



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 08-10947  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

December 10, 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 June 17, 2008. (Government Exhibit 1). On July 13, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G, E and J 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 August 3, 2009, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on September 2, 2009. A notice of hearing was issued on October 14, 2009, and the matter was scheduled for hearing on November 20, 2009. At the hearing, the Government presented five exhibits, referred to as Government Exhibits 1 through 5, which were received without objection. The Applicant presented no exhibits, but testified

on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 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 50 years old and has completed two years of college. He is employed by a defense contractor as a Field Service Technician, 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 served honorably in the United States Air Force from October 1977 to March 1991, over thirteen years. He has been arrested and convicted on six separate occasions for Driving Under the Influence of Alcohol (DUI), and on one occasion for Disorderly Conduct Involving Alcohol. In April 2008, he began working for a defense contractor.

The Applicant was first arrested in approximately 1985, while on active duty. He was arrested on base by military police and charged with DUI. He did not take a breathalyser test. He received non-judicial punishment and was reduced in grade.

Applicant's second arrest for DUI occurred in 1989, again on the Air Force Base. This time, he did not inform his chain of command of this arrest. Applicant was subsequently punished for this conduct. Applicant testified that because of the DUI's he received in the Air Force, he lost his security clearance and he was denied extended re-enlistment.

Following these two arrests, in 1989, the Applicant attended a thirty day in-patient treatment program at the Air Force Base. During the program, he abstained from consuming alcohol for a period following the program, before he returned to consuming alcohol again. Applicant testified that he attended Alcoholics Anonymous (AA) for five years and found it very helpful. At one point, the Applicant believes that he had over three years of sobriety. (Tr. p. 26). He thinks that this period of sobriety may have been between 1989 and 1994. (Tr. p. 28).

Applicant's third arrest for DUI occurred on or about August 1999. He failed to appear at trial.

On or about February 1998, the Applicant was arrested and charged with disorderly conduct. On this occasion, he had been drinking to excess.

Applicant's fourth arrest for DUI occurred on or about July 2001.

On or about October 2004, the Applicant was arrested for the fifth time of DUI. He was also arrested for reckless driving, and for refusing the breath test. Applicant explained that he and his wife, at the time, were drinking at a bar, got into an argument, and he decided to drive home. While driving, he was pulled over by the police.

Applicant's sixth arrest for DUI occurred on or about November 2004. He explained that he had consumed about eight to nine beers at a bar. To avoid a fight, he decided to drive home. On the way home he struck a telephone pole. Police arrived at the scene, detected the odor of alcohol and the Applicant was arrested. Applicant failed to appear at trial and in October 2006, a warrant was issued for his arrest. He left the state and has no plans to return until the statute of limitations has run.

Applicant testified that following his most recent arrest for DUI, he changed his drinking habits. He currently drinks on a daily basis and has four beers in the evening. (Tr. p. 20). He has moved to a state that has a great transportation system and so he no longer drinks and drives. He does not believe that he has a drinking problem. He states that a twelve pack is what it takes to make him feel intoxicated. (Tr. p. 23). Due to health reasons, he had considered stopping his consumption of alcohol. (Tr. p. 24). He believes alcohol has only caused him "moderate problems" in his life and he has been able to deal with them. (Tr. p. 25). He is also considering returning to AA, but he is not motivated to do so simply because his security clearance is in jeopardy. (Tr. p. 29).

Paragraph 2 (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 Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP), Standard Form 86, dated June 17, 2008, which asked him if he had ever been charged with or convicted of any offenses related to alcohol or drugs. The Applicant responded "yes" and disclosed three charged offenses, set forth in 1(a), 1(b), and 1(c), but failed to disclose his arrests and alcohol related offenses in 1(d) through 1(h) of the SOR. (Government Exhibit 1).

Applicant explained that he misunderstood the question and was not attempting to conceal any of his DUI's or any other alcohol related offenses from the Government. (Tr. p. 23). He listed those offenses that occurred within seven or ten years, whatever

he believed the question required, and he left out the others. He states that he was not trying to hide anything from the Government. (Tr. p. 22).

## **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;

22(d) diagnosis by a duly qualified medical professional (e.g. physician, clinical psychologist, or psychiatrist) or alcohol abuse or alcohol dependence;

22(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

Conditions 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.

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.

Conditions 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 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, dishonesty and/or criminal conduct 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 history of alcohol abuse and criminal conduct includes six arrests and convictions for DUI's, and one for disorderly conduct involving alcohol. Although his most recent arrest occurred in 2004, about five years ago, he continues to consume alcohol, which has been at the root of his criminal problems. As a result of his most recent arrest, he failed to appear in court, and left the state to avoid the matter. His in-patient treatment program for alcohol abuse in 1989, and his AA participation appeared to be helpful, as he was able to maintain sobriety for several years. However, he has stopped attending AA and started drinking again. He has tried on his own to abstain from the use of alcohol, but has not been able to do it. Although the record contains no formal diagnosis of alcohol dependence, the Applicant's past history of alcohol abuse clearly demonstrates that there has been and still is 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; 22(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program* 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 AA's recommendation that the Applicant completely abstain from the use of alcohol, the Applicant continues to consume alcohol on a daily basis. 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 on his security clearance application. The Applicant's testimony, explanation, and demeanor was reasonable, credible and

painfully honest. In fact, he admitted his most recent criminal incidents. 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 50 years old, has a serious history of alcohol abuse involving numerous alcohol related incidents, and continues to drink alcohol. He has left the state to avoid his most recent court matter. 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 3 of the SOR. Paragraph 2 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.
- Subpara. 1.h.:    Against the Applicant.
- Subpara. 1.i.:    Against the Applicant.
  
- Paragraph 2:           For the Applicant.
- Subpara. 2.a.:    For the Applicant.
  
- Paragraph 3:           Against the Applicant.
- Subpara. 3.a.:    Against 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