

DATE: January 23, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-10555

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of abusive drinking that is marked by both blackouts and a still recent aggravated DWI conviction. In an ensuing aftercare program, the licensed alcohol drug abuse counselor who evaluated him characterized his condition as alcohol abuse on the Axis 1 scale. Despite a favorable prognosis from his aftercare counselor and commitment to abstain, Applicant returned to drinking (sometimes to what could be characterized as abusive), which he continues to do. Based on Applicant's drinking history and abstinence failures, it remains too soon to make safe predictions that Applicant can avoid risks of recurrent judgment lapses associated with his past alcohol abuse. Clearance is denied.

STATEMENT OF THE CASE

On July 16, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant. The SOR 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on August 21, 2003, and elected to have his case decided on the basis of the written record. Applicant was furnished the File of Relevant Material (FORM) on September 25, 2003, and received it on October 20, 2003. The exhibit file contains no documentation that he provided any timely response to the FORM within the time permitted. The case was assigned to me December 2, 2003.

SUMMARY OF PLEADINGS

Applicant is a 28-year-old material handler for a defense contractor who seeks a security clearance.

Under Guideline G, Applicant is alleged to have (a) consumed alcohol to excess from the time he was 21 to the present,

(b) consumed 2 to 6 beers a night between 1996 and 1999, (c) blacked out 15 times after alcohol use from 1997 to 1998, (d) been arrested for aggravated DWI in August 1999, to which he pled no contest, was found guilty, fined \$600.00, sentenced to 6 months in prison (suspended for 2 years) and had his driving privileges suspended for a year, (e) attended an alcohol aftercare program in July and August 2000, completing the program in September 2000, (f) attended an alcohol treatment program, completing this program in September 2000, and (g) continued to drink.

For his answer to the SOR, Applicant admitted most of the allegations, including his 1999 aggravated DWI offense and disposition. He denied drinking excessively every day and denied consuming alcohol past December 31, 2002.

STATEMENT OF FACTS

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Applicant began drinking at the age of 19, mostly on the weekends at a friend's house. For the ensuing 2 years, he consumed from 1 to 6 beers a sitting. In some weeks he would not a drink at all; in other weeks he would engage in drinking in one to two sittings a week (*see ex. 5*). When Applicant turned 21, he increased his alcohol consumption to 4 to 5 nights a week. During each sitting he estimates to have consumed 2 to 6 beers, depending on his mood. His drinking at first relaxed him. But as he increased his consumption, he blacked out on numerous occasions, about 15 times in 1997 and 1998, altogether (*ex. 5*).

Preceding his 1999 aggravated DWI, Applicant consumed 10 beers, 2 shots of tequila and a tequila sunrise. On the way home from a friend's house, he passed out behind the wheel and veered into a parked car. He was taken to a hospital for testing and blood work. Thereafter, he was arrested for aggravated DWI after he registered a blood alcohol level in excess of .16 per cent (*see ex. 7*). As the result of his ensuing guilty conviction, he was sentenced to 6 months in jail (suspended for 2 years), fined \$600.00, and had his driving privileges suspended for 2 years.

Applicant attended both an alcohol aftercare program and an alcohol treatment program following his 1999 aggravated DWI conviction. From his counseling experiences, he gained good feedback about the dangers of drinking. In his alcohol treatment program, he was diagnosed by a licensed alcohol and drug abuse counselor with alcohol abuse, based on his taken history of consumed alcohol of up to 7 beers a sitting and his 1999 aggravated DWI conviction. Applicant attended all 6 sessions prescribed by his treatment counselors and is credited with gaining useful knowledge about the disease of alcoholism. His treatment counselors assigned him a favorable prognosis, but recommended he continue his claimed abstinence (which he assured he had adhered to for the previous 3 months).

After completing his contemporaneous aftercare and treatment programs and attending a few AA meetings, Applicant convinced himself he could control his drinking without the need of aftercare, treatment, or AA. Despite claims in his answer he discontinued drinking altogether in December 2002, he stated otherwise in his signed, sworn to interrogatory responses (*i.e.*, 3 to 4 beers at a time on a weekly basis after March 2003). With nothing more in the record to reconcile these competing stories, Applicant cannot avert inferences that he continued to consume alcohol after December 2002 at the consumption levels stated in his interrogatory responses (*see ex. 6*).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list guidelines to be considered by judges in the decision making process covering DOHA cases. Judges must consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Alcohol Consumption

The Concern: 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.

Disqualifying Conditions:

DC 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.

DC 4 Evaluation of alcohol abuse or alcohol dependence by a licensed social worker who is a staff member of a recognized alcohol treatment program.

DC 5 Habitual or binge consumption of alcohol to the point of impaired judgment.

Mitigating Conditions:

MC 3 Positive changes in behavior supportive of sobriety.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Applicant presents as a material handler for a defense contractor with a considerable history of alcohol abuse. His past record of excessive consumption and blackouts must be assessed as well when evaluating his diagnosis, counseling and drinking patterns following his 1999 aggravated DWI conviction.

Following his 1999 aggravated DWI conviction, Applicant elected to enroll in both an aftercare program and treatment program. Each program was designed to (and appeared to) help him better understand the nature of alcoholism and abusive drinking. Despite a favorable prognosis from his treatment counselors, which to some extent hinged on his continued abstinence which he underscored with his counselors, he returned to drinking, at times even to excess. On the strength of the evidence presented, three disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption may be applied: DC 1 (alcohol-related incidents away from work), DC 4 (evaluation of alcohol abuse by a licensed social worker) and DC 5 (habitual or binge consumption).

In making an overall assessment of Applicant's clearance eligibility, major emphasis must be accorded his past recent

drinking history, the aggravated nature of his 1999 DWI conviction, his ensuing counseling and abuse evaluation by a licensed social worker, and his continued drinking despite his commitments to abstain.

By his actions to date, Applicant demonstrates some progress in learning about alcohol abuse. However, he did not stay long enough with his abstinence commitments to sustain the faith placed in him by his treatment counselors. Not only are his assurances of discontinued drinking in December 2002 belied by his earlier admissions in his interrogatory responses, but his drinking level even arises to abusive levels on occasion for someone who presents with the serious abuse history that Applicant has (*i.e.*, 3 to 4 beers at a weekly sitting). Without any sustained abstinence record, he is not in a position to take advantage of the key mitigating condition for evaluated alcohol abuse, namely DC 4 (following diagnosis of alcohol abuse or alcohol dependence the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates in meetings of AA 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).

In fairness to Applicant he has been able to avoid any additional alcohol-related incidents away from work and seems to have reduced the amount of his drinking, both in terms of the number of sittings per week and the amounts consumed in each sitting. His efforts do merit some use of MC 3 (positive changes in behavior supportive of sobriety). But his efforts to date still lack the probative weight necessary for crediting him with sufficient indications of sustained mitigation of both his drinking problems and encounters with law enforcement authorities to overcome any residual security risks associated with his past alcohol-related judgment lapses. Based on this written record, it is still too early to make safe predictions about Applicant's ability to avert recurrent judgment lapses associated with his drinking.

Considering the record as a whole, Applicant fails to make the convincing showing that he has both the maturity and resource support at his disposal to avert any recurrent problems with judgment lapses related to alcohol to warrant safe predictions that he is no longer at risk to judgment impairment associated with such conduct. Unfavorable conclusions warrant with respect to the alcohol-related allegations covered by Guideline G.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE G (ALCOHOL): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge