been arrested on four occasions, three times for Driving Under the Influence of Alcohol, and once for being Drunk In Pubic. Multiple alcohol related infractions are indicative of a serious alcohol problem. Although his most recent arrest occurred in 2008, two years ago, there is no evidence in the record that the Applicant has stopped drinking, or reduced his drinking for any significant 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.

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, and 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 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 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:	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.

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