



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 11-07639

Appearances

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

June 26, 2013

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (E-QIP) on December 28, 2010. (Government Exhibit 1.) On December 10, 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G and E 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 January 24, 2013, and he requested a hearing before a DOHA Administrative Judge. This case was assigned to this Administrative Judge on March 25, 2013. A notice of hearing was issued on April 26, 2013, scheduling the hearing for May 20, 2013. At the hearing the Government presented six exhibits, referred to as Government Exhibits 1 to 6, which were admitted without objection. The Applicant presented eight exhibits, referred to as Applicant's Exhibits A through H, which were admitted without objection. He also testified on his own behalf. The official transcript (Tr.) was received on June 4, 2013. Based upon a

review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Department Counsel made a motion to amend a typographical error set forth in allegation 1(a) of the SOR to reflect, Article 86 Unauthorized Absence etc., instead of Article 96 Authorized Absence. (Tr. p. 42-43.) Applicant had no objection to said amendment, and the motion to amend the SOR was granted. (Tr. p. 43.) Department Counsel also moved to amend allegations 2(b), 2(c), and 2(d) of the SOR, to refer to 1(f) rather than 1(d) in those subparagraphs. Applicant had no objection to said amendments, and that motion was granted. (Tr. pp.72-76.)

FINDINGS OF FACT

The Applicant is 37 years old and married with two biological children and one step-child. He has an Associates Degree of Applied Science in Fire Science. He is employed by a defense contractor as a Senior Marine Analyst 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.

Applicant admitted each of the allegations set forth under this guideline, except 1.(f). (Applicant's Answer to SOR.) He served honorably in the United States Navy from 1995 to 2010, for fifteen years. During his military career, he received several Achievement Awards and Good Conduct Medals. (Applicant's Exhibit D and Government Exhibit 6.) He also held a security clearance without a violation.

At the age of nineteen, Applicant began consuming alcohol a week before he entered the Navy in 1995. In the beginning he would consume beer on the weekends with friends and coworkers. His consumption increased to weekdays consuming four or five mixed drinks to the point of intoxication. Over time, his excessive drinking caused problems that negatively effected his military career. This pattern of alcohol consumption continued until he was married in 2001. After marrying, his consumption of alcohol further increased. At times, he would consume eight or nine drinks after work with his spouse. (Tr. p. 49.) He was eventually diagnosed as Alcohol Dependent. He received some treatment for his alcohol dependence, and quit drinking on at least five different occasions. His longest period of abstinence was six months. On each occasion, however, he later returned to his regular drinking habit. (Tr. p. 54 and Government Exhibit 2.)

In 1998, while on active duty in the Navy, Applicant was found guilty at a Captain's Mast of violations of Article 86 (Unauthorized Absence), 92 (Failure to Obey an Order), and 134 (Disorderly Conduct, Drunkenness). Applicant explained that he had been drinking with other Sailors and celebrating a friend who was leaving the Navy and going home. Applicant was extremely drunk and punched a shipmate. As a result of this incident, Applicant was referred for alcohol treatment. (Government Exhibit 3.)

Applicant was treated at the Navy Hospital and diagnosed with Alcohol Dependence, with psychological dependence. During the four week treatment program, the Applicant completely refrained from drinking at night or on the weekends. He was discharged from the program with a poor diagnosis because he expressed his intention to continue consuming alcohol. (Tr. p. 47.) A few weeks later, he resumed his regular drinking habits. (Government Exhibit 5.)

In 2000, while still on active duty in the Navy, Applicant was arrested by local law enforcement and found guilty at a Captain's Mast. He was issued non-judicial punishment and was required to attend alcohol counseling. Applicant explained that the problem started because he had consumed too much alcohol with friends at a bar and got into a fist fight with a couple of local guys. (Tr. p. 50.) Applicant received 60 days restriction. (Tr. p. 52.)

In 2001, Applicant's diagnosis of alcohol dependence was again confirmed, and he was required to attend an intensive outpatient alcohol treatment. (Government Exhibit 5.) During the three week alcohol treatment program, followed by six weeks of Alcoholics Anonymous meetings, the Applicant was able to remain completely abstinent. (Applicant's Exhibit E.) He then resumed his drinking.

In February 2010, after a night of consuming alcohol with an adult female friend, Applicant crawled into her bed and mistakenly fondled her child, believing it to be the mother. Applicant contends that he was sober at the time. He explained that he and his wife were having some marital problems. (Tr. p. 59.) His wife was on active duty and was aboard a ship. Applicant got home early and hung out with his female friend. Things escalated to an affair. Applicant planned to meet his female friend in the early morning at her house. He went over to her house at about 5:30 a.m. and climbed into her bed, thinking she was in it, and by mistake started fondling her ten year old daughter. (Tr. p. 60.) Applicant stated that six months later when he told his female friend that he was not going to leave his wife for her, she reported the incident to Navy officials. He requested a Captains Mast, but was denied one since an extra-marital affair in not becoming of a Sailor. He was not recommended for retention and denied re-enlistment. He states that he is presently in the process of joining the Reserves. (Tr. p. 65). Applicant's FBI Report indicates that he was arrested for Child Sex Abuse under the UCMJ. (Government Exhibit 4.)

Applicant indicated in his responses to interrogatories dated May 21, 2012, that he intends to continue to consume alcohol in the future. (Government Exhibit 2.) Since resuming his alcohol consumption, the Applicant consumes a case of beer in one night with two friends on weekends. During the week, he and his spouse may have two to three beers, two-to three-times a week. Applicant's testified that his last use of alcohol occurred about four weeks before the hearing. (Tr. p. 39.)

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 denied each of the allegations set forth in the SOR under this guideline. The Applicant completed an Electronic Questionnaire for Investigations Processing dated December 28, 2010. (Government Exhibit 1.) Question 13.(c) on the application, asked the Applicant if any of the following has happened to him in the last seven years; 5. Left a job for other reasons under unfavorable circumstances. The Applicant answered, "NO." This was a false response. The Applicant did not reveal that he left his employment with the Navy because he was not recommended for retention due to, at least in part, his extra-marital affair. Applicant explained that he answered the question this way because he left the Navy under honorable circumstances.

Question 22.(c) of the same application asked if the Applicant has ever been charged with a felony? The Applicant answered, "NO." (Government Exhibit 1.) The Government contends that this was a false answer. Applicant states that he thought that he was never formally charged and so he did not list the charge of Child Sexual Abuse under the UCMJ in 2010. He states that he was not aware of the formal charge until he saw his FBI report during this security clearance investigation. (Tr. p. 71 and Applicant's Answer to SOR.)

Question 24.(a) of the same application asked the Applicant if in the last seven years, has his use of alcohol had a negative impact on his work performance, his professional or personal relationships, his finances, or resulted in intervention by law enforcement? The Applicant answered, "NO." (Government Exhibit 1.) The Government contends that this was a false response. The Applicant failed to list his alcohol-related incident in February 2010 for child sexual abuse that resulted in him not being recommended for retention in the Navy. The Applicant explained that his drinking did not cause him to climb into bed with his female friend's daughter, and so he did not believe he was required to list it.

During an interview on January 25, 2011, with DoD investigators, the Applicant stated that he had no contact with law enforcement other than the incident that occurred in February 2010, and that he had no disciplinary problems in the military. (Government Exhibit 2.) The Government contends that this was a false response. The Applicant failed to list that he was found guilty at a Captains Mast for violations of Articles 86 (Unauthorized Absence), 92 (Failure to Obey an Order), and 134 (Disorderly Conduct, Drunkenness). He also failed to list that he was found guilty at a Captain's Mast and issued non-judicial punishment, and required to attend alcohol counseling.

During another interview on March 8, 2011, with DoD investigators, after being confronted with the incident that occurred in 1(b), the Applicant discussed the incident and subsequent treatment in 2001. He failed to reveal the Captain's Mast in 1998 as well as the diagnosis of Alcohol Dependence. (Government Exhibit 2.)

The Applicant stated that when he answered the questions on his security clearance application he did not intend to conceal anything from the Government. He explained that he thought at the time that he had answered the questions correctly. He states that if he made a mistake, he is sorry. He states that he has never tried to deceive or lie to anyone on any of his personal information and any information he did not reveal was simply an oversight.

The reasons given by the Applicant's for not providing complete and truthful information to the Government on his security clearance application and during his interviews with the investigators are not acceptable or convincing. Given the fact that so many questions on his security clearance application were inaccurate, I believe that the Applicant deliberately furnished incomplete, untruthful information to mislead the Government.

Letters from the Applicant's command dated May 15, 2013, and November 16, 2012, are favorable. (Applicant's Exhibit A.)

A letter submitted by the Applicant's wife indicates that from 2007 to 2010 she was assigned on a ship and deployed or working late every night. Her husband did his best to manage things at home while working full-time himself. Their marriage was strained and suffered greatly. Since then, they have become better communicators and have learned that family comes first and are recommitted to each other.

Applicant was selected as Employee of the Month at work for his outstanding performance and he received a cash award in recognition of his efforts. (Applicant's Exhibit C.)

The Applicant admitted that he was a young, naive kid who did not take anything seriously and he moved through his life not thinking about the consequences of his actions. He claims that when his first child was born in 2002 is when he stopped getting into trouble, with the exception of the incident that occurred in 2010. He testified that he is going to continue to work on his sobriety. (Tr. pp 83 - 84.)

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;

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.

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;

16.(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

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 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 Guideline G of the SOR.

The evidence shows that Applicant has a long history of alcohol abuse and a diagnosis of alcohol dependence. His excessive drinking began when he joined the Navy, and has continued to the present. His drinking has caused problems for him in the military, namely two alcohol-related incidents that resulted in Captain's Mast and military punishment. Alcohol also played a role in his inability to re-enlist in the military. Although he underwent and successfully completed two separate alcohol treatment programs, each time he has relapsed and continued to drink. He states that he is currently working on maintaining sobriety, and at the time of the hearing had four weeks of sobriety. 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, 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; 22.(e) evaluation of alcohol abuse or alcohol dependence by a licenses 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. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline G, Alcohol Consumption.

I find that the Applicant deliberately concealed material information from the Government on his security clearance application and during the interviews with the investigators. His excuses are not convincing or reasonable under the circumstances. The questions were not difficult, and this is not his first time completing this application. Furthermore, Applicant held a security clearance during his military career and understood the importance of providing true and accurate information to the Government on his security clearance application. He knew or should have known to provide honest answers to the questions. Because of his lack of honesty and candor regarding very clearly written questions, I find that Applicant did intend to mislead the Government. The Government relies on the honesty and integrity of individual's seeking access to our nations secrets. If such an individual intentionally falsifies material facts, it is extremely difficult to conclude that he nevertheless possesses the judgment and honesty necessary for an individual given a clearance

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;* and 16.(b) *deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative* apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under this guideline.

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 only scraped the surface of understanding 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 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: For 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.

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. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge