



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-01678
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: *Pro se*

August 23, 2011

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on October 12, 2009. (Government Exhibit 2.) On December 22, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, J and G 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) effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

The Applicant responded to the SOR on January 21, 2011, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to this Administrative Judge on February 14, 2011. A notice of hearing was issued on February 24, 2011, scheduling the hearing for March 16, 2011. At the hearing the Government presented eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. The Applicant presented twenty-one exhibits, referred to as Applicant's Exhibits A through U, which were admitted without objection. He also testified on his own behalf. The record remained open until close of business

on March 28, 2011, to allow the Applicant to submit additional supporting documentation. Although they were submitted late, the Applicant submitted eight Post-Hearing Exhibits referred to as Applicant's Post-Hearing Exhibits A through H, and they were admitted without objection. The official transcript (Tr.) was received on March 25, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Request for Administrative Notice

Department Counsel requested that I take administrative notice of Vehicle Code Section 23152 and 23103, concerning Drunk Driving; and the Diagnostic and Statistical Manual of Mental Disorders Section 303.90, concerning Alcohol Dependence. (Tr. p. 33-34.) Applicant had no objection. (Tr. p. 34.) Administrative Notice was taken of the above requested sections.

FINDINGS OF FACT

The Applicant is 33 years old and married with three children. He has completed two years of college and is currently pursuing his business degree. He is employed by a defense contractor as a Systems Analyst and System Trainer, and is applying for a security clearance in connection with his employment.

Paragraph 1 (Guideline F - Financial Considerations) The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

The Applicant admits to each of the delinquent debts set forth in the SOR, except 1(d), 1(k) and 1(m). (See Applicant's Answer to SOR.) Credit Reports of the Applicant dated October 31, 2009; October 18, 2010; and March 8, 2011, indicate that he was indebted to each of the outstanding creditors listed in the SOR, which totaled in excess of \$15,000.00. (Government Exhibits 3, 6 and 8.)

The Applicant served on active duty in the United States Marine Corps from 1998 to 2003. (Government Exhibit 1.) He believes that while stationed in Okinawa from 2000 to 2001 is when he started consuming alcohol to excess. He explained that there was nothing else to do besides work out and drink alcohol. He married his wife in 2002. After leaving the military in 2003, the Applicant started working for the defense industry. He and his wife experienced problems in their relationship, and on September 20, 2008, the day the Applicant was arrested for domestic violence, they separated.

The Applicant continued to work, but was depressed, and consumed alcohol to excess on a regular basis. Discussed in detail below, he was arrested for DUI, on February 21, 2009. On or about March 21, 2009, the Commanding Officer at the base where he worked fired the Applicant from his job as a civilian employee for the DUI, and the Applicant was escorted off of the base. The Applicant realized at that point that he had to stop drinking. He states that he has not had any alcohol to drink since the night

of his last arrest for DUI on February 28, 2009 (Tr. p. 99.) Since then, the Applicant and his wife have reconciled and they are back together.

The Applicant and his wife also experienced financial problems and became indebted to a number of creditors. The Applicant submitted a debt payment schedule indicating that he has paid off or satisfied all but two of the delinquent debts listed in the SOR. (Applicant's Exhibit A and Tr. p. 38.) Applicant's Exhibit A indicates that all of his accounts have been paid and satisfied.

The following debts have been paid or satisfied. The Applicant owed a delinquent debt to a creditor in the amount of \$98.00. The debt was paid on January 7, 2011. (Applicant's Exhibit B.) The Applicant owed a delinquent debt to a creditor in the amount of \$1,250.00. The debt has been paid in full. (Applicant's Exhibit D.) The Applicant owed a delinquent debt to a creditor in the amount of \$1,220.00. The debt was paid in full. (Applicant's Exhibit D.) The Applicant owed a delinquent debt to a creditor in the amount of \$950.00. The debt has been paid in full. (Applicant's Exhibit C.) The Applicant owed a delinquent debt to a creditor in the amount of \$259.00. The debt was paid in full on February 21, 2001. (Applicant's Exhibit E.) The Applicant owed a delinquent debt to a creditor in the amount of \$100.00. The debt was paid in full on February 23, 2011. (Applicant's Exhibit F.) The Applicant owed a delinquent debt to a creditor in the amount of \$101.00. The debt has been paid in full. (Applicant's Exhibit G.)

The Applicant owed a delinquent debt to a creditor in the amount of \$8,169.00. The Applicant entered into an installment agreement and is paying the debt each month through \$200.00 allotments to be withdrawn from his checking account. (Applicant's Exhibit M and Applicant's Post-Hearing Exhibit A.) The Applicant owed a delinquent debt to a creditor in the amount of \$1,001.00. The debt has been paid in full. (Applicant's Exhibit H.) The Applicant owed a delinquent debt to a creditor in the amount of \$398.00. The debt has been paid in full. (Applicant's Exhibit N.) The Applicant owed a delinquent debt to a creditor in the amount of \$660.00. The debt has been paid in full. (Applicant's Exhibit O.) The Applicant owed a delinquent debt to a creditor in the amount of \$207.00. The Applicant has satisfied the debt. (Applicant's Post-Hearing Exhibit B.) The Applicant owed a delinquent debt to a creditor in the amount of \$487.00. The debt was paid in full. (Applicant's Exhibit P.) The Applicant owed a delinquent debt to a creditor in the amount of \$157.00. The debt was paid in full on January 21, 2011. (Applicant's Exhibit I.) The Applicant owed a delinquent debt to a creditor in the amount of \$160.00. The debt was paid in full on January 17, 2011. (Applicant's Exhibit J.) The Applicant owed a delinquent debt to a creditor in the amount of \$715.00. The debt was paid in full. (Applicant's Exhibit K.) The Applicant owed a delinquent debt to a creditor in the amount of \$724.00. The debt was paid in full. (Applicant's Exhibit L.)

Applicant's personal financial statement dated March 15, 2011, indicates that after paying his monthly expenses he has \$1,300.00 in discretionary monies left at the end of the month. (Applicant's Exhibit Q.)

Paragraph 2 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in criminal activity that calls into question his ability or willingness to comply with laws, rules and regulations.

Paragraph 3 (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 these guidelines, which were be discussed together. The Applicant has abused alcohol, at times to excess, and to the point of intoxication, from approximately 1991 until at least February 2009. From 1999 to February 2009 he was arrested on four separate occasions for alcohol related offenses. The Applicant admits that he is an alcoholic, because of his binge drinking, but he does not like the term, "alcohol dependent." (Tr. p. 101.)

The Applicant explained that he was not a daily drinker, but when he did drink, he drank a lot. He consumed alcohol about once or twice a week. When he consumed alcohol, he had about five or six beers every two or three days. (Tr. p. 89.) He would usually drink every other weekend. He stated that he drank alcohol because he was depressed about things that were going on in his life. He believes now that he has learned from his past and moved on with his life.

While in the military, the Applicant was arrested in December 1999, for 1) Driving Under the Influence of Alcohol/Drugs and, 2) Driving with a BAC of .08% or higher. He pled nolo contendere to reckless driving and count 1 and count 2 were dismissed. The court sentenced him to 45 day confinement. The Applicant stated that he was not really punished for the offense, as it was one of those things that was "swept under the rug." (Tr. p. 92.) He was not placed on restriction, but only given extra duty. (Tr. p. 92.)

In November 2005 the Applicant was arrested again for 1) Driving Under the Influence of Alcohol/Drugs, and 2) Driving with a BAC of .08% or higher. He plead nolo contendere to Count 2, and Count 1 was dismissed. The court sentenced him to three years probation, a fine, and he was required to complete a first offenders course. He completed a three month alcohol course, and his license was suspended for six months. The Applicant explained that the punishment for this offense was like "a slap on the wrist." (Tr. p. 92.)

In September 2008 the Applicant was arrested for beating his spouse after consuming alcohol. The police report of the incident indicates that the Applicant came home around midnight after drinking alcohol at a friends house, and his wife was very upset about it. At some point she became so irate that she grabbed a kitchen knife and came after the Applicant. The Applicant states that he grabbed his wife's arm that had the knife and took her down. He claims that she fell on the driveway and scraped her arms and legs. The Applicant's wife claims that the Applicant injured her. When the Applicant was arrested it was also discovered that he had an outstanding warrant. The charge was ultimately dropped based upon insufficient evidence. (Government Exhibit 4.)

Most recently, the Applicant was arrested in February 2009 for 1) Driving Under the Influence of Alcohol/Drugs, and 2) Driving with a BAC of .08% or higher. Prior to the arrest, the Applicant had consumed about six beers and about three or four rum and cokes. (Tr. p. 99.) He pled guilty to Count 2, and Count 1 was dismissed. He was sentenced to 20 days confinement, required to pay a fine and to attend a multiple conviction program. He served 13 days in jail, and was placed on five year probation, which ends sometime in 2014. Applicant's Post-Hearing Exhibits C and H indicate that on July 29, 2011, he appeared in court and had his probation terminated. At work, he was removed from the classified area and assigned to a non-sensitive area. A month after the arrest, he was fired.

At this point, the Applicant felt that he had hit rock bottom and needed to do something about his drinking. (Tr. p. 94.) From March 5, 2009, through August 12, 2010, he voluntarily sought outpatient treatment for alcohol dependence. (Government Exhibit 4.) He testified that he had completed 14 months of the 18 month Alcoholics Anonymous (AA) program that the court required him to complete. Applicant's Post-Hearing Exhibit F, indicates that on June 22, 2011, the Applicant completed his 18 month alcohol education class. The Applicant states that he has not attended AA since January 2011. (Tr. p. 109.) He explained that he has not worked the 12 step program of AA because he does not feel that he needs it. (Tr. p. 105.)

Favorable letters of recommendation were submitted on Applicant's behalf from his second level supervisor, the president of a company the Applicant served for in the past, and a retired Marine gunnery sergeant that the Applicant previously worked for. (Applicant's Exhibit R.)

Applicant's performance appraisals for the period from 2010 to 2011, indicates an overall rating of 4 out of 5. (Applicant's Exhibit T.)

Applicant is currently attending college in an effort to finish his business degree so he can start his own business. He submitted a copy of his admissions application. (Applicant's Exhibit U.) He plans to graduate with his Bachelor's degree in March 2013. (Applicant's Post-Hearing Exhibit G.)

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 F (Financial Considerations)

18. *The Concern.* Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who

is financially overextended is at risk of having to engage in illegal acts to generate funds.

Conditions that could raise a security concern:

19.(a) inability or unwillingness to satisfy debts;

19.(c) a history of not meeting financial obligation.

Conditions that could mitigate security concerns:

20.(c) the person has received or is receiving counseling for the problem and/or there are clear indications that problem is being resolved or is under the control;

20.(d) the individual has initiated a good faith effort to repay overdue creditors or otherwise resolve debts.

Guideline J (Criminal Conduct)

30. *The Concern.* Criminal 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.

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.(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.

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 excessive financial indebtedness, criminal conduct, and alcohol abuse that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him a security clearance.

In this case the Government has met its initial burden of proving that the Applicant was excessively indebted, under Financial Considerations (Guideline F), and that he engaged in Criminal Conduct (Guideline J), and excessive Alcohol Consumption (Guideline G.) 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.

The evidence shows that the Applicant incurred a number of delinquent debts. It is not clear from the record whether his alcohol abuse had anything to do with his delinquent debts. Recently, he has paid off or satisfied all of the debts. Under Guideline F, Financial Considerations Disqualifying Conditions 19.(a) *inability or unwillingness to satisfy debts*, and 19.(c) *a history of not meeting financial obligation* apply. However, Mitigation Conditions, 20.(c) *the person has received or is receiving counseling for the problem and/or there are clear indications that problem is being resolved or is under the control*, and 20.(d) *the individual has initiated a good faith effort to repay overdue creditors or otherwise resolve debts* are also applicable. Accordingly, I find for the Applicant under Guideline F (Financial Considerations.)

Much more troubling in this case is the Applicant's 18 year history of alcohol abuse and related criminal conduct. The Applicant is an alcoholic who has been arrested on at least four occasions over the past 10 years, three times for Driving Under the Influence (DUI), and once for domestic violence. His most recent arrest for DUI occurred a little over two years ago, in 2009. Following his most recent arrest for DUI in 2009, the Applicant was fired from his job. At that point, he decided to stop drinking. He states that he has completely abstained from alcohol since his last arrest. He has voluntarily participated in an outpatient treatment program for alcohol dependence. He has now completed the 18 month alcohol program ordered by the court required as a result of his last DUI. Although his probation was originally to have continued until 2014 based upon his last DUI offense in 2009, it was recently terminated by the court because he had met all of the conditions of probation. At this point in his life, the Applicant seems to realize the seriousness of his disease and appears to have made a commitment to sobriety. He has made many positive changes in his life. He is commended for his efforts and encouraged to continue his alcohol free lifestyle. However, at this time, given his past extensive history of alcohol abuse, more time in rehabilitation is needed in order to guarantee the Government that he will not return to his old ways.

In regard to his criminal conduct, under Guideline J, 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.

With Applicant's alcohol abuse, 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*, and 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*, apply. There is no evidence in the record that any of the mitigating conditions apply. Accordingly, I find against the Applicant under Guideline J (Criminal Conduct) and Guideline G (Alcohol Consumption).

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. The Applicant is a 33 year old admitted alcoholic with an extensive history of alcohol abuse and a little over two years of sobriety. 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.

The Applicant has not demonstrated that he is sufficiently trustworthy, and at this time, he does not meet the eligibility requirements for access to classified information. Accordingly, I find against the Applicant under Guideline J (Criminal Conduct) and Guideline G (Alcohol Consumption).

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 2 and 3 of the SOR. Paragraph 1 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: For the Applicant.

- Subpara. 1.a.: For the Applicant.
- Subpara. 1.b.: For the Applicant.
- Subpara. 1.c.: For the Applicant.
- Subpara. 1.d.: For the Applicant.
- Subpara. 1.e.: For the Applicant.
- Subpara. 1.f.: For the Applicant.
- Subpara. 1.g.: For the Applicant.
- Subpara. 1.h.: For the Applicant.
- Subpara. 1.i.: For the Applicant.
- Subpara. 1.j.: For the Applicant.
- Subpara. 1.k.: For the Applicant.
- Subpara. 1.l.: For the Applicant.
- Subpara. 1.m.: For the Applicant.
- Subpara. 1.n.: For the Applicant.
- Subpara. 1.o.: For the Applicant.
- Subpara. 1.p.: For the Applicant.
- Subpara. 1.q.: For 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.

Paragraph 3: Against the Applicant.

- Subpara. 3.a.: Against the Applicant.
- Subpara. 3.b.: Against the Applicant.
- Subpara. 3.c.: For 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