



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-02395
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

June 21, 2010

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on June 12, 2008. (Government Exhibit 1.) On August 31, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G, H, 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 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 September 14, 2009, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the Administrative Judge on October 27, 2009. A notice of hearing was issued on January 12, 2010, scheduling the hearing for March 2, 2010. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 to 8, which were admitted without objection. The Applicant presented six exhibits, referred to as Applicant's Exhibits A through F, which were admitted without objection, and he called

one witness. He also testified on his own behalf. The official transcript (Tr.) was received on March 10, 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 Applicant is 60 years old and has completed two years of college. He is employed by a defense contractor as an Aerospace Engineering Manager 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 admitted each of the allegations set forth under this guideline, except 1(a). (Applicant's Answer to SOR). The Applicant served on active duty in the United States Navy for six years from January 1970 to January 1976, when he was honorably discharged. During that period, he was assigned to a ship, and for 32 months he was supporting combat operations in Vietnam. He received the National Defense Service Medal. He did not hold a security clearance while in the military. After leaving the military, he joined the defense industry where he has worked for the past thirty-five years. He obtained a security clearance for the first time in 1982, when he started with his current employer. Since that time, he has had a successful career. He has been promoted seven times in twenty years over two stints with his current employer.

The Applicant explained that he began consuming alcohol in 1965, at the young age of fourteen. In the beginning, he drank on the weekends. His drinking continued and increased overtime from social to daily drinking at home. He consumed alcohol at times to the point of intoxication, off and on, until August 2009. From 1992 to 2001, the Applicant worked the twelve steps of AA, and claims that he was completely sober. (Tr. p. 22.) In 2001, he returned to drinking wine at first, that after several months escalated to scotch. He last consumed alcohol about six months before the hearing. He presently attends Alcoholics Anonymous (AA) meetings two to three times a week and is on step 6.

The Applicant's abusive drinking resulted in two alcohol related arrests. His first arrest occurred in 1972, where he was charged with Driving While Intoxicated. He stated that he was driving home from the race track after consuming about four or five beers, when he was arrested. He was arrested again, a year later, in 1973, and charged with Reckless Driving after consuming alcohol. This time, he was driving home from playing pool and believes that he consumed about six beers prior to the arrest. Following both arrests, the Applicant pled guilty and was fined. Applicant admits to drinking and driving on other occasions where he was not arrested.

The Government further alleges that the Applicant was arrested in 1974, and charged with Misdemeanor Driving Under the Influence of Alcohol. The Applicant

denies the allegation and the Government presented no evidence to substantiate the allegation. (Tr. p. 66.) Accordingly, this allegation is found for the Applicant.

By 2005, the Applicant's was consuming between 6 to 8 drinks of alcohol on a daily basis at home alone. Realizing he had a serious problem, he voluntarily entered several treatment programs to help him with his alcohol addiction. From August 2, 2005, through August 5, 2005, he entered a three day inpatient alcohol detox treatment program for his condition diagnosed as Alcohol Dependence. Following the detox treatment, he received outpatient therapy and family counseling for alcohol abuse from August 9, 2005, to September 27, 2005. He testified that these first two experiences with treatment were not the best, and he did not find them helpful. (Government Exhibits 5 and 6.)

Following the treatment, Applicant was able to stay sober for several months before relapsing again. From August 5, 2008, to August 16, 2008, he again sought out and received treatment for a condition diagnosed as Alcohol Dependence and Alcohol Withdrawal Syndrome. He found this treatment program to be very professional and effective. He also received after care treatment from about August 18, 2008, to October 14, 2008. From August to November 2005, he remained completely sober before he started drinking again. (Government Exhibits 7 and 8.) In October 2009, he stopped drinking, and has now been sober for six months.

The Applicant's wife testified that she has been married to the Applicant for thirty years. She considers him honest and reliable and supports him with his endeavors. (Tr. pp. 41- 42.)

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

The Applicant admitted each of the allegations set forth under this guideline, except 2(i). (Applicant's Answer to SOR.) The Applicant has used a variety of illegal drugs, discussed below, between January 1966 and July 2008. From 1992 to 2001, during the period he abstained from alcohol, he claims that he was also drug free.

The Applicant used marijuana from about January 1966 to July 2008, very sporadically. (Tr. p. 81.) At times, he contributed to the purchase of marijuana. He used marijuana while working for a defense contractor knowing it was illegal. He continued to use marijuana after having been granted program access by another government agency, in about April 2007. He tested positive for marijuana on a drug test in about August 2005, while being admitted into the alcohol treatment program. Applicant stated that he told the facility that he would test positive.

The Applicant also used cocaine, mostly on the weekends, from 1978 to 1982, at varying frequencies. He provided money for the purchase of the cocaine. He used thai sticks in about 1973, and purchased thai sticks. He explained that this use occurred during a one or two month period while overseas in Guam when the destroyer he served on was being repaired. He used heroin several times during for a one year

period. (Tr. P. 48.) He also purchased heroin. He used speed about ten times from 1970 to at least 1972 and also purchased speed. He used LSD with varying frequencies from about 1970 to at least 1972. While serving in the Navy, in about 1971, he purchased and sold 100 LSD tablets to a friend using the interstate mail to deliver them. He used hashish less than ten times from about 1970 to at least 1971 and also purchased it.

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 admitted allegations 3(a) and 3(b), and denied the other allegations set forth under this guideline. (Applicant's Answer to SOR). The Applicant completed a security clearance application dated April 9, 2004. Question 27 of the application asked him if, since the age of 16 or in the last 7 years, whichever is shorter, had he illegally used any controlled substance. The Applicant responded, "NO." (Government Exhibit 2.) This was a false answer. The Applicant failed to list his use of marijuana from 1997 to 2004. (Tr. p. 101.) He admitted that he deliberately attempted to conceal his illegal drug involvement from the Government on the application.

In April 2007, the Applicant's program access was revoked by another Government Agency as a result of his drug involvement, alcohol consumption, and personal conduct.

The Applicant completed another security clearance application dated June 12, 2008. Question 24(a) of this application, known as an Electronic Questionnaire for Investigations Processing (e-QIP), asked the Applicant if since the age of 16 or in the last 7 years, whichever is shorter, had he illegally used any controlled substance. The Applicant answered, "YES," and listed marijuana use from about January 1966 to November 2006. (Government Exhibit 1.) He failed to list his marijuana use until 2008.

Question 24(b), of the same questionnaire asked him if he ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance or while in a position directly and immediately affecting the public safety. The Applicant answered, "NO." (Government Exhibit 1.) This was a false answer. The Applicant failed to list his use of marijuana while possessing a security clearance.

On December 10, 2008, the Applicant provided a signed sworn affidavit to an authorized investigator of the Department of Defense, wherein he stated that he used marijuana from January 1966 to November 2006. (Government Exhibit 8.) This information was partially true, but not entirely true. The Applicant failed to disclose that he used marijuana until July 2008.

The Applicant contends that when he filled out the 2008 security clearance application, he must have made a mistake that was not deliberate on his part. He

believes that all of the his illegal drug involvement came out in a polygraph he took in 2007, so there would be no reason for him to lie. (See Government Exhibit 8, and Applicant's Answer to SOR.) Based upon the evidence presented, I find the Applicant to be credible. Although the questions on the applications are not difficult, confusing or complex, he told the lie in 2004, and obviously just copied his false answers on the 2004 application down onto the 2008 application by mistake.

Paragraph 4 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in criminal conduct.

The Applicant denied the allegation set forth under this guideline. (Applicant's Answer to SOR.) By intentionally provided false information on his 2004 security clearance application, the Applicant violated Title 18, United States Code, a felony.

Letters of recommendation from the Applicant's current manager, former managers, sister-in-law who is a Methodist minister, and other professional colleagues attest to the Applicant's honesty, reliability, integrity, high moral and ethical standards. He is considers to be a asset to the company and highly recommended for a position of trust. (Applicant's Exhibits A, B, C, D and E.)

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 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.

Conditions that could raise a security concern:

25.(a) any drug abuse;

25.(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia.

Conditions that could mitigate security concerns:

None.

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 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.

Conditions that could mitigate security concerns:

None.

Guideline J (Criminal Conduct)

30. *The Concern.* Criminal Conduct activity creates 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 lesser offenses;

31.(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

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, personal conduct and 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), Drug Involvement (Guideline H), poor Personal Conduct (Guideline E), and Criminal Conduct (Guideline J). 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, E and J of the SOR.

The evidence shows that the Applicant has a forty year history of alcohol abuse that has not been mitigated. Despite his treatment programs for alcoholism, his two alcohol related incidents, and his diagnosis of alcohol dependence, he has been unable to maintain any long term sobriety. This time, he has been abstinent for six months. 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 used an assortment of illegal drugs while he was serving in the military, working for a defense contractor, and holding a security clearance. He used marijuana, cocaine, thai sticks, heroin, speed, LSD and hashish. He knew when he used marijuana that it was against the law and against company policy. His last use of any illegal drug occurred in July 2008, less than two years ago. This use is recent and poses a security risk. Under Guideline H, Drug Involvement, Disqualifying Conditions 25.(a) *any drug abuse*, and 25.(c) *illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline H, Drug Involvement.

Furthermore, the Applicant deliberately provided false information to the Government on his 2004 security clearance application. He is therefore, not sufficiently trustworthy to have access to classified information. Under the particular facts of this case, his poor personal conduct is considered a significant security risk, which prohibits a favorable determination in this case. Under Guideline E, Personal Conduct, Disqualifying Conditions 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* applies. None of the mitigating conditions are applicable. Consequently, I find against the Applicant under Guideline E, Personal Conduct.

In addition, the Applicant violated federal law, Title 18, United States Code, Section 1001, by deliberately providing false information to the Government on his security clearance application. 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. This is criminal conduct that has not been mitigated. Accordingly, I find against him under Guideline J, Criminal Conduct.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. The Applicant is a 60 year old alcoholic

who has abused illegal drugs while employed for a defense contractor. He lied on his security clearance application in 2004 concerning his illegal drug use in order to obtain a security clearance, and only during a polygraph in 2007, did he confess his misconduct. 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 demonstrated that he is not 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), Guideline E (Personal Conduct) and Guideline J (Criminal 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, 3 and 4 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.: For 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.

Paragraph 2: Against the Applicant.

- Subpara. 2.a.: Against the Applicant.
- Subpara. 2.b.: Against the Applicant.
- Subpara. 2.c.: Against the Applicant.
- Subpara. 2.d.: Against the Applicant.
- Subpara. 2.e.: Against the Applicant.
- Subpara. 2.f.: Against the Applicant.
- Subpara. 2.g.: Against the Applicant.
- Subpara. 2.h.: Against the Applicant.
- Subpara. 2.i.: Against the Applicant.
- Subpara. 2.j.: Against the Applicant.
- Subpara. 2.k.: Against the Applicant.

Subpara. 2.l.: Against the Applicant.
Subpara. 2.m.: Against the Applicant.
Subpara. 2.n.: Against the Applicant.
Subpara. 2.o.: Against the Applicant.
Subpara. 2.p.: Against the Applicant.

Paragraph 3: Against the Applicant.

Subpara. 3.a.: Against the Applicant.
Subpara. 3.b.: Against the Applicant.
Subpara. 3.c.: For the Applicant.
Subpara. 3.d.: For the Applicant.
Subpara. 3.e.: Against the Applicant.
Subpara. 3.f.: Against the Applicant.

Paragraph 4: Against the Applicant.

Subpara. 4.a.: 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