



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-09684
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Edmunds, Esquire, Department Counsel
For Applicant: Jerry L. McCune, Personal Representative

May 30, 2008

Decision

WESLEY, Roger C., Administrative Judge

Statement of the Case

On October 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 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 Applicant. DOHA recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on December 4, 2007, and requested a hearing. The case was assigned to me on January 15, 2008, and was scheduled for hearing on March 5, 2008. A hearing was held on March 5, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At the hearing, the Government's case consisted of seven exhibits; Applicant relied on one witness (himself) and six exhibits. The transcript (R.T.) was received on March 18, 2008.

Summary of Pleadings

Under Guideline G, Applicant is alleged to have been arrested, charged, or cited with five alcohol-related offenses between 1985 and January 2004. Those five offenses are as follows: (1) in September 1985 for Operating Under the Influence/ intoxication of Liquor; (2) in February 2002 for public intoxication, for which he was fined \$115.00, (3) in October 2003 for Driving Under the Influence (DUI), for which he pled guilty and was sentenced to two years deferred sentence, fined, placed on probation, and ordered to pay for probation supervision (\$20.00 a month), as well as a \$25.00 deferred sentence fee, (4) in December 2003 for Actual Physical Control of Motor Vehicle, for which he pled *nolo contendere* and was sentenced to one year in jail (suspended), required to attend a victims impact meeting, and fined \$762.00, and (5) in January 2004 for resisting executive officer and DUI-Liquor or Drugs/Actual Physical control of Vehicle, for which he pled *nolo contendere* and was sentenced to a year in jail (suspended), ordered to attend a victim's impact panel meeting, and fined \$250.00.

Additionally, under Guideline G, applicant is alleged to (a) have received medical treatment/counseling between April 1999 and May 1999 at an alcohol rehabilitation center, and (b) continued to consume alcohol as of October 2007.

Under Guideline E, Applicant is alleged to have falsified his security clearance application (SF-86) of May 2005 by omitting (a) all but his December alcohol-related arrest, (b) his treatment/counseling for alcohol abuse in 1999, and (c) his reported tax lien in October 1998.

For his response to the SOR, Applicant admitted most of the of the allegations. without any explanations. He denied his January 2004 alcohol-related offense and any attempts to falsify his 2005 SF-86.

Findings of Fact

Applicant is a 48 year-old aircraft mechanic for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant is unmarried and has no children (R.T., at 36). During his six years of active duty in the Navy (between 1978 and 1984), he received extensive training in aviation maintenance and was awarded certificates honoring his demonstrated professionalism (see ex. E). Applicant was honorably discharged from the Navy in 1984 (see ex. C).

Applicant was introduced to alcohol at a very early age (estimated 5 to 6). Before April 1999, he typically drank on a nightly basis, consuming 2 to 3 beers at a sitting (R.T., at 73-74), oft-drinking to intoxication (at least once a week). His drink of choice was beer; although, he sometimes consumed tequila as well (R.T., at 74-75). Applicant considered intoxication to be the rough equivalent of falling down drunk (R.T., at 75). Occasionally, he drank and drive (R.T., at 76).

Between 1985 and January 2004, Applicant was involved in five separate alcohol-related incidents. In September 1985, he was arrested for operating a motor vehicle under the influence/intoxication of liquor. He had consumed three beers in a local residence before the incident, and was on his way home when stopped by police (R.T., at 43-44). Applicant assures that his brother was actually driving the vehicle. But because his brother did not have a drivers license, Applicant told the arresting officer that he was the driver (R.T., at 44-45). Applicant believes he was administered a Breathalyzer test at the scene, but could not remember what it registered. While Applicant believed the charges were dropped (R.T., at 46), he could provide no documentation of the disposition of the case. Case disposition remains uncertain. Based on Applicant's own statements, though, the incident qualifies as an alcohol-related offense even without a documented conviction.

Applicant was arrested in February 2002 for public intoxication. He had consumed a six-pack of beers over a 4 to 5 hour period at a local residence with his girlfriend and drove to his girlfriend's home to drop her off (R.T., at 48-50). She went to the wrong apartment door when they arrived at her place of residence. Applicant tried the key and when it did not work, he kicked in the front door to the apartment (R.T., at 47-49). When the police arrived, they escorted him to the station. Applicant later pled guilty to public intoxication and was fined \$115.00. (R.T., at 51-53).

In October 2003, Applicant was arrested and charged with Dul. He had consumed several beers before his arrest and was speeding when he was stopped by police (R.T., at 54-55). Once arrested, he was handcuffed and taken to jail, where he spent the night. When he appeared in court, he pled guilty to the charged offense. He was sentenced to two years in jail (deferred), fined \$150.00 plus \$600.00 in court costs, placed on probation, and ordered to pay a \$20.00 a month supervision fee and a \$25.00 a month deferred sentence fee.

Applicant was arrested again in December 2003 on an alcohol-related offense. Before his arrest, Applicant had consumed several shots of tequila and four to five beers (R.T., at 58-59). He was sitting in his parked vehicle when confronted by the arresting officer at the scene. Applicant's verbal exchange with the officer evolved into a scuffle, in which Applicant suffered two broken ribs (R.T., at 60-61). While in the police car in transit to a local hospital, Applicant complained that the officer was physically hurting him (see ex. 2; R.T., at 61). Without a police report, it is not possible to verify these complaints and disposition. After spending about two weeks in the hospital for treatment of his broken ribs, the same transporting officer returned and arrested/charged Applicant (in January 2004) and transported him to the county jail where he booked and charged Applicant with the offense of actual physical control of a motor vehicle and transported (R.T., at 61-62). Once in court, Applicant pled *nolo contendere* and was sentenced to one year (suspended), fined \$762.00, and required to attend a victim's impact meeting (R.T., at 62). Applicant's claim that his December 2003 arrest is one and the same as the January arrest alleged in sub-paragraph 1.e of the SOR is sufficiently corroborated by the FBI investigation report (ex. 3; R.T., at 64-66) to warrant acceptance.

Concerned about his drinking, which had caused him some problems at work (R.T., at 81-82), Applicant sought treatment for his perceived alcohol problem in April

1999 (R.T., at 67). He voluntarily admitted himself to an alcohol rehabilitation center (H Center) in April 1999. During his 26-day inpatient stay in this facility, Applicant was counseled and treated for his alcohol problem. His group activities included the center's 12-step program (R.T., at 68, 77). Both Applicant and his brother claim to be alcoholics (see ex. D; R.T., at 69-70). Neither, though, provides any documented medical information confirming their alcohol dependence condition. And Applicant simply has no recollection of ever being advised by hospital staff of any dependent or abuse diagnosis (R.T., at 70-72). Before he was discharged, the center's staff did suggest he quit drinking altogether and attend Alcoholics Anonymous (AA) meetings (R.T., at 72-73).

Following his May 1999 discharge from H Center, Applicant did curtail his drinking to about a six-pack a week (R.T., at 78). However, he did not give up drinking as recommended by H Center's staff and never pursued AA participation following his inpatient discharge. Because Applicant's treatment records have not been made available, it is not possible to determine his rendered drinking diagnosis (if any) by H Center professional counselors. Since December 2003, Applicant estimates he reduced his alcohol consumption rate to about 2 to 3 beers a week (R.T., at 78) and maintained this basic rate of consumption through 2007.

Applicant has not enrolled in any other alcohol treatment programs since his May 1999 discharge from H Center and has no plans to do so (R.T., at 80). He does not consider his attendance at a victims impact meeting to constitute alcohol treatment (R.T., at 80). While he assures that he has abstained from alcohol use since January 2008, and commits to future abstinence, he provides no witness or documentary support for his assurances. Applicant's older brother (who has been an AA sponsor himself) credits Applicant with joining AA's 12-step program and committing to remaining sober with the help of the program's active recovery principles (see ex. D; R.T., at 79-82). Describing him as an alcoholic like himself, the brother provides no account, though, of Applicant' past drinking practices.

Asked to complete an SF-86 in may 2005, Applicant omitted three of his four alcohol-related arrests (listing only his December 2003 arrest when responding to question 24 of the questionnaire. He attributes this arrest omissions to memory lapse and his belief that the arrests would not appear in his record (see ex. 2; R.T., at 84-85). In the same SF-86, Applicant omitted his inpatient treatment with H Center in 1999. When answering question 30. He attributes this omission, too, to memory lapse (R.T., at 85). Besides his alcohol-related omissions, Applicant omitted a state tax lien from his SF-86, when responding to a question (question 36) covering this subject matter. Applicant attributes this omission to his lack of knowledge at the time of any tax liens filed against his property interests (R.T., at 86).

When interviewed by an OPM investigator in March 2006 (see ex. 2), Applicant acknowledged the arrests he could recall when specifically asked about them by the investigator (R.T.,at 98-100). Albeit, he could not recall being asked about his treatment (R.T.,at 99).

Without more to tie in his omission explanations with the actual questions covering his alcohol arrests and treatment episodes, his explanations are not convincing. The questions themselves are straight forward and ask for details covering

any alcohol-related arrests and treatment admissions. To misread arrest history and treatment-related questions so completely places too much strain on credibility limits. Acceptance of Applicant's explanations require more corroborative proof of a good-faith misapprehension of the questions posed in each questionnaire than Applicant was able to provide.

Applicant's explanations for omitting his state tax lien are consistent with his previous denials of any knowledge of the lien and credible enough to warrant their acceptance (see ex. 2). He documents his subsequent satisfaction of the state's tax lien in January 2007 once he learned of the lien from reviewing his credit report (see ex. F; R.T., at 86). Without any more developed information on this tax lien and how and when it came to be filed, there is not enough information at hand to impute knowledge to Applicant of the existence of the lien when he completed the SF-86 in issue. Accordingly, favorable inferences warrant with respect to his tax lien omission.

Applicant is well regarded by his superiors and coworkers (see ex. D). They find him to be a reliable aircraft mechanic who conscientious about his work (ex. D). He has numerous certificates that document his successful completion of aircraft maintenance training with his employer in 1999 (see ex. E).

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the conditions that could raise a security concern and may be disqualifying (Disqualifying Conditions), if any, and all of the Mitigating Conditions, if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial, common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Alcohol Consumption

"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" (Adjudicative Guidelines, para. 21).

Personal Conduct

"The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, 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” (Adjudicative Guidelines, para. 15).

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Applicant is an honorably discharged military veteran with a history of regular alcohol consumption over a 20-year period and four established alcohol-related incidents between 1985 and 2004. Applicant's history of alcohol-related incidents and continued consumption in the face of inpatient treatment for alcohol abuse in 1999, reflects both a recent pattern of alcohol abuse outside the work place and a potential abuse or dependency problem that raise security concerns. Additional security concerns are raised over Applicant's omissions of most of his alcohol-related arrests and treatment referral in his answers to a security clearance application in May 2005. Of some initial security concern, but still largely unsubstantiated, is Applicant's omission of a state tax lien filed against him in October 1998.

Alcohol issues

On the strength of the evidence presented, one of the available disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption is clearly applicable: DC 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,” under the facts and circumstances of Applicant’s situation.

Applicant’s drinking history, that includes four alcohol-related incidents and one inpatient treatment stay at a recognized substance abuse facility, reflects problem drinking over a considerable period of time. Even though he does not recall receiving a diagnosis of either alcohol dependence or abuse, his belief that he had a potential alcohol dependence problem is what prompted him to seek treatment from H Center in 1999.

While Applicant’s H Center treatment had some positive influence initially on his drinking practices, he soon resumed regular drinking and maintained this drinking pattern for the ensuing ten years. During this ten year stretch between 1998 and 2008, he experienced three additional alcohol-related arrests, for which he was convicted, and at times consumed alcohol beyond recognized legal limits. This combination of continuous abusive drinking over an extensive period of time that manifested in a series of alcohol-related offenses (four proven ones altogether) and a treatment admission justify assigning some application to DC 22©), “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.”

Because Applicant could not recall receiving a dependence or abuser diagnosis from his H Center providers, he continued to drink and avoid his recommended AA attendance until recently. His failure to seek a current diagnosis and prognosis from any qualified substance abuse provider and/or enlist substance abuse counseling to date, warrants limited application of any of the mitigating conditions covered by the Guidelines for alcohol. Favorable views from his coworkers and brother about his recent commitments to sobriety through AA’s 12-step program, while helpful, are not enough to mitigate alcohol concerns under any of the covered mitigating conditions.

Whole person assessment does not alter risk concerns associated with Applicant’s pattern of alcohol-related offenses and still recent drinking patterns in the aftermath of his H Center treatment and recurrent drinking over the past nine years. Applicant’s alcohol evaluations by qualified clinicians and his corresponding failure to either mount a successful challenge to the abstinence/AA recommendations of his treatment counselors until just recently prevent safe predictive judgments about his ability to sustain his current abstinence commitments.

Considering the record as a whole, Applicant failed to make a convincing showing that he has both the maturity and seasoned resource support to avert any recurrent problems with judgment lapses related to alcohol. There is insufficient evidence to warrant safe assessments that he is no longer at risk of judgment impairment associated with his past alcohol-related conduct. Unfavorable conclusions warrant with respect to subparagraphs 1.a through 1.d and 1.f and 1.g of the SOR. Applicant is entitled to favorable conclusions with respect to sub-paragraph 1.e based on Applicant’s probative showing that subparagraphs 1.d and 1.e cover the same December 2003 alcohol-related arrest.

SF-86 omissions

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant's failure to list all of his of his alcohol-related arrests and past alcohol treatment in his 2005 SF-86. So much trust is imposed on persons cleared to see classified information that the margins for excusing candor lapses are necessarily narrow.

By omitting his 1985, 2002 and October 2003 arrests and 1999 inpatient treatment at H Center in his 2005 SF-86, Applicant concealed materially important background information needed by the government to properly process and evaluate his security updates. His claims of memory lapses lack credible plausibility. So, weighing all of the circumstances surrounding his SF-86 omissions, Applicant's claims lack the necessary probative showing to avert drawn conclusions he deliberately withheld material background information about the extent of his arrest history. Only his explanation for his omitted acknowledgment of his 1998 state tax lien is sufficiently convincing to justify conclusions that the allegation is unsubstantiated.

What is clear about the alcohol-related questions involved in Applicant's 2005 SF-86 is that they contain no time qualifications and could not plausibly be misread or easily forgotten. Applicant's omissions require application of a disqualifying condition (DC) for personal conduct of the Guidelines: 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."

Mitigation is difficult to credit Applicant with, because his omissions are neither isolated nor followed by prompt and good faith corrections of his omissions. Under these circumstances, he cannot claim the benefit of any of the potentially applicable mitigating conditions. Not only has the Appeal Board found the use of the predecessor to mitigating condition (MC) 17©) (which is A5.1.3.2) of the Adjudicative Guidelines for personal conduct ("the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment") to be unavailable to applicants seeking mitigation by treating the omission as isolated, but it has denied applicants availability of MC 17(a) and its predecessor mitigating condition ("the individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts"). *Compare* ISCR Case No. 97-0289 (January 1998) *with* DISCR Case No. 93-1390 (January 1995).

Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E2.2.2 factors), unfavorable conclusions warrant with respect to sub-paras. 2.a and 2.b of Guideline E.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE G (ALCOHOL CONSUMPTION): AGAINST APPLICANT

Sub-para. 1.a:	AGAINST APPLICANT
Sub-para. 1.b:	AGAINST APPLICANT
Sub-para. 1.c:	AGAINST APPLICANT
Sub-para. 1.d:	AGAINST APPLICANT
Sub-para. 1.e:	FOR APPLICANT
Sub-para. 1.f:	AGAINST APPLICANT
Sub-para. 1.g:	AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2a:	AGAINST APPLICANT
Sub-para. 2.b:	AGAINST APPLICANT
Sub-para. 2.c:	FOR 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge