

record remained open until close of business on March 8, 2010, for receipt of additional documentation. The Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was received without objection. The transcript of the hearing (Tr.) was received on March 12, 2010. Based upon a review of the case file, pleadings and exhibits, eligibility for access to classified information is denied.

FINDINGS OF FACT

The Applicant is 51 years old, and has a Master's Degree in Mechanical Engineering. He is employed by a defense contractor as a Mechanical Engineer 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 to each of the allegations set forth in the SOR under this guideline. He has been working for his current employer since 1978, about thirty two years. He has held a security clearance since then. Over his career, he has completed a number of security clearance applications.

He is an admitted alcoholic, who has consumed alcohol to excess and the point of intoxication for over thirty-five years, from 1972 to at least April 2009. For the past five years, he has received alcohol counseling to help him with his disease. At first, the Applicant had difficulty coming to grips with his problem and did not take it seriously. He had not really committed to not drinking and was unable to maintain sobriety. From April 2005 to at least June 2009, he received counseling from his Employer's Assistance Program. He also received outpatient treatment from May 2005 to June 2005, for his alcohol addiction. From June 2, 2005, to June 16, 2005, he received inpatient treatment for a condition diagnosed as "Alcohol Dependence."

In August 2006, he was detained by the police for being Drunk in Public. He explained that had taken off work that day and was doing projects around the house, while consuming alcohol. He went to get his hair cut, and on the way back to his car, he tripped on the sidewalk and knocked himself out. He was detained by the police over night and released the next morning. He was not cited or charged and the matter was forgotten. (Government Exhibit 8). He discussed the situation with the Employee Assistance Counselor at work, who told him that it was unlikely that the situation would ever come up, but that it was his obligation to self-report any adverse information such as this. The Applicant did self-report the incident that he believes set in motion the chain of events that led to his hearing. This incident was an eye-opener for the Applicant.

By April 2009, the Applicant had changed his attitude and was committed to an alcohol rehabilitation program. He realized how seriously his alcoholism had negatively effected his life. From April 2009 to June 2009 he received inpatient treatment, which

was followed by outpatient treatment from May 2009 to June 2009. This time the Applicant approached the situation differently. He began working an Alcoholics Anonymous (AA) program. He obtained a sponsor. He made a one year service commitment to AA, as Secretary/Treasurer of his meeting group.

A letter from the Applicant's Employee Assistance Counselor dated February 3, 2010, states that in his opinion the Applicant's prognosis is excellent. He has solid stability factors that include a stable family who are aware of his problems and support his recovery. He attends three or four AA meetings per week and is working the 12 steps of AA. (Applicant's Exhibit A.)

A letter from his alcohol counselor dated February 10, 2010, states that the Applicant successfully completed alcohol rehabilitation treatment. It states, "He followed all treatment recommendations and displayed consistent behavior that is indicative of one who is truly motivated to maintain ongoing recovery. All random alcohol and drug tests were negative." (Applicant's Exhibit B.)

A letter from the Applicant's sponsor indicates that the Applicant has completed all twelve steps of the Alcoholic Anonymous program, and he continues to meet with his sponsor once a week for a book study. (Applicant's Exhibit C.)

The Applicant indicates that he is now committed to an alcohol free lifestyle. He has been completely sober for 319 days. He indicates that his father died from alcoholism, and his grandfather managed to stay sober the last 17 years of his life through AA.

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 completed a security clearance application dated January 8, 2000. Question 27 asked 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, "NO." (Government Exhibit 3.) This was a false response. The Applicant failed to list his use of marijuana from 1993 to at least January 2000.

The Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP) dated October 20, 2005. Question 24(a) 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, "NO." (Government Exhibit 1.) This was a false response. The Applicant failed to list his marijuana use from 1999 to about May 2001.

Question 24(b) of the same questionnaire asked the Applicant if he has 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 response. The Applicant failed to list his marijuana use in May 2001 after having been granted a Department of Defense Industrial Security Clearance in about January 2001.

Question 25 of the same application asked the Applicant if in the last 7 years has his use of alcoholic beverages resulted in any alcohol related treatment or counseling. The Applicant answered, "NO." (Government Exhibit 1.) This was a false response. The Applicant failed to list the fact that he received treatment and or counseling for his use of alcohol at three different facilities from April 2005 to June 2009, from May 2005 to June 2005 and from June 2, 2005 to June 16, 2005.

The Applicant completed a Questionnaire for National Security Positions dated September 5, 2006.¹ Question 24(a) asked the Applicant if since the age of 16 or in the last 7 years, whichever is shorter, has he illegally used any controlled substance. The Applicant answered, "NO." (Government Exhibit 2.) This was a false response. The Applicant failed to list his marijuana use from 1999 to about May 2001.

Question 24(b) of the same application asked the Applicant if he has 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 2.) This was a false response. The Applicant failed to list his marijuana use in May 2001, after having been granted a Department of Defense Industrial Security Clearance in about January 2001.

Applicant completed interrogatories issued to him by the Department of Defense dated June 2, 2009. Question 1 asked him to state the date that he last used marijuana. The Applicant answered, "N/A." (Government Exhibit 7.) This was a false response. The Applicant failed to list that he had used marijuana in May 2001.

Question 4 of the same interrogatories asked the Applicant to explain why he did not list his illegal drug use in response to question 24(a), on his security clearance application dated September 5, 2006. The Applicant answered, "The correct answer to 24A is NO." (Government Exhibit 7.) This was a false response. The Applicant failed to disclose his marijuana use from at least 1999 to a about May 2001.

Question 5 of the same interrogatories asked the Applicant to explain why he did not list his illegal drug use while possessing a security clearance, in response to question 24(b), on his security clearance application dated September 5, 2006. The Applicant answered, "The correct answer to 24B is NO." (Government Exhibit 7). This was a false response. The Applicant failed to disclose that he had used marijuana to about May 2001, after having been granted a security clearance in January 2001.

¹ Allegation 2(e) of the SOR reflects the date of the security clearance application as September 25, 2006. This is obviously a typographical error. The correct date should reflect September 5, 2006.

The Applicant admits that he has used marijuana, cocaine and mushrooms while holding a security clearance, realizing that it was against the law, against company policy and against DoD policy. (Tr. pp. 43-44.) On every subsequent security clearance application, he falsified the fact that he was using marijuana. The last time he used marijuana was in 2001. He has no intention of ever using any illegal drug again. (Tr. p. 45.)

Applicant's performance appraisal dated February 25, 2010, indicates that he "meets requirements". It also indicates that the Applicant had issues outside of work that adversely impacted his ability to perform in his role and in April 2009, he took a medical leave of absence. (Applicant's Post-Hearing Exhibit.)

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. (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.

Condition 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.

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 and dishonesty 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), and poor personal conduct and dishonesty (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 and E of the SOR.

The evidence shows that the Applicant is an alcoholic with over thirty-five years of abusive drinking, who has been sober for 319 days. He is commended for his recent commitment and great effort to adopt an alcohol free lifestyle. He is also encouraged to

continue with his rehabilitation program. Under Guideline G, Alcohol Consumption 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*, and 22.(f) *relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program* apply.

Admittedly, the Applicant is currently working his alcohol rehabilitation program. He has been sober for ten months and his intent is to remain sober. However, given the extensive nature of his drinking that occurred over a thirty-five year period, at the present time, more time in rehabilitation is needed in order to demonstrate that he will not return to his old habits. There is insufficient evidence in the record that any of the mitigating conditions apply. Accordingly, I find against the Applicant under Guideline G, Alcohol Consumption.

The Applicant deliberately concealed his marijuana use from the Government on two different security clearance applications and in response to interrogatories issued to him by the DoD, in fear that it would jeopardize his security clearance. Furthermore, he continued to use marijuana and other illegal drugs after receiving a security clearance from the DoD. This conduct demonstrates dishonesty, unreliability and untrustworthiness. 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.

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 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 that he clearly does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline G (Alcohol Consumption), and under 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 and 2 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.
- Subpara. 1.g.: 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.

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