



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



In the matter of:

Applicant for Public Trust Position

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ADP Case No. 11-04085

Appearances

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

February 22, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

On April 9, 1993, the Composite Health Care Systems Program Office (CHCSPO), the Defense Office of Hearings and Appeals (DOHA), and the Assistant Secretary of Defense for Command, Control, Communications and Intelligence (ASD C3I) entered into a memorandum of agreement for DOHA to provide trustworthiness determinations for contractor personnel employed in Information Systems Positions as defined in DoD Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated January of 1987.

The Applicant submitted his Electronic Questionnaire for Investigations Processing (SF 86), on April 21, 2010. (Government Exhibit 1.) On January 19, 2012 the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the trustworthiness concerns under Guidelines G and E regarding the 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 after September 1, 2006.

The Applicant answered the SOR in writing on February 15, 2012, and requested a hearing before an Administrative Judge. DOHA received the request on November 2, 2012, and the case was assigned to the undersigned Administrative Judge that same day. DOHA issued a notice of hearing on November 6, 2012, scheduling the hearing for November 27, 2012. At the hearing the Government presented five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant presented nine exhibits, referred to as Applicant's exhibits A through I, which were admitted without objection. He also testified on his own behalf. DOHA received the transcript of the hearing (TR) on December 5, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied.

FINDINGS OF FACT

The Applicant is 40 years old and has never been married. He has a high school diploma and military training. He is employed by a defense contractor as a Terminal Manager, and is applying for a determination of trustworthiness in connection with his employment.

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

The Applicant admits each of the allegations set forth under this guideline. He has been working for his current employer since June 2006, and has held a position of trust since then.

The Applicant is an admitted alcoholic who has a long history of alcohol abuse that includes four arrests for Driving Under the Influence of Alcohol. He has abused alcohol at times to excess and to the point of intoxication from 1989 or 1990 to at least June 2010. He testified that he began consuming alcohol in high school, at times to the point of black out. (Tr. p. 37.) After graduating, he worked several jobs before joining the military where he continued to drink.

In July 1990, the Applicant was arrested for Driving Under the Influence of Alcohol, Prohibited Offensive Weapons, Underaged Possession of Alcohol, and Failure to Keep Right. He explained that it was shortly after graduation from high school, while at a friend's party, he had been consuming alcohol. He was driving home and wrecked the car. The police administered the field sobriety test which the Applicant failed and he was arrested. The Applicant pleaded guilty, was fined and given a suspended sentence and probation. (Tr. p. 42; and Government Exhibits 2 and 4.)

From 2000 to 2006, the Applicant served on active duty in the United States Marine Corps. He received a number of awards and commendations for his service including the Navy and Marine Corps Achievement Medal. (Applicant's Exhibit B.) During that period he continued to consume alcohol, mainly beer, and continued to drink

to the point of intoxication. He would drink with groups of friends and sometimes alone at home. At one point in the military he showed up late for work one day and he was still drunk. (Tr. p. 48.)

In 2003, while in the military, the Applicant suffered a head injury that caused him to experience anxiety and depression. He states that he did not realize his condition and only felt that drinking alcohol made him feel better. He testified that he has been found to be 60% disabled with traumatic brain injury and post-traumatic stress disorder. (Applicant's Exhibit I.) His drinking continued.

From 2006 to 2009, after leaving the military, the Applicant's drinking increased. He testified that he then started drinking everyday. (Tr. p. 57.) He would drink a 12 pack of beer each day or some shots of hard liquor. He would drive from place to place and drink, but he always showed up for work.

In December 2006 the Applicant was arrested for Driving Under the Influence. The Applicant testified that he was driving home after drinking at a bar. The police pulled him over for swerving. A field sobriety test was administered which the Applicant failed. He pleaded guilty to the charge and was required to complete an approved alcohol program for four months. (Government Exhibits 2 and 4.)

Sometime in 2008, the Applicant began to realize that his drinking was a problem for him. He tried to stop on his own but was not able to do so.

In March 2009 the Applicant was arrested a third time for Driving Under the Influence. He stated that he had been playing pool that night and had stayed late. He left and was on his way to a friend's house when he was arrested. He failed to use his turn signal and was pulled over by the police. A field sobriety test for administered which the Applicant failed. He was arrested. The Applicant pleaded guilty. Following this arrest, the Applicant went to see a psychiatrist for help and tried to cut back on his drinking, but he still found himself drinking to the point of intoxication. (Applicant's Exhibit F; and Government Exhibits 2 and 4.)

In July 2009 the Applicant was arrested again and charged with Driving Under the Influence. This time he was pulled over by the police for swerving. A field sobriety test was administered, which the Applicant failed. He pleaded guilty to the charge and in lieu of jail time he was sentenced to complete a multiple offender alcohol treatment program and a 90 day outpatient alcohol rehabilitation program. His driving privileges were revoked for three years. He was ordered to attend at least three Alcoholics Anonymous (AA) meetings a week for five years. (Tr. p. 86.) The Applicant testified that during the alcohol rehabilitation program he did not remain sober. Except for the five years of AA meetings, he has completed each of the court ordered sentencing requirements. He has completed three of the five years of AA meetings. (Applicant's Exhibits G and H.)

In 2010, the Applicant began attending the AA meetings and he obtained a copy of the "Big Book". He found it extremely helpful and has been sober since June 15,

2010. Attendance records from AA meetings from March 2010 to October 2012 reflect that the Applicant attends meetings almost every day and is currently the secretary of his meetings. (Applicant's Exhibit G.) He has noticed that things in his life have gradually started to get better. He no longer has the cravings to drink that he used to. The Applicant is now a sponsor for others in the program. (Tr. p. 81.) He has also enrolled in college. (Applicant's Exhibit D.)

The Applicant is under psychotherapy treatment for his alcoholism, Post Traumatic Stress Disorder and Traumatic Brain Injury. (Applicant's Exhibit F.)

Paragraph 2 (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 unwillingness 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.

The Applicant admits the allegation set forth under this guideline. (See Tr. p. 35) He completed a Questionnaire for Public Trust Position dated April 21, 2010. (Government Exhibit 1.) Question 20 asked, "In the last seven years, have you been arrested for, charged with, or convicted of any offenses?" The Applicant answered Yes, and listed two DUI offenses, one in 10/2009 (estimated) and one in 2/2007 (estimated). He failed to disclose that he was arrested on two separate occasions for DUI in 2009.

The Applicant admitted that he intentionally failed to disclose his second arrest in 2009 for Driving Under the Influence because he was in fear of losing his job. (Tr. p. 35.)

A letter from the Vice President of the company, who is aware of the Applicant's past problems with alcohol, indicates that the Applicant is well respected and has the knowledge, skills and abilities unique in his position to carry out the responsibilities of the job. He is considered to be a vital ingredient to the company and is highly recommended for a position of trust. (Applicant's Exhibit A.)

A letter from his company dated May 29, 2012, further indicate that the Applicant is a high trained essential leader whose skills and abilities contribute greatly to the successful support of all of the training, support and tenant activities abroad the center. He has the ability to effectively communicate with the customers and his understanding of operational requirements has solved many problems over the years. He is recommended for a position of trust. (Applicant's Exhibit A.)

A letter of recognition from his company dated May 1, 2012, attests to his excellent work product. (Applicant's Exhibit C.) An e-mail correspondence commends the Applicant for his contributions on the job. (Applicant's Exhibit 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 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.

Conditions that could mitigate a security concern:

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.

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 sensitive 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 a position of trust 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, civilian workers must be counted upon to safeguard 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 a determination of trustworthiness may be involved in alcohol 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 continued access to sensitive information. 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 access to sensitive information.

In this case the Government has met its initial burden of proving that the Applicant has engaged in excessive alcohol consumption (Guideline G) 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 eligibility to access sensitive information. 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.

Very troubling in this case is the Applicant's recent pattern and history of alcohol abuse. The Applicant is an alcoholic who has been arrested on at least four occasions over the past twenty years, each time for Driving Under the Influence. It has only been since his most recent arrest that he has been able to abstain from the use of alcohol for any sustained period. His most recent arrest for Driving Under the Influence occurred in late 2009, and he has been completely sober since June 15, 2010. He is currently working his AA program and maintaining sobriety. He is commended for these efforts and encouraged to continue working his program. He now realizes the seriousness of his disease and has made a commitment to sobriety. At this time, however, more time in rehabilitation is needed to show the Government that he can be trusted with the national secrets. At this point, however, given his past history, there is no guarantee that he will not return to his old ways.

Regarding 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*, and 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*, 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).

Equally as troubling is the fact that the Applicant was not candid or truthful in answering the questions concerning his arrests on his application for a position of trust. He stated that he did not list all of his DUI arrests because he was in fear of losing his job. Under Guideline E, Disqualifying Condition 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. 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 sensitive information. The Applicant is a 40 year old admitted alcoholic with an extensive history of alcohol abuse. He has recently taken his disease seriously and has been sober since June 15, 2010. However, 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 sensitive information.

The Applicant has not demonstrated that he is sufficiently trustworthy, and at this time, he does not meet the eligibility requirements for a position of trust. Accordingly, I find against the Applicant under 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 access to sensitive information. 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.

- 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 Applicant's access to sensitive information.

Darlene Lokey Anderson
Administrative Judge