



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 09-01986

**Appearances**

For Government: Melvin A. Howry, Department Counsel  
For Applicant: Joseph Testan, Attorney At Law

February 10, 2011

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**Decision**  
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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on November 3, 2008. (Government Exhibit 1.) On October 1, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G, H and E 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 (DoD) for SORs issued after September 1, 2006.

The Applicant responded to the SOR on October 31, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the Administrative Judge on January 22, 2010. The Applicant was on temporary duty overseas in Afghanistan until August 26, 2010. A notice of hearing was issued on July 9, 2010, scheduling the hearing for September 16, 2010. The hearing was cancelled due to his five month extended temporary duty assignment. Another notice of hearing was issued on October 6, 2010, scheduling the hearing for December 28, 2010. At the

hearing the Government presented five exhibits, referred to as Government Exhibits 1 to 5, which were admitted without objection. The Applicant presented seven exhibits, referred to as Applicant's Exhibits A through G, which were admitted without objection, and he called three witness. He also testified on his own behalf. The official transcript (Tr.) was received on January 13, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

The Applicant is 58 years old and married with four children. He is employed by a defense contractor as a Creative Director/Senior Producer and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant admits each of the allegations set forth under this guideline. The Applicant has abused alcohol, at times to excess, and to the point of intoxication, from approximately 1973 to about 1986, and from about 2002 to at least 2008. He has held a security clearance since November 2006. (Tr. p. 92.)

The Applicant is an alcoholic who has been battling the disease for many years. He started drinking alcohol at the young age of sixteen. (Tr. p. 93.) During his last year of college his problems began to surface. He has been arrested, charged and convicted for Driving Under the Influence of Alcohol (DUI) on three separate occasions. The first DUI occurred in early 1980's, and the second one occurred in the mid-1980's. His last arrest for DUI occurred in 1986. Following his third arrest and conviction, the Applicant joined Alcoholics Anonymous (AA) and attended meetings from October 1986 through November 1987. Although he did not consume alcohol, he was not actively working the AA program. In November 1987, he obtained a sponsor and began working the program. He remained sober until 2002, approximately fifteen years. (Tr. 96.)

In August 2001, he injured his knee and took prescribed pain medication and muscle relaxers for the pain. In November 2002, he began having other serious medical problems, including arthritis, cancer, a bad rotator cuff, (which required surgery), a stroke and Hepatitis C. During this time, he was diagnosed with chronic liver disease and told that he would eventually require a liver transplant and/or die. He underwent Chemotherapy for about a year that resulted in fevers, chills, shaking, joint pain, nausea, vomiting and muscle spasms. ((Tr. p. 98.) This treatment was torturous and caused excruciating pain. (Government Exhibit 2.) It was during this treatment that the Applicant was told that he was going to be laid off. (Applicant's Answer to SOR.) It was also during this treatment that the Applicant relapsed and took more than the prescription amount of pain medication to seek relief. In November 2002, he also consumed alcohol a few times to relieve the pain. This relapse lasted several months. (Tr. p. 100.)

In March 2003 or 2004, following knee surgery, the Applicant again relapsed, and took more prescription pain pills than was prescribed. (Tr. pp. 101-102.)

In September 2008, while in Hawaii on business, the Applicant relapsed a third time. This time, he not only used prescription pain pills, including Tylenol and Codeine that he had left over from another surgery, but oxycontin that he was prescribed in Hawaii, combined with alcohol, specifically vodka that he had been consuming. (Tr. p. 124.) He was found passed out in a beach chair and taken to the emergency room. Following this relapse, he immediately sought treatment for his alcoholism. He entered a one year treatment program for alcoholism from September 15, 2008, to about June 2009. During this program, he was diagnosed with Drug Dependence, combined opioid and others and Alcohol Dependence. (Applicant's Exhibit B.) Following this alcohol treatment program, he resumed his daily attendance at AA. He also reconnected with AA.

Following his relapse in Hawaii, his employer temporarily suspended him from his job, required mandatory and random drug and alcohol testing, and required that he sign a statement of intent indicating that if he were ever found intoxicated again, he would be terminated from his employment. The Applicant also submitted a letter of intent indicating that he does not intend to use any illegal drug, or abuse prescription drugs, in the future and that he understands that if he violates his promise, any security clearance he has will be automatically revoked. (Applicant's Exhibit G.)

In September 2009, the Applicant deployed to Afghanistan. He has remained clean and sober while serving in Afghanistan. Although he is unable to attend AA meetings in Afghanistan, his sponsor is available by e-mail and on a monthly basis he receives and reads bi-monthly AA publications to assist him with his recovery. Since returning from Afghanistan, he has been attending three AA meetings a week. He also meets with his sponsor weekly, and talks with him on a daily basis. (Tr. pp. 113-114) The Applicant has alerted his doctors and the pharmacy concerning his addiction and no longer wants to be prescribed pain medication. (Tr. p. 113.) He currently suffers from mild depression and is currently taking prozac for his condition. (Applicant's Exhibit A and Tr. p. 138.)

Paragraph 2 (Guideline H - Drug Involvement). The Government alleges that the Applicant is ineligible for clearance because he abuses illegal drugs.

The Applicant denied the allegation set forth under this guideline. (Applicant's Answer to SOR.) The Applicant has abused controlled substances, to include opiates, Oxycontin, valium, and a combination of Tylenol and Codeine from about 2002 to at least 2008. The Applicant has been prescribed a number of pain medications for various ailments he has suffered from over the years. From 2002 to 2008, he was prescribed pain medications for chronic back and neck pain from osteoarthritis and knee surgery, for a torn left shoulder rotator cuff, and a torn bicep tendon. The Applicant admits that at times to relieve pain he took more of the prescribed pain pills than was recommended by his doctor. Sometimes he used pain pills that were left over from previous ailments to relieve pain for other than what it was originally intended.

Paragraph 3 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or an unwillingness to comply with rules and regulations.

The Applicant denies each of the allegations set forth under this guideline. (Applicant's Answer to SOR.) The Applicant completed a Questionnaire for National Security Position dated November 3, 2008. (Government Exhibit 1.) Question 24(b), asked him if since the age of sixteen or in the last seven years, whichever is shorter, have he illegally used any controlled substance. The Applicant answered, "NO." This was a false response. He failed to list that he abused a number of controlled substances, specifically Opiates, Oxycontin, Valium, and a combination of Tylenol and Codeine.

On the same questionnaire dated November 3, 2008, under "Additional Comments", the Applicant stated as follows: "In September 2008, I had a brief relapse by using alcohol while taking prescribed medicine. I had previously been clean and sober for 15 years in Alcoholics Anonymous and am again clean and sober for 40 days (today)..." (Government Exhibit 1.) The Applicant failed to disclose that he had consumed alcohol and abused prescription drugs from at least 2002 to September 2008. (Applicant's Answer to SOR.)

During an interview with an investigator on February 2, 2009, the Applicant stated that he was a recovering alcoholic who had not consumed alcohol or abused any other controlled substances from November 1, 1987, until the week of September 3, 2008. (Government Exhibit 4.) This was false information. The Applicant failed to disclose that he has used alcohol and prescription drugs from at least 2002 to September 2008. (Applicant's Answer to SOR.)

The Applicant explained that since the pain pills he was taking were prescribed by a physician, he did not believe he was abusing them. (Tr. p. 126 and Applicant's Answer to SOR.) This was a mistaken belief and an attempt to rationalize or justify his abuse. I find that the Applicant knew or should have known that he was abusing the prescription drugs he was taking when he was not taking them as prescribed. However, I do not find that he deliberately sought to conceal his abuse of alcohol and prescription drugs from the Government on his security clearance application since he had already revealed that he was a recovering alcoholic who had relapsed. With respect to what he told the investigator, it is clear that he lied. He apologizes for his misleading statement concerning this. (Applicant's Answer to SOR.)

Three witnesses, including his pastor, his AA sponsor, and his wife, who is also a recovering alcoholic, testified on the Applicant's behalf. They collectively characterize the Applicant as an honest, trustworthy, responsible, conscientious, God loving man and an individual with a renewed commitment to stay sober. (Tr. pp 38-42, 48-58 and 70-81.)

Applicant's performance appraisal from October 2009 to May 2010, reflect all "outstanding" ratings. His performance appraisal from May 2010 to November 2010, reflects that he either "exceeds expectations" or is "outstanding" in every category. (Applicant's Exhibit E.)

A letter from the Applicant's Information Operations Director, to whom the Applicant reports, describes the Applicant as an honest, dependable, and mature. The Applicant has been assigned many difficult tasks and has successfully accomplished all of them in a difficult combat environment. The writer is confident that the incidents in the past have been resolved. (Applicant's Exhibit D.)

Letters of recommendation and accolades from other professional associates, coworkers and friends of the Applicant attest to his good character, honesty and integrity. His work performance is exceptional and his work ethic is outstanding. They see that he is doing all he can to improve himself, his relationship with his family and his friends. He is highly recommended for a position of trust. (Applicant's Exhibits C, D 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.

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

22. (e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

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 H (Drug Involvement)

*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.

Conditions that could mitigate security concerns:

26. (b) a demonstrated intent not to abuse any drugs in the future, such as

(4) a signed statement of intent with automatic revocation of clearance for any violation;

26. (c) abuse of prescription drugs was after a serve or prolonged illness during which these drugs were prescribed, and abuse has since ended.

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:

16. (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

16. (b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

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 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.

## CONCLUSIONS

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, drug abuse and personal 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), Drug Involvement (Guideline H), and poor Personal Conduct (Guideline E). The totality of 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, H and E of the SOR.

The evidence shows that the Applicant is a recovering alcoholic who had fifteen years of sobriety before running into problems remaining sober. He has recently experienced a series of three relapses in the past ten years, the most recent of which occurred in 2008, less than three years ago. Despite his diagnosis of alcohol dependence, treatment programs for alcoholism that included intensive educational classes, group therapy, and treatment with a psychiatrist and psychologist, followed by Alcoholic Anonymous meetings, he has been unable to maintain any long term sobriety. Presently, he has been abstinent for almost three years. He appears to have a renewed commitment to sobriety as a priority in his life. However, given the nature of his disease, his recent relapses prevent a favorable finding at this time. Based upon his past record of relapse there is no guarantee that he can remain sober in the future.

Under 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 22.(d) diagnosis by a duly qualified medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence, 22.(e) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program, and 22.(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program apply. There is no evidence in the record that any of the mitigating conditions apply. Accordingly, I find against the Applicant under Guideline G, Alcohol Consumption.*

The Applicant has also abused an assortment of prescription drugs. He abused opiates, Oxycontin, Valium, and a combination of Tylenol and Codeine from about 2002 to 2008. He knew when he used the pain pills that he was using more than what he was supposed to, or for a purpose other than for what they were intended. His last abuse of any prescription drug occurred in 2008, about three years ago. Given his history of addiction, this use is recent and poses a security risk. Under Guideline H, Drug Involvement, Disqualifying Conditions 25.(a) *any drug abuse* applies. Arguably, Mitigating Conditions 26.(b) *a demonstrated intent not to abuse any drugs in the future, such as (4) a signed statement of intent with automatic revocation of clearance for any violation, and 26.(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended* apply. In this case, however, they are not controlling. Applicant's extensive use of prescription drugs coupled with multiple and recent relapses precludes a favorable finding here. Accordingly, I find against the Applicant under Guideline H, Drug Involvement.

Although the Applicant did not answer the questions correctly in response to his use of illegal drugs on his security clearance application, I do not believe that he deliberately attempt to conceal this information. He did disclose elsewhere in the application that he was a recovering alcohol that had relapsed. With respect to what he told the investigator during his interview, namely that he had not consumed alcohol or abused any controlled substances from November 1987 to September 2008, this was a blatant lie that bears no excuse. The Applicant was not candid or forthcoming with this information, and therefore, he cannot be trusted with the national secrets. Disqualifying Condition 16.(b) *deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative* applies. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline E, Personal Conduct.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. The Applicant is a 58 year old alcoholic who has also abused prescription pain pills. He was not forthright during his interview with an investigator concerning his illegal drug use. 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 poor judgment, untrustworthiness, unreliability, a lack of candor, an unwillingness to comply with rules and regulations, and/or other

characteristics indicating that the person may not properly safeguard classified information.

This Applicant has not demonstrated that he is sufficiently trustworthy, and he clearly does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline H (Drug Involvement), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct).

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, 2 and 3 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.

Subpara. 1.f.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the Applicant.

Subpara. 2.b.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: For the Applicant.

Subpara. 3.b.: For the Applicant.

Subpara. 3.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