

DATE: August 19, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-09555

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esq., Department Counsel

FOR APPLICANT

Anthony J. Solare, Esq.

SYNOPSIS

Applicant has had a long history of alcohol abuse. The first time he received alcohol abuse counseling in 1995, he was not ultimately successful, because he again began consuming alcohol. His second treatment has been more successful, because Applicant is more committed to sobriety, including attending meetings six to seven times a week at Alcoholics Anonymous, and he has abstained from alcohol consumption since December 16, 2002. Evidence of Applicant's alcohol rehabilitation is sufficient to mitigate his alcohol related history. Clearance is granted.

STATEMENT OF THE CASE

On August 11, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) 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 Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed a signed and sworn, notarized response, dated November 22, 2003, to the allegations set forth in the SOR. He requested a clearance decision based on a hearing record before a DOHA Administrative Judge.

On February 4, 2004, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on March 3, 2004, and the hearing was held on April 27, 2004.

At the hearing, Department Counsel offered five documentary exhibits (Exhibits 1 - 5) and no witnesses were called. Applicant, through his counsel, offered 10 documentary exhibits (Exhibits A - J) and his own testimony. The transcript (TR) was received on May 12, 2004.

FINDINGS OF FACT

The Government opposes Applicant's request for a security clearance, based upon the allegations set forth in the SOR. In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline G of the Directive because of Applicant's excessive alcohol consumption. The SOR contains four allegations, 1.a. through 1.d., under Guideline G (Alcohol Consumption). Applicant admits all of the allegations. The admitted allegations are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents and the live testimony, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 46 years old. He is married and has two children. He is employed as a Field Engineer by a defense contractor, and he seeks to retain a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline G - Alcohol consumption).

The Government alleges in this paragraph that Applicant is ineligible for clearance because he abuses alcohol to excess.

Applicant first consumed alcohol when he was 11 years of age, and excessive drinking began at age 13. He enlisted in the United States Navy when he was 21. In October 1988, Applicant's consumption of beer was six to twelve beers a day.

By March 1995, his consumption had escalated to 12 to 18 beers a day, and he referred himself for treatment for his alcohol consumption. He entered a treatment program at an Army medical center. He was diagnosed as having acute alcoholism with liver problems. The treatment consisted of four weeks of in house treatment, with individual and group counseling, and one year of aftercare, which involved attending three Alcoholics Anonymous (AA) meetings a week. Applicant abstained from consuming alcohol for 21 months until December 1997, when he again consumed alcohol. Ultimately, his consumption escalated again, and while he could drink moderately at times, there were also frequent times when he would drink to the point of intoxication (Tr at 40-45, Exhibit 2).

Applicant last consumed alcohol on December 16, 2002. On January 11, 2003, he was evaluated by a Ph.D., licensed psychologist, who diagnosed Applicant as being alcohol dependent without physiological dependence. He stated about Applicant, "He is motivated for treatment and recovery and has a supportive family system. . . . His prognosis: is good if the dictates of his treatment program are adhered to with little deviation."

From February 20, 2003, through April 1, 2003, Applicant successfully completed treated in an intensive alcohol outpatient treatment program. Applicant followed up with six months of aftercare and 10 sessions with his treating psychologist and consistent attendance at AA meetings. His initial goal was to attend 90 meetings in 90 days, which he did. He currently attends six or seven AA meetings a week (Tr at 31, 32) (Exhibits C, H, I).

Applicant submitted a letter of reference from his supervisor which was extremely positive about Applicant as a good and trusted employee (Exhibit B). He also submitted his performance evaluation which gave Applicant an Outstanding evaluation (Exhibit A). Three letters were introduced from fellow members of AA, which were extremely positive about his involvement with that organization (Exhibits D, E, F). Finally, he presented a letter from his wife which stated that Applicant has a more mature outlook and is far more committed to AA than he was previously (Exhibit J).

Finally, I have considered that Applicant served twenty years in the U.S. Navy, and he never received an adverse evaluation or report because of alcohol. He has also never been arrested for Driving Under the Influence of alcohol (DUI) or any other alcohol related violation.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the

factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case.

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge can only draw those inferences or conclusions that have a 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."

CONCLUSIONS

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 or her a security clearance.

In this case, the Government has met its initial burden of proving by substantial evidence that Applicant has used alcohol to excess (Guideline G). Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him.

Paragraph 1 (Guideline G - Alcohol Consumption). While Applicant has had a long history of consuming alcohol to excess, he was credible when he testified that he last consumed alcohol on December 16, 2002. I have also considered the fact that Applicant's alcohol consumption never resulted in a DUI or any other alcohol related violation, or adversely affected his current employment or career in the Navy.

All of Applicant's treatment has been as a result of his own initiative. While his first treatment ultimately resulted in his drinking again after 21 months, the evidence has been extremely persuasive that he is more committed to sobriety, and that he has a better overall support team, including AA, to help him to remain sober.

The Government established that Applicant has received an diagnosis of alcohol abuse or alcohol dependence by a credentialed medical professional which is Disqualifying Condition (DC) (E2.A7.1.2.3). It has also been established by substantial evidence that Applicant has engaged in habitual or binge consumption of alcohol to the point of impaired judgment which is which is DC (E2.A7.1.2.5.).

Mitigating Condition (MC) (E2.A7.1.3.3.) applies because of the positive changes in Applicant's behavior supportive of sobriety. Also, MC (E2.A7.1.3.4.) is applicable because Applicant has successfully completed an outpatient rehabilitation program, including aftercare, and has been extremely committed to AA; he has abstained from alcohol for greater than twelve months; and he has received a favorable prognosis by a credentialed medical professional. Overall, the mitigating conditions outweigh the disqualifying conditions, and Paragraph 1 is concluded for Applicant.

On balance, it is concluded that the Applicant has overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding for Applicant as expressed in Paragraph 1 of the Government's SOR.

FORMAL FINDINGS

Guideline G: FOR APPLICANT

Subparagraph 1.a.: For Applicant.

Subparagraph 1.b.: For Applicant.

Subparagraph 1.c.: For Applicant.

Subparagraph 1.d.: For Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Martin H. Mogul

Administrative Judge