



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. 10-06758

**Appearances**

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

May 29, 2012

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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 March 29, 2010. (Government Exhibit 1.) On October 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G 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 November 17, 2011, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the Administrative Judge on January 3, 2012. A notice of hearing was issued on March 26, 2012, scheduling the hearing for April 9, 2012. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 to 4, which were admitted without objection. The Applicant presented one exhibit, referred to as Applicant's Exhibit A, which was admitted without objection. He also testified on his own behalf.

The official transcript (Tr.) was received on April 17, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

The Applicant is 50 years old and has a high school diploma. He is employed by a defense contractor as a Radar Technician 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 denied each of the allegations set forth under this guideline, except allegation 1(b). (Applicant's Answer to SOR).

The Applicant served twenty-two years in the United States Marine Corps, from 1980 to 1984, and then from 1986 until he retired in 2001, as a Gunnery Sergeant, E-7. During his military career, he received numerous awards that include the Marine Corps Drill Sergeant Ribbon, the National Defense Service Medal, the Marine Corps Good Conduct Medal (six awards), the Navy Unit Commendation, Meritorious Unit Commendation, Meritorious Mast three times among others. (Tr. p. 38.) Throughout his military career, he held a Top Secret security clearance and had no security violations.

He began consuming alcohol during his senior year of high school in the late 70's early 80's. At that time he drank a few beers. When he joined the Marines in 1980, his drinking escalated. Shortly after joining the Marines in 1980, the Applicant was arrested on base by the military police for Driving Under the Influence (DUI). (Tr. pp. 45-46.) He explained that as a result of his arrest, he was supposed to have received a six month suspension but because he was scheduled to be deployed, the charges were dropped. He suffered no other repercussions. As time passed, his drinking continued and increased. It was typical for him to drink to the point of intoxication. The Applicant testified that in 2001, right before he was to retire, he was purposefully late for work and had consumed a beer. Alcohol was detected on his breath. He was referred to treatment for alcohol abuse and was told at that time that he had an alcohol problem. (Tr. p. 56.) Despite this, he continued to consume alcohol.

By 2009, the Applicant was drinking between one and two six packs a beer a sitting. At times he drank to the point of intoxication. In 2009, the Applicant was arrested and charged with (1) DUI, (2) No Motor Vehicle Insurance, (3) No Person to have Open Liquor. He pled no lo contendere and was found guilty of Count (1) and was fined \$1,262.99 and ordered to attend alcohol treatment. Counts (2) and (3) were dismissed. (Government Exhibit 4.) The Applicant explained that his son was getting ready to go away to boot camp and was visiting for a week. The last day, on the way to the airport, the Applicant decided to stop at a bar to have a couple of drinks, and went

overboard. The Applicant stated that he consumed about twelve beers and then got behind the wheel to drive. (Tr. p. 43.) He realized that he was swerving, but by the time he pulled the car over, the police had arrived and he was being arrested.

In 2010, in compliance with the court directed obligations, the Applicant received a five day alcohol treatment course, a five day follow up course at the VA hospital, and then a six month driver's license suspension. During the court ordered treatment, the Applicant was diagnosed with alcohol dependence. (Government Exhibit 3.) Following treatment he continued to consume alcohol.

The Applicant testified that he does not believe that he is alcohol dependent. (Tr. pp. 48- 49.) He states that he continues to drink, but not like he did while he was in the Marine Corps. (Tr. p. 52.) He still drinks at times to the point of intoxication and plans to continue. (Tr. p. 52.) He most recently drank to the point of intoxication on New Years, when he consumed ten beers. (Tr. p. 51.) He now only drinks for leisure, mostly at home, and limits himself to a six pack of beer. (Tr. p. 50.)

Paragraph 2 (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.) Discussed above, in 2009, the Applicant was arrested and charged with (1) DUI, (2) No Motor Vehicle Insurance, (3) No Person to have Open Liquor. He pled no lo contendere and was found guilty of Count (1) and was fined \$1,262.99 and ordered to attend alcohol treatment. Counts (2) and (3) were dismissed. He has satisfied all of the court's sentencing requirements concerning this offense.

A letter from the company Facility Security Officer dated January 10, 2012, indicates that the Applicant has completed all of the court directed obligations, to include driver's education, substance abuse evaluation, substance abuse classes, and 14 hours (2) mandatory DUI classes. He is said to perform as a model employee without incident. (Applicant's Exhibit A.)

## **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; and

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 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; and

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

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 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 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), 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 and J of the SOR.

The evidence shows that the Applicant has abused alcohol over the past thirty years. He has been arrested for DUI on two occasions, in 1980, and most recently in 2009. He has also been treated for and diagnosed with alcohol dependence in 2010. His thirty year history of alcohol abuse has not been mitigated. Although the treatment he received was quite limited in scale, despite his treatment program for alcohol abuse, his two alcohol related incidents, and his diagnosis of alcohol dependence, he continues to drink to the point of intoxication and has no intention of stopping. In fact, he does not believe that he is alcohol dependent, despite what the experts say. Based upon his past record of alcohol abuse, he is not eligible for access to classified information.

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.*

In addition, the Applicant has engaged in criminal conduct by illegally drinking and driving as evidence by his 1980 arrest for DUI, and his most recent 2009 arrest and conviction for DUI. 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 50 year old alcoholic who really has no clue about the seriousness of his condition and its ramifications. 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 G (Alcohol Consumption) 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 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.: For the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.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