



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-04520

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Sheida Shoalehvar, Attorney At Law

February 22, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on April 28, 2008. (Government Exhibit 1.) On August 31, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline 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) after September 1, 2006.

The Applicant responded to the SOR on September 24, 2012, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to the Administrative Judge on November 7, 2012. A notice of hearing was issued on November 30, 2012, scheduling the hearing for January 16, 2013. At the hearing the Government presented four exhibits, referred to as Government Exhibits 1 to 4, which were admitted without objection. The Applicant called one witness, and presented three exhibits, referred to as Applicant's Exhibits A through C, which were admitted without objection. He also testified on his own behalf. A motion to amend allegation 1(a) to

reflect the date of September 2004, not September 2009, was made by Department Counsel. (Tr. P. 37.) The Applicant had no objection and said amendment was made. (Tr. P. 38.) The record remained open until close of business on January 23, 2013, to allow the Applicant to submit additional documentation. The Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A which was admitted without objection. The official transcript (Tr.) was received on January 25, 2013. 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 married with two children. He has a high school diploma and extensive military training. He is employed by a defense contractor as a Senior Aeronautical 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 each of the allegations set forth under this guideline. (Applicant's Answer to SOR).

The Applicant served honorably in the United States Air Force from July 1980 to July 2002, for twenty-two years. During his military career he received numerous awards and commendations for his service, including three Air Force Achievement Medals and seven Good Conduct Medals. (Applicant's Exhibit B.) He held a security clearance during his entire time in the military without a violation.

The Applicant began consuming alcohol at the age of sixteen. In the beginning, he consumed only beer. When he joined the Air Force at seventeen, his alcohol consumption increased and he drank on weekends. When he retired from the military, his drinking decreased. At that point, he usually consumed alcohol about one weekend a month and drank four or five beers or a couple of mixed drinks.

In September 2004, the Applicant was arrested for Driving Under the Influence of Alcohol. He testified that after consuming four or five beers at a bar, he drove his car and was pulled over by the police for weaving from side to side and for crossing over the painted lines for traffic. He was given a field sobriety test and his BAC was .16 or .17. He was arrested and confined for several hours until he was bailed out. He plead no contest and received a suspended sentence for 88 days and four days with a tracking device to allow him to go back and forth to work. He was required to attend a DWI Driving School and was placed on probation for one year. (Government Exhibits 2 and 4.) He has successfully completed all of his court ordered sentencing requirements.

Following this DUI, the Applicant made a conscious effort to completely abstain from alcohol and was able to abstain for about one year. (Tr. p. 41.) He then resumed his drinking. In his statement to the DoD investigator dated May 29, 2008, he stated that he will still drink on occasion maybe two or three beers twice a week when he goes out. At the hearing he testified that he usually consumed alcohol two to three times a month, usually four or five beers and on occasion a mixed drink. (Tr. p. 42.)

From 2007 to 2008, when he met his girlfriend, who is now his wife, the Applicant started doing other things besides going to bars and his drinking slowed substantially. However, in 2008, he and his first wife divorced, and his drinking picked up to four or five beers on the weekend.

In October 2010, the Applicant was arrested a second time for Driving Under the Influence. He testified that he had consumed three rum and cokes at a bar over a two and a half hour period. He was pulled over by the police for swerving off the road. The field sobriety test was administered, his BAC was .14, and he was arrested. He was found guilty and fined \$800 plus court fees. He was required to attend a first offender alcohol education program that included Alcoholic Anonymous (AA) meetings. His driving privileges were revoked for six months and he was placed on three years probation. He is currently on probation. He has satisfied all of his court ordered sentencing requirements except probation. (Government Exhibits 2 and 4.)

Following this arrest, the Applicant stopped drinking again for about one year. He then resumed his drinking.

The Applicant's wife testified that the Applicant drinks a couple of beers about once a month. He does not drink at home, and she has never seen him drink and drive. (Tr. pp. 69-70.)

The Applicant does not feel he has a problem with alcohol. He testified that he believes that he is a social drinker who can control his drinking. (Tr. p. 47.) He explained that his wife is not a drinker and if the Applicant is going to drink alcohol, his wife will drive. (Tr. p. 48.) He initially testified that the only two times he consumed alcohol and drove were the two times he was arrested for DUI. (TR. p. 49.) After further reflection, he testified that since 2004 he would estimate that he drank and drove on an average of twice a month. (Tr. p. 67.) He also stated that he has slowed his drinking and only drinks now about once a month and has between two to four beers. On those occasions, his wife does the driving. (Tr. p. 66.) The Applicant also provided a list of his prescribed medications that are not to be taken with alcohol. (Applicant's Exhibit C.)

Following the hearing, the Applicant submitted a letter dated January 22, 2013, and a list of AA meetings he plans to attend. He admits that his two DUI were mistakes for which he has no excuse. He indicated that he has decided to voluntarily re-enter AA as he is motivated to completely abstain from alcohol. (Applicant's Post-Hearing Exhibit A.)

The Applicant's performance appraisals from January 2004 through December 2011 indicate that he has consistently been a "successful contributor" to the company, He is said to be a competent performer and valued team player, who has the abilities and motivation to effectively carry out the responsibilities of the position and consistently meets the objectives and expectations of his job. (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.

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 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). 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 Guideline G of the SOR.

The evidence shows that the Applicant has a long history of alcohol abuse. Although he has never been formally diagnosed as an Alcoholic nor has he received treatment for alcohol addiction, he shows signs of a serious alcohol problem. He has been arrested on two occasions for Driving Under the Influence of Alcohol. Following his arrests he stopped consuming alcohol for a year at a time but eventually returned to his regular habit. His most recent arrest occurred in October 2010, for which he remains on probation. Recently he has decided to address his problem and has started attending AA meetings for a second time. He is commended for this action and encouraged to continue seeking help with his problem. More time in sobriety is necessary to prove to the Government that he can be trusted with the national secrets. Based upon his past record of alcohol abuse, the Applicant is not eligible for access to classified information at this time.

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.

I have also considered the "whole-person concept" in evaluating the Applicant's eligibility for access to classified information. The Applicant is a troubled drinker who has had two DUI's and who has only recently come to realize 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).

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 Paragraph 1 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.

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