



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-06849
SSN:-----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

January 18, 2008

Decision

LOKEY-ANDERSON, Darlene D., Administrative Judge:

History of Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on August 1, 2006. On August 31, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on October 5, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on November 7, 2007. A notice of hearing was issued on November 16, 2007, scheduling the hearing for December 3, 2007. At the hearing the Government presented fourteen exhibits. The Applicant presented two exhibits. He also testified on

his own behalf. The record was left open until close of business on December 13, 2007, to allow the Applicant to submit additional supporting documentation. On December 10, 2007, he submitted one Post-Hearing Exhibit consisting of seventeen pages that was admitted into evidence. The official transcript (Tr.) was received on December 11, 2007.

Findings of Fact

The Applicant is 53 years old and a widower. He has a high school diploma. He is employed by a defense contractor as a Material Production Clerk, and is applying for a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR:

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

The Applicant admitted most of the allegations set forth in the SOR under this guideline. However, with respect to allegations 1(a) and 1(b), he claims that they involve the same arrest. Allegations 1(f) and 1(h), also concern the same incident. After a close review of the Government's exhibits, there is no evidence in the record to substantiate allegations 1(a), and 1(h). Accordingly, allegations 1(a), and 1(h) are found for the Applicant.

The Applicant's excessive use of alcohol began in about 1975/1976. He testified that in the beginning he usually consumed alcohol with friends at their homes where he would drink several beers, four or five times a week. To get to a friend's house, he would usually ride a bike, walk or get a ride from someone else. On several occasions, when he had what he believed to be too much to drink, he would spend the night at his friend's house. On other occasions, when he had only a few drinks, he would drive home.

The Applicant was arrested and convicted for Driving Under the Influence of Alcohol in 1976 and 1977. (See Government Exhibits 1 and 2). Following both convictions, the Applicant was fined either \$200.00 or \$300.00.

Realizing that his pattern of drinking was self-destructive, in December 1980, the Applicant voluntarily sought out help from his Employee Assistance Program for his abusive alcohol consumption. It was recommended by the Employee Assistance Program Manager that he enter a 30 day in-patient alcohol and drug treatment program. The Applicant agreed and entered the program. From December 19, 1980 through January 15, 1981, the Applicant received in-patient alcohol and drug rehabilitation. At

that time he was diagnosed with drug abuse and dependence. (See Government Exhibit 2).

Following this treatment program, the Applicant completely abstained from alcohol until October 1982, when his father passed away. The Applicant then started drinking intermittently, but not on a continuous basis. (Tr. p. 45).

From 1992 through 1999, the Applicant wife suffered from a debilitating condition that kept her in extreme pain. The Applicant's consumption of alcohol increased during this time. His wife passed away in 1999.

In February 1995, the Applicant was charged with Drunk Driving involving alcohol /drugs and Drunk Driving 10% or above. He pled guilty to Drunk Driving and was sentenced to 180 days in county jail, (suspended) placed on summary probation for five years, and fined approximately \$500.00. In lieu of the 180 days in county jail the Applicant did 15 days in a work release program.

On January 2, 1996, the Applicant was suspended (he was not fired as alleged in the SOR) from his job with a defense contractor when he reported to work under the influence of alcohol. The Applicant testified that he did not consume alcohol at work. He had been drinking the night before until early in the morning, went to bed for a short time and then got up and went to work. A co-worker smelled alcohol on his breath. (Tr. p. 57). The Applicant was required to complete alcohol counseling program and to submit to random drug/alcohol testing.

In September 1996, the Applicant was arrested and charged with (1) DUI, (2) Driving with .08% or More Alcohol in Blood and (3) Reckless Driving. The Applicant's blood alcohol level was .11%. He pled guilty to Reckless Driving and was sentenced to three years probation, 15 days in custody and fines and fees totaling \$864.00. (See Applicant's Exhibit A and Government Exhibit 8). The Applicant testified that he did not spend 15 days in custody.

From January 10 1997, through February 28, 1997, the Applicant attended a 30 day out-patient treatment program. Following this treatment program he completely abstained from alcohol for about a year and a half before he started drinking again. (See Government Exhibit 2).

In October or November 2002, the Applicant was charged with (1) Driving Under the Influence of Alcohol, (2) Speeding, and (3) Not Driving in Proper Lane. He pled no contest to Not Driving In Proper Lane. The Applicant admits that he had consumed one drink of alcohol before the arrest and his blood alcohol level was .04%. The charges against him were ultimately dismissed. (See Applicant's Exhibit B and Government Exhibit 6).

Since his last arrest for DUI in November 2002, the Applicant has been trying to reduce his alcohol consumption. He believes that he now drinks in a responsible

manner. During an interview by a Special Agent from the Defense Security Service on September 6, 2006, the Applicant stated that he consumed alcohol two to three times weekly. The Applicant states that he currently drinks about once a week and has only two beers. (Tr. p. 85). He is not involved in any treatment program or Alcoholics Anonymous.

Seventeen letters of recommendation submitted on behalf of the Applicant from his company security officer, supervisor, coworkers, friends and family attest to the Applicant's trustworthiness, good judgment, responsible and hardworking nature. They all recommend him for a position of trust. (See Applicant's Post-Hearing Exhibit).

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 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- 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 voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- 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 predicted 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."

Analysis

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). 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.

Under Alcohol Abuse, 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. None of the mitigating conditions are applicable. Accordingly Guideline G is found against the Applicant.

The Applicant's history of alcohol abuse began over 30 years ago and has resulted in at least three arrests for Driving Under the Influence of Alcohol, the most recent of which occurred in 2002. Although there is no formal diagnosis in the record of alcohol dependence, the Applicant sought out help for his alcohol abuse, and attended, participated in, and received both a 30 day in-patient program and a 30-day outpatient treatment program. Following his arrests for DUI, and after his two alcohol rehabilitation programs, he completely abstained from the use of alcohol for a period of time. He is commended for these efforts. However, with the stress of everyday life, as well as some very devastating circumstances including his father's death and his wife's long painful illness and her eventual death, he has returned to drinking, and was subsequently charged with Driving Under the Influence of Alcohol. He has not made the commitment to stop. At this time, he is not working a structured recovery program that includes Alcohol Anonymous meetings or any other program, and has not been able to stay alcohol free. He continues to drink, although he believes that he is now drinking responsibly. He is not on the right road to recovery. Based upon his long history of alcohol abuse and its related effects on the Applicant there is insufficient evidence in the record to show that he is sufficiently trustworthy, or that he will not return to his old ways.

I have also carefully considered the favorable words from his security officer, supervisor, co-workers, family and friends, but that evidence does not come close to mitigating the negative effect of his numerous alcohol related arrests.

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.:	For 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.
Subpara. 1.h.:	For the Applicant.
Subpara. 1.i.:	Against the Applicant.
Subpara. 1.j.:	Against the Applicant.
Subpara. 1.k.:	Against the Applicant.
Subpara. 1.l.:	Against the Applicant.

Conclusion

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