



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-08215
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein Esquire, Department Counsel
For Applicant: *Pro Se*

September 17, 2008

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations (e-QIP), on November 1, 2005. On January 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines G, E and B 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on February 16, 2008. He answered the SOR in writing on February 26, 2008, and requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on April 29, 2008. A notice of hearing was issued on May 2, 2008, and the matter was scheduled for hearing on May 28, 2008. The Government presented eight exhibits, referred to as Government Exhibits 1 through 8, which were received without objection. The Applicant presented two exhibits, referred to as Applicant's Exhibits A and B, which were received without objection. The Applicant also testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 5, 2008. Based upon a review of the case file,

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

Findings of Fact

The Applicant is 47 years old and married. He has a high school diploma and various Naval educational courses. He is employed by a defense contractor as an Electronic Satellite Controller, 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 began consuming alcohol in junior high or high school at the age of seventeen. He usually drank beer, at the most a six pack at social gatherings with friends on the weekends. Following high school, in February 1989, the Applicant joined the Navy and continued to use alcohol at times to excess and to the point of intoxication. In 1985, he married his first wife, they had one child, and were divorced in 1989.

In April 1991, while serving in the United States Navy, the Applicant was arrested and charged with Driving Under the Influence of Alcohol. He explained that he went to shoot pool one evening and consumed alcohol. On his way home he was pulled over by the police. He was fined \$1,400.00 and placed on probation for three years. He was evaluated by the Navy for his excessive alcohol consumption and was referred to the NDSAP. An administrative action in June 1991, indicated that the Applicant was diagnosed with "alcohol abuse". The Applicant married his second wife in 1995, and they have two children.

In 1999, the Applicant was having real difficulties with his second wife. She did not like his drinking and he discovered that she was having an extra-marital affair. In August 2003, they separated and she took their two children and moved in with another man. The Applicant's drinking increased to the point where he was consuming about a six pack of beer every day or so. (Tr. p. 34).

In an effort in part, to save the marriage, the Applicant self-referred himself for alcohol treatment from October 2003 through November 2003. He was treated for "Alcohol Dependence" at a Navy hospital. Medical records show that the Applicant had experienced black outs and had elevated liver enzymes. (Government Exhibit 6, p. 3). The Applicant was prescribed medication to help him abstain from alcohol. (Tr. p. 42). He explained that during detoxification he experienced withdrawal symptoms including cold sweats, shaking, chills, fever, headaches and the inability to eat. (Tr. pp. 42- 43). When he was discharged from the hospital he was diagnosed with "Alcohol Dependence", early remission. He completed the requirements of the program and

continued attending Alcoholic Anonymous meetings through New Years, (for about a month following his discharge) and was able to remain completely sober during this period. A month later, he resumed his alcohol consumption, but at a much lower level. (Tr. p. 40). The Applicant and his second wife later divorced.

In March 2005, the Applicant was arrested for (1) Driving Under the Influence, (2) Unsafe Lane Change, and (3) Possession of Drug Paraphernalia. The Applicant had been consuming alcohol at a pool tournament and was pulled over by the police after leaving the bar. It was determined that the location in which the Applicant was pulled over is notorious for DUI arrests, since it is so close to the bar and that the police had no probable cause to pull the Applicant over at the time. The case was subsequently dismissed. (See Government Exhibit 7).

The Applicant stated that he continues to consume alcohol. Just two days before the hearing he consumed two beers. (Tr. p. 37). He usually consumes alcohol at home. He no longer drinks and drives, and becomes intoxicated only about once a month. (Tr. p. 45).

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

As a now retired navy enlisted man, the Applicant held a security clearance during his military career. He became familiar with the security clearance application and has completed at least three of them. He understands the importance of being honest to the Government in response to questions concerning the security clearance application and background investigation.

The Applicant was interviewed on December 6, 2006, by an investigator for the Department of Defense. During that interview he omitted material facts by stating that his arrest for Driving Under the Influence (DUI) in 1991, in Sacramento did not happen. Although the facts were not entirely accurate, he did not offer the truth. He deliberately failed to disclose his 1991 arrest and charge for DUI that occurred in San Diego, California. (See Government Exhibit 3).

In his response to Interrogatories dated October 5, 2007, issued to him by the Department of Defense, he omitted material facts in that he stated that his arrest in 1991 for DUI in Sacramento did not happen. Although the facts were not entirely accurate, he did not offer the truth. He deliberately failed to disclose his 1991 arrest and charge for DUI that occurred in San Diego, California. (See Government Exhibit 3).

The Applicant excuse for failing to reveal his 1991 arrest and charge for DUI was that he forgot about it. (Tr. p. 26). He stated that he was shaken up by the fact that the investigator mention a gun charge to him that he had no knowledge of, and the location of a DUI in Sacramento that were inaccurate. The Applicant contends that he did not deliberately conceal the information from the Government. However, the evidence shows that the Applicant remembered his 1991 DUI on his security clearance application dated July 18, 1995, (See Government Exhibit 2) and, he also mentioned it to his doctors during his treatment in 2003 for alcohol dependence as evidenced by his

medical records. (See Government Exhibit 6). It is difficult to believe that he forgot about it during his interview in 2006 and in response to interrogatories in 2007.

Paragraph 3 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant's third and current wife is a citizen and resident of the Philippines. He met her through the internet in March 2006, and married her in March 2008. (See Applicant's Exhibit A). She resides with the Applicant in the United States. His two former spouses, who he married in 1985, and 1995, respectively, were also Philippines nationals. The Applicant believes that they are both now naturalized United States citizens. Other than about ten telephone calls to his first wife concerning his son, the Applicant has had no contact with her since 1988. His second wife is now residing in the United States. His former mother-in-law and father-in-law are citizens and residents of the Philippines. The Applicant's last contact with his in-laws was in 2000. He traveled to the Philippines in 1998, two times in 2000, and at least three times in 2006, to take his children to visit their grandparents. He has no other foreign contact with the Philippines or any other foreign national whatsoever.

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.

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.

Conditions that could mitigate security concerns:

None.

Guideline B (Foreign Influence)

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

Condition that could raise a security concern:

7. (a) contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.

Conditions that could mitigate security concerns:

8. (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose

between the interests of a foreign individual, group, organization, or government and the interests of the U.S.

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."

Conclusion

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, dishonesty and/or foreign influence 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), dishonesty (Guideline E), and foreign influence (Guideline B). 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 Guidelines G, E and B 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”*; 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”* and, 22(d) *“diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence”* apply. None of the mitigating conditions are applicable.

The Applicant's history of alcohol abuse is extensive. He has been consuming alcohol, at times to the point of intoxication for almost thirty years. He has been arrested in 1991, and again in 2005, for DUI. He has been diagnosed as “alcohol dependent” and has undergone treatment for his disease. Despite the diagnosis and the recommendation that he completely abstain from the use of alcohol, he continues to consume alcohol. Based upon his long history of alcohol abuse, its related negative effects on the Applicant are such that I am unable to find him sufficiently trustworthy to

safeguard classified information. Accordingly Guideline G is found against the Applicant.

Under Personal Conduct, Guideline E, Disqualifying Condition 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* applies. None of the mitigation conditions are applicable.

The evidence shows that the Applicant intentionally failed to disclose his 1991 arrest and charge for DUI during his interview with the Defense department in 2006, and in response to interrogatories in 2007. Since he revealed his 1991 arrest on his earlier security clearance application in 1995, and to his doctors during his alcohol treatment in 2003, it is not reasonable to believe that he forgot about it. Even assuming the investigator confronted the Applicant with wrong information, the Applicant should have offered the truth. There is no reasonable excuse as to why he would not disclose it other than to conceal the information and hope that the Government would not notice that he has been arrested on two occasions for DUI arrests, rather than just one. This intentional deception is intolerable. Accordingly, Guideline E is found against the Applicant.

Under Foreign Influence, Guideline B, Disqualifying Condition 7.(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident of a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion applies. However Mitigating Condition 8.(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.* also applies.

The Applicant's current wife is a citizen of the Philippines, and now lives with the Applicant in the United States and is in the process of becoming a United States citizen. His former spouses are now naturalized United States citizens. His former in-laws reside in the Philippines, but he has had no contact with them since 2000. The Applicant's only travel to the Philippines for the sole purpose of taking his children to visit their grandparents. He understands his responsibilities in holding a security clearance and it is unlikely that he will be influenced by any foreign entity. Accordingly, I find for the Applicant under this guideline.

I have considered all of the evidence presented, however it does not come close to mitigating the negative effects of his excessive alcohol abuse and his dishonesty and the effects that it can have on his ability to safeguard classified information.

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. Paragraph 3 is found for the Applicant.

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.

Paragraph 2: Against the Applicant.
Subpara. 2.a.: Against the Applicant.
Subpara. 2.b.: Against the Applicant.

Paragraph 3: For the Applicant.
Subpara. 3.a.: For the Applicant.
Subpara. 3.b.: For the Applicant.
Subpara. 3.c.: For the Applicant.
Subpara. 3.d.: For 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