



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 07-09572  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jennifer I. Goldstein Esquire, Department Counsel  
For Applicant: Edward O. Lear, Attorney At Law

July 30, 2008

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on October 14, 2006. On February 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline G 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 19, 2008. He answered the SOR in writing through Counsel on March 7, 2008, and requested a hearing before an Administrative Judge. The matter was assigned to this Administrative Judge on April 10, 2008. A notice of hearing was issued on April 17, 2008, and the matter was scheduled for hearing on May 29, 2008. The Government presented thirteen Exhibits, referred to as Government Exhibits 1 through 13, which were received without objection. The Applicant presented two Exhibits, referred to as Applicant's Exhibits A

and B, which were received without objection. He also testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 11, 2008. I granted Applicant's request to keep the record open until close of business on June 5, 2008, to submit additional documentation. On June 5, 2008, the Applicant submitted one Post-Hearing Exhibit, consisting of two pages, that was received without objection. The record closed on June 6, 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 55 years old and divorced with three adult children. He is employed by a defense contractor as an Electrical Engineer, 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 each of the allegations set forth in the SOR under this guideline. (See Applicant's response to SOR). He began consuming alcohol to excess at the age of eighteen in about 1970. His excessive use of alcohol continued off and on until at least October 2007. During this period, he was charged, arrested and convicted of six alcohol related incidents that include, two Public Intoxication charges, an Alcohol in a Closed Area charge, and three arrests for Driving Under the Influence of Alcohol (DUI) or Driving While Intoxicated (DWI).

From 1973 until 1978, the Applicant served in the United States Air Force. For the past twenty years, he has been working for his current employer, and has held a security clearance since 1972. He is also a part-time musician who has worked in the studio where he has consumed alcohol to help him relax from time to time.

The Applicant was arrested and charged with Public Intoxication on two occasions, August 15, 1972 and two days later, on August 17, 1972. He was sentenced to jail time and served about ten days in jail. (Tr. p. 37 and Government Exhibits 8, 9 and 10).

In October 1977, he was arrested and charged with Driving While Intoxicated. The Applicant had been drinking alcohol and was pulled over for speeding. He pled guilty, was fined approximately \$500.00, was required to attend a DWI or George Air Force Base course. His drivers license was suspended for six months, and he was placed on probation for two years. (Government Exhibits 8, 9 and 10)

In December 1981, the Applicant was arrested and charged with a felony offense of Driving Under the Influence of Alcohol Involving Injuries. The Applicant explained

that it was Christmas Eve, he had gotten off of work early and had been consuming alcohol (screwdrivers) most of the day. He was looking in his glove box for a cassette tape when a car pulled out in front of him on the highway and he rear ended it, causing the car to turn over. Both the driver and the passenger in the other car received skull fractures. (Tr. p. 38). The Applicant's blood alcohol level was .27%. He was found guilty and was sentenced to serve 180 days in jail (on weekends), was fined approximately \$1,300.00, his drivers license was revoked for one year and he was placed on probation for three years. Following this incident, the Applicant did not consume alcohol again for about six years, until 1987. (Tr. p. 39 and Government Exhibits 6 and 12).

In February 1983, the Applicant provided a statement to the Defense Investigative Service wherein he stated, "Since the incident, I have not drank alcohol, and it is my intention never to do so again." (Government Exhibit 6 and Tr. p. 40).

In about 1987 or so, the Applicant gradually started consuming alcohol again. His drinking increased to about three times a month and to the point of intoxication about two times a year. (Tr. pp. 42-43). Ten years later, in July 1993, the Applicant was charged with alcohol in a closed area. He was found guilty and fined \$76.00. (Government Exhibit 5).

In March 2006, the Applicant was arrested and charged with (1) Driving Under the Influence - Alcohol, and (2) Driving Under the Influence with Alcohol Over .08%. The Applicant's blood alcohol level actually tested at .16%. The Applicant explained that he was going to a friend's house and had been drinking earlier that evening. He was driving onto the freeway. The roads were icy and he lost traction and went off of the road. Pursuant to a plea bargain, Count (3) Wet Reckless Involving Alcohol was added. The Applicant pled Nolo Contendere to Count (3) and was sentenced to pay a fine and fees totaling \$1,075.00, to complete a 16 week alcohol education program, his drivers license was suspended for one month, and he was required to make restitution in the amount of \$3,717.47. He was placed on summary probation for three years, which will not expire until June 2009. (Government Exhibits 8 and 11)

Pursuant to court order, the Applicant attended a three month course beginning in about May 2006, which included 12 hours of Alcohol Education, six hours of self-help meetings, eight Alcoholic Anonymous meetings and 18 hours of group sessions. He successfully completed the program in about August 2006.

Up until three and a half months ago, the Applicant continued to consume alcohol despite the fact that he is currently on probation. He does not believe that he is addicted to alcohol, however, he keeps it in his house for friends who come to visit. (Tr. p. 50). He indicated that he attended and completed the meetings required by the court but did not find it worthwhile to continue seeking treatment of any kind. However, upon receipt of the notice of hearing in this matter, he took several steps to remind himself not to drink. He hung several posters in his house, one on his door that says, "Drink Responsibly", and another from his employer that says, "Don't forget who you work for". On the refrigerator there is another poster from the DMV that reminds him of the blood

alcohol levels. He also purchased a breathalyzer to test his blood alcohol level. (Tr. p. 30). The Applicant states that drinking is not as important to him as the other things that he has going on in his life. (Tr. p. 31). His recent alcohol related arrest and conviction cost him at least \$35,000.00 out of pocket. (Tr. p. 49).

He has not consumed any alcohol for the past three and a half months and plans to continue to remain abstinent.

Twelve letters of recommendation from professional colleagues and long time friends who have known and/or worked with the Applicant for many years attest to his professional manner, positive and respectful attitude, honesty, hardworking and compassionate nature, integrity and trustworthiness. He is considered to be a dedicated family man, who is responsible, patriotic, loyal, security conscious, and honorable in every aspect of his life. (See Applicant's Exhibit A (1) through A (12)).

An affidavit from the Applicant dated May 30, 2008, indicates that as of May 19, 2008, he has eliminated all consumable alcohol from his residence. (See Applicant's Post-Hearing Exhibit).

The Applicant received an Instant Recognition Award from his employer on December 4, 2001. (See Applicant's Exhibit B).

### **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."

## 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 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 thirty-seven years ago and has resulted in at least six alcohol related arrests, including two public intoxication charges, an alcohol in a closed area charge, and three arrests for DUI. His last arrest occurred in 2006, just two years ago, and he remains on probation for the offense until June 2009. In 1983, the Applicant told the Department of Defense that he was not going to consume alcohol again, but he later returned to his excessive drinking habit. Presently, he has only abstained from the use of alcohol for the past three and a half months and again he says that he has no intentions of ever drinking. Hopefully, this time, the Applicant will be able to completely abstain from excessive alcohol abuse.

Although there is no formal diagnosis in the record of alcohol dependence, the Applicant's pattern of alcohol abuse is clearly indicative of a serious alcohol problem that he still has not gained an understanding of. He has again made the commitment to stop drinking. In order to stay sober, he has posted reminders around him, on the door and the refrigerator and has purchased a breathalyzer. Recently, he has eliminated alcohol from his home. However, he is not working a structured recovery program that includes Alcoholics Anonymous meetings or any other recognized alcohol rehabilitation program. Three and a half months of abstinence is only the beginning of a long program of recovery and is no guarantee that he will not return to his old habits. 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 at this time.

I have also carefully considered the favorable statements from his professional colleagues 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.:	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.
Subpara. 1.h.:	Against the Applicant.
Subpara. 1.i.:	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.

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Darlene Lokey-Anderson  
Administrative Judge