



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)

ISCR Case No. 11-07831

**Appearances**

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

August 20, 2013

---

**Decision**

---

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing dated September 27, 2010. (Government Exhibit 5.) On January 22, 2013, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines J, G, and F for Applicant. Applicant signed the receipt for the SOR on February 18, 2013. 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 for SORs issued after September 1, 2006.

The Applicant responded to the SOR on February 26, 2013, and he requested an administrative hearing before a DOHA Administrative Judge. This case was assigned to the undersigned Administrative Judge on June 5, 2013. A notice of hearing was issued on June 11, 2013, and the hearing was scheduled for July 9, 2013. At the hearing the Government presented seventeen exhibits, referred to as Government Exhibits 1 through 17, which were admitted without objection. The Applicant presented no exhibits at the hearing. He testified on his own behalf. The record remained open

until close of business on July 15, 2013, to allow the Applicant the opportunity to submit additional documentation. He submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit that was admitted without objection. The official transcript (Tr.) was received on July 17, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## **FINDINGS OF FACT**

Applicant is 39 years old, and twice divorced with three children. He has a high school diploma and a college Associates Degree. He is employed by a defense contractor as a Computer Technical Instructor and is applying for a security clearance in connection with his employment. He has been employed with his current employer since October 2008.

Paragraph 1 (Guideline J - Criminal Conduct). The Government alleges that Applicant is ineligible for clearance because he engaged in Criminal Conduct.

Applicant admitted each of the allegations set forth in the SOR under this guideline. (See Applicant's Answer to the SOR.) These allegations will be discussed in detail under Paragraph 2 below.

Paragraph 2 (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 in the SOR under this guideline. (See Applicant's Answer the SOR.)

Applicant married his first wife in 1994. Two years later, he joined the United States Air Force. Marital problems surfaced. His wife became unhappy with the military lifestyle that required moving, the Applicant's drinking, and their differences in child rearing. When the Applicant joined the military he was consuming alcohol about three times a week, mostly on the weekends. Over time, his drinking gradually increased. He explained that he became a daily heavy drinker and a functional alcoholic. He would consume four or five bottles of wine or a liter of whiskey daily. He has learned that he has used alcohol to self medicate for relief from anxiety and stress. He enjoyed wine and turned into a wine fanatic, and would also drink whiskey and vodka. (Tr. p. 68.) He started experiencing numerous black out episodes in 2009/2010 time period. (Tr. pp. 70-71.) Beginning in 2002 and continuing until 2010, the following alcohol related arrests and/or charges were brought against the Applicant:

In May 2002, while in a training status as a student in the Air Force, Applicant was charged with public intoxication. He was ticketed and fined.

In 2005, Applicant first realized that he had a drinking problem and sought out help. He reported himself and received alcohol treatment from January 2005 to July

2005 through the Air Force, which included weekly meeting for five or six months. He was completely abstinent during that time. (Tr. p. 72) He remained abstinent for about another five months before relapsing. He and his wife legally separated in 2006, and were divorced in 2007.

In October 2007, Applicant was arrested at his overseas duty station and charged with vandalism. At the time of the incident, Applicant had been consuming alcohol. He was detained and released. He received a letter of reprimand from his Air Force commander for conduct unbecoming. (Government Exhibit 3.)

A week later, in October 2007, he was arrested at his overseas duty station and charged with Driving Under the Influence of Alcohol. He paid a fine and was released to the custody of the United States Air Force. He received a letter of reprimand from his commander for conduct unbecoming. (Government Exhibit 3.)

From January 2008 to February 2008, Applicant received treatment for a condition diagnosed in part as alcohol dependence. He entered and completed a 29 day inpatient treatment program. He stayed sober for about 30 days after that. (Tr. p. 73.) In March 2008, the Applicant married his second wife. A week later, he was charged with Assault. At the time of the incident he has been consuming alcohol. Applicant explained that his wife called the police after an argument. Charges were ultimately dropped. (Government Exhibits 7 and 12.) This incident involving alleged domestic violence led to the Applicant's administrative separation from the Air Force in 2008, and his legal separation in 2009 and eventual divorce in July 2010. (Tr. p. 64.)

In April 2010, Applicant was consuming alcohol on a daily basis. In April 2010 Applicant was arrested and charged with (1) Driving Under the Influence, Alcohol/Drugs and (2) Driving with a BAC of over .8%. He pled guilty to count 2, and count 1 was dismissed. He was sentenced to 3 years probation, an alcohol and drug counseling program and a fine. (Government Exhibits 7 and 12.) Applicant has satisfied all of the court's sentencing requirements except probation.

In August 2010, Applicant was arrested and charged with (1) Driving Under the Influence, Alcohol/Drugs and (2) Driving with a BAC of over .8%. He pled guilty to count 2 and count 1 was dismissed. He was sentenced to three years probation, an alcohol and drug counseling program and a fine. (Government Exhibits 7 and 12.) Applicant has satisfied all of the court's sentencing requirements except probation. (Applicant's Post-Hearing Exhibit.) It appears that Applicant will remain on probation for his two DUI's until December 2016. (Tr. p. 87.)

Since his most recent arrest, Applicant has been focused on obtaining from his drinking. From September 2010 to October 2010, Applicant received treatment from two physicians, his general practitioner and an addiction therapist, for a condition diagnosed in part as alcohol abuse. Although he has been exposed to and attended a 12 step program and attended meetings on a daily basis at times, he chose to work closer with his medical doctor and seek help from a psychiatrist and working through meditation and alternative methods. He finds this helpful. He sees his physician once a

quarter. (Government Exhibits 10 and 11.) He is not currently seeing a psychiatrist or therapist but he is considering it. (Tr. p. 47.) Applicant is currently taking anti-anxiety and anti depression medication, exercising and other forms of distraction to keep from drinking.

Paragraph 3 (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.

Applicant admitted each of the allegations set forth in the SOR under this guideline. Credit Reports of the Applicant dated March 3, 2006; October 21, 2010; May 11, 2012; and August 13, 2012, reflect that the Applicant is indebted to each of the creditors set forth in the SOR totaling in excess of \$24,000. (Government Exhibits 2, 6, 8 and 13.)

He explained that following his first divorce and his separation from his children in 2006, he did not handle things well. He was very irresponsible and his excessive drinking did not help his situation. He spent money on alcohol instead of paying his bills. (Tr. P. 52.) Although he continued to pay child support in the amount of \$1,500 monthly without interruption many of his other debts became delinquent. As a result, he became excessively indebted. He stated that the debts set forth in the SOR were incurred during his marriage to his first wife and also during his second marriage. He has recently focused on paying the court fines related to his DUI's and other related expenses and has completed that. Each of the debts set forth in the SOR under allegation 3(a), 3(b), 3(c), 3(d), 3(e), 3(f), 3(g), 3(h), 3(i), 3(j), 3(k), 3(l), 3(m), 3(n), 3(o), remain outstanding and owing. In total Applicant owes approximately \$24,000. Applicant indicates that he has made arrangements with three of his creditors to start paying off debt but these are not creditors listed in the SOR. (Tr. P. 93.) He admits however, that he does not have a full grasp of his financial situation.

Applicant indicates that he is now a full time Dad. His high school aged son now lives with him and it has highly motivated him to be as healthy as he can.

## **POLICIES**

Enclosure 2 and Section E.2.2. of the Directive set 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 J (Criminal Conduct)

30. *The Concern.* Criminal activity creates a 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 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.

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 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; and

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

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 adverse to an applicant 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 criminal conduct, alcohol abuse, and financial irresponsibility 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 or her a security clearance.

In this case the Government has met its initial burden of proving that Applicant has engaged in criminal conduct (Guideline J), alcohol abuse (Guideline G), and financial irresponsibility (Guideline E). The totality of this evidence indicates poor judgment, unreliability and untrustworthiness on the part of Applicant. Because of the scope and nature of Applicant's conduct, I conclude there is a nexus or connection with his security clearance eligibility. Considering all of the evidence, Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines J, G or E of the SOR.

The evidence shows that Applicant is an alcoholic who was arrested and or charged six separate occasions on related charges. Since 2005, he has realized his alcohol problem, and has gone through periods of treatment, followed by abstinence and then relapse. At this point, he has satisfied all of the court’s sentencing requirements related to his two most recent DUI arrests, except probation which will not expire until 2016. He is currently focused on staying sober and working toward that goal on a daily basis. Applicant is commended for his favorable lifestyle changes and is encouraged to continue with his alcohol free lifestyle. However, given the extent of his drinking , more time in rehabilitation in necessary in order to show the Government that he can maintain sobriety. 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 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 apply. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline G, Alcohol Consumption.*

In regard to the Applicant's history of criminal conduct, it too stopped in 2010. He has not been arrested or charged with any violation of law since then. However, he remains on probation for his two recent DUI's until 2016. Under Guideline J, Criminal Conduct, Disqualifying Conditions 31.(a) *a 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 at this point. Applicant must continue to demonstrate responsibility before he can be trusted under this guideline. Accordingly, I find against the Applicant under Guideline J, Criminal Conduct.

In addition, Applicant's financial affairs are not in order. Each of the delinquent debts set forth in the SOR remain owing and outstanding. He has not yet been able to address these in any manner. 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. None of the mitigating conditions are applicable. Accordingly, I find against the Applicant under Guideline F, Financial Considerations.

I have also considered the "whole-person concept" in evaluating Applicant's eligibility for access to classified information. Applicant is an educated man who has made some very poor choices in his life. Although he has recently been working hard to turn his life around, for many years he has shown extreme immaturity and unreliability. His long history of misconduct shows indicators of poor judgment and unreliability that preclude him from security clearance eligibility at this time. There is absolutely no excuse for this illegal conduct.

Under the particular facts of this case, the totality of the conduct set forth under all of the guidelines viewed as a whole supports 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.

A security clearance is a privilege, not a right. In order to meet the qualification for access to classified information, it must be determined that the applicant is and has been sufficiently trustworthy on the job and in his everyday life to adequately protect the



Government's national interest. Overall, based upon the seriousness of the conduct outlined here, this applicant has demonstrated that he is not sufficiently trustworthy at this time, and he does not meet the eligibility requirements for access to classified information. Accordingly, I find against Applicant under Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), and Guideline F (Financial Considerations.)

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 Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1, 2, and 3 of the SOR.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against Applicant.

- Subpara. 1.a.: Against Applicant.
- Subpara. 1.b.: Against Applicant.
- Subpara. 1.c.: Against Applicant.
- Subpara. 1.d.: Against Applicant.
- Subpara. 1.e.: Against Applicant.
- Subpara. 1.f.: Against Applicant.

Paragraph 2: Against Applicant.

- Subpara. 2.a.: Against Applicant.
- Subpara. 2.b.: For Applicant.
- Subpara. 2.c.: For Applicant.
- Subpara. 2.d.: For Applicant.
- Subpara. 2.e.: For Applicant.

Paragraph 3: Against Applicant.

- Subpara. 3.a.: Against Applicant.
- Subpara. 3.b.: Against Applicant.
- Subpara. 3.c.: Against Applicant.
- Subpara. 3.d.: Against Applicant.
- Subpara. 3.e.: Against Applicant.
- Subpara. 3.f.: Against Applicant.
- Subpara. 3.h.: Against Applicant.
- Subpara. 3.i.: Against Applicant.
- Subpara. 3.j.: Against Applicant.
- Subpara. 3.k.: Against Applicant.
- Subpara. 3.l.: Against Applicant.
- Subpara. 3.m.: Against Applicant.
- Subpara. 3.n.: Against Applicant.
- Subpara. 3.o.: Against 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 Applicant.

Darlene Lokey Anderson  
Administrative Judge