

DATE: August 11, 2006

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-07825

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 18, 2005, DOHA issued a statement of reasons advising Applicant of the basis for that decision—security concerns raised under Guideline G (Alcohol Consumption) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a determination based on the written record, as opposed to a hearing. On October 31, 2005, after reviewing Department Counsel's File of Relevant Material and Applicant's response to it, Administrative Judge Philip S. Howe denied Applicant's request for a security clearance. Applicant initially appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30. The Board remanded the case to the Administrative Judge with instructions on January 18, 2006. The Judge issued an unfavorable Remand Decision on February 8, 2006. Applicant now appeals the Judge's Remand Decision.

Applicant raised the following issue on appeal: whether the Administrative Judge's adverse security clearance decision, which was based on Applicant's history of problems with alcohol, failed to properly consider Applicant's recent history of sobriety and the positive changes in his life.

The Administrative Judge's findings were not challenged on appeal. Those include the following: Applicant consumed alcohol from 1981 until at least November 2004. Applicant was arrested and convicted of DUI in January 1981 after consuming 12 beers at a party. He quit drinking briefly but resumed and was soon drinking 10 to 12 beers over a five hour period each Friday and Saturday night, a pattern that continued until 1985. In 1985 Applicant started drinking every night, a pattern which included 4 or 5 beers per night during the week and 10 to 12 beers per night on the weekends. In 1988, after Applicant realized he had a drinking problem he was admitted to a hospital for six weeks of in-patient treatment. He successfully completed the program and attended AA for a time. Applicant stopped attending AA in 1995 or 1996 because he thought he had solved his alcohol problem. However, in 1997 he resumed drinking again with his old pattern of nightly drinking and heavier drinking on the weekends. In July 2001, Applicant was again admitted to a hospital to treat acute alcohol withdrawal and dehydration. He was diagnosed as suffering from alcohol abuse. He was discharged on July 30, 2001 with recommendations for AA and aftercare program attendance. Applicant attended AA for 90 days, then went to 4 or 5 meetings a week until October 2001. He then moved to another state and began drinking about 10 days later. Applicant began his current pattern of drinking one or two nights a week, consuming one or two beers. He continues to attend AA and realizes that he has an alcohol problem and should not drink. Applicant told a government investigator in May 2003 that he intended to stop drinking immediately but he

admitted in his answer to the SOR that he continued to drink until at least March 2004. His latest admission is that he stopped drinking in November 2004, but there is no substantiation of his claim.

Citing Applicant's significant history of problems with alcohol, including a diagnosis of alcohol abuse, habitual consumption, and inability to cease drinking after two alcohol treatment hospitalizations, the Administrative Judge concluded that Applicant was unable to support his latest claim of abstinence and, though well-meaning, Applicant does not have sufficient control over his drinking problem to instill confidence in his professions of future sobriety. The Judge concluded that the government's security concerns over Applicant's alcohol consumption had not been mitigated.

On appeal, Applicant emphasizes that he has been sober for over a year and a half and that positive changes in his life, most importantly a new marriage, have enabled him to an upstanding and alcohol-free life, and that his past is behind him. Applicant claims that he is being unfairly judged solely on his long-ago past and not on his present circumstances.

Applicant's appeal brief contains some references to changed life circumstances (a former bad marriage and a current happy one) that were not part of the record below. The Board cannot consider new evidence on appeal. *See Directive ¶ E3.1.29.* Applicant's representations that he had ceased all alcohol consumption as of November 2004 was evidence that the Administrative Judge was required to consider. However, the Judge was not required to accept that evidence and find that Applicant has, indeed, entered a period of unblemished sobriety since November 2004. Given the record evidence of Applicant's relapses into heavy alcohol use after brief periods of sobriety, and the record evidence of Applicant's inability to refrain from continuing use of alcohol after his stated intentions of forbearance after certain dates, the Judge's finding that Applicant had failed to establish his current claimed period of abstinence in the absence of corroborating evidence was reasonably supported by the record. An applicant's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge's finding is unsustainable. Regarding the Judge's ultimate conclusion that Applicant failed to mitigate the concerns raised by his history of problems with alcohol, the Board concludes that the Judge's ultimate disposition of the case is supported by the record. Thus, the Administrative Judge did not err in denying Applicant a clearance.

Order

The decision of the Administrative Judge denying Applicant a clearance is **AFFIRMED**.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman, Appeal Board

Signed: Jeffrey D. Billett

Jeffrey D. Billett

Administrative Judge

Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board