

DATE: May 17, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-09486

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

James Norman, Esquire, Department Counsel

Kathryn MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Security concerns persist over Applicant's alcohol abuse which led to three alcohol-related convictions. Although he has attended two treatment programs and has been abstinent since July 2003, he no longer attends Alcoholics Anonymous (AA). He will remain on probation until June 2005 for the alcohol-related conviction in June 2003, so there is insufficient evidence that he has met mitigating conditions. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on October 15, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.⁽¹⁾ The SOR alleges specific concerns in paragraph 1 over alcohol issues (Guideline G) and in paragraph 2 over criminal conduct (Guideline J). Applicant responded to these SOR allegations in an Answer notarized on November 6, 2003, where he requested a hearing.

Department Counsel on January 19, 2004 indicated that the case was ready to proceed. The case was assigned to me on January 22, 2004. Subsequently, a mutually convenient date for hearing was agreed to. A Notice of Hearing, issued on January 27, 2004, set the matter for February 26, 2004, at a location near where Applicant works and lives.

At the hearing the Government offered six exhibits which were admitted into evidence. (Exhibits 1-6) Applicant testified and offered five exhibits. (Exhibits A-E) The transcript (TR) was received on March 4, 2004.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I

make the following findings of fact:

Applicant, 49 years old, has worked for a defense contractor in State #1 since 1992. He was granted a secret security clearance in July 1982. He completed a Security Clearance Application (SF 86) in May 2000. (Exhibit 1; TR 57-58)

Applicant received a B.S. degree in 1976. He married in 1983 and was divorced in February 2002. (Exhibit 1; TR 56-57)

Alcohol Consumption and Criminal Conduct

Applicant first used alcohol when he was 18 years old and first became intoxicated when he was 18. (Exhibit 4) His first alcohol-related conviction in State #1 was in January 1975: Applicant was arrested for drunk driving following an automobile accident and charged with Driving with Ability Impaired by Alcohol. He was found guilty, fined, and his driver's license was temporarily suspended. He did not seek any alcohol counseling after this conviction. (SOR 1.e.; Answer; Exhibit 6; TR 33-34)

After attending a "hurricane survival party" in September 1996, Applicant drove and crossed over the white line on the edge of the road. He was again arrested for an alcohol-related offense. He was found guilty of driving while intoxicated as his Blood Alcohol Content (BAC) was .21. He voluntarily sought counseling with a substance abuse treatment center in December 1996. The center recommended he attend an alcohol program with weekly breathalysers. It was a 13-week program; but since he had a trip that took him out of the country for five months, he had to start over when he returned in August 1997. As part of the treatment he also attend Alcoholics Anonymous (AA) meetings. When he completed the program in December 1997, the treatment program gave him a good prognosis. (SOR 1.c., 1.d.; Answer; Exhibits 1, 2, 3, 4, 5, 6; Exhibit E; TR 27-31, 35-42)

After he completed the program, he continued to drink but stated he did not intend to drive after he had been drinking as he had a restriction on his license of zero tolerance for alcohol from 1997-1998. (TR 42)

Nevertheless, he had a third alcohol-related conviction in State #1 in June 2003 for driving while intoxicated. He was sentenced to one year in jail, suspended to ten days confinement in a detention center, given two years probation, and ordered to be supervised by a drinking driving monitoring program, and to pay court costs. His sentence commenced in July 2003. Also, he was ordered to attend an alcohol treatment program. Under the terms of the monitoring program he goes once a month to prove his employment and living condition status. He was ordered to abstain from alcohol for two years. He plans to comply with the terms of his probation and abstain from alcohol as he does not want to go to jail. (Answer; Exhibit 6; TR 31-32; 43-44)

Because of this third alcohol-related conviction, he again entered treatment, an out-patient program, which he completed in October 2003. While he was in treatment he attended AA meetings two times a week. All of his random urine tests were negative. Applicant stated there were no after-care recommendations. The program provided no prognosis. Applicant does not believe he is an alcoholic even though he continued to drink beer twice a month after his conviction. He has not had any alcohol since July 2003 when he was released from jail and learned about the abstinence requirement beginning in August 2003. He will be on probation until June 2005. In September 2003 his probation officer reported he was in compliance with all conditions of his probation. (Answer; Exhibit 6; Exhibits A, B, C, D; TR 45-47, 52-55)

Applicant stopped attending AA when the treatment program was over in October 2003. He is a home brewer, likes good beer, and intends to drink in the future. (Answer; Exhibit 6; TR 48-51, 55-56)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth

below :

Guideline G --Alcohol Consumption

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Conditions that could raise a security concern and may be disqualifying include:

1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use;
5. Habitual or binge consumption of alcohol to the point of impaired judgment;

Conditions that could mitigate security concerns include:

None

Guideline J - Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

- a. Allegations or admissions of criminal conduct
- b. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Alcohol Consumption

The Government established security concerns over Applicant's alcohol abuse as he has a history of drinking to excess and has had alcohol-related convictions in 1975, 1996, and 2003. Even after he attended an alcohol treatment program in 1997, Applicant returned to drinking to excess in 2003 when he was convicted of DWI and sentenced to one year in jail, suspended to ten days confinement in a detention center. Not only was he given two years probation until June 2005, but he was also ordered to be supervised by a drinking driving monitoring program in order to ensure his abstinence for two years. He plans to comply with the terms of his probation and abstain from alcohol as he does not want to go to jail. Because of this conviction, he again entered a treatment for an out-patient program which he completed in October 2003. There is no evidence in the record that he was diagnosed with an alcohol abuse problem; however, the treatment program provided no prognosis. While he was in treatment he attended AA meetings two times a week and has not consumed any alcohol since July 2003. However, Applicant stopped attending AA when the treatment program ended. As a home brewer, he likes good beer; and he intends to drink in the future. Applicant's conduct falls

within DC 1 and 5.

Applicant failed to provide sufficient evidence to demonstrate that he falls within the mitigating conditions.⁽²⁾ Although he has maintained his current sobriety since July 2003, he candidly admitted that a major motivating factor was the court's zero tolerance for any alcohol after his third offense and his fear of jail time. He received his severe sentence after the June 2003 DWI conviction because his alcohol related incidents do indicate a pattern. Further, the problem is recent as he will remain on probation until June 2005. While his current sobriety is one positive changes in his behavior, it is still too soon to predict that he will be able to maintain this sobriety as he no longer attends AA and has an intent to return to alcohol after he completes his probation. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 1.a. though 1.f. under SOR Paragraph 1.

Criminal Conduct

The Government established security concerns over his criminal conduct as related to his alcohol use, SOR 1.a., 1.c., and 1.e., as discussed above. Conditions that could raise a security concern and may be disqualifying include: a. allegations or admissions of criminal conduct, regardless of whether the person was formally charged; and b. a single serious crime or multiple lesser offenses. As discussed above, Applicant provided insufficient evidence that he has reformed⁽³⁾ his conduct as he will remain on probation until June 2005. For example, he failed to provide any reference letters to provide sufficient evidence of successful rehabilitation.

Consequently, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 2.a. under SOR Paragraph 2.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline G: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Paragraph 2. Guideline J: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

DECISION

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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.
2. **Conditions that could mitigate security concerns include:** 1. The alcohol related incidents do not indicate a pattern; 2. The problem occurred a number of years ago and there is no indication of a recent problem; 3. Positive changes in behavior supportive of sobriety; 4. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with after-care requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.
3. **Conditions that could mitigate security concerns include:** a. The criminal behavior was not recent; b. The crime was an isolated incident; c. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life; d. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur; e. Acquittal; f. There is clear evidence of successful rehabilitation.