

DATE: June 28, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0546

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Matthew E. Malone, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's conduct raises security concerns over his criminal conduct, alcohol abuse, drug abuse, and personal conduct. Applicant deliberately misled the Government by material omissions from his security form. Thus, the Government established a case of criminal falsification under 18 U.S.C. section 1001 as he was clearly put on notice that he had a duty to reveal all adverse information on the SF 86. Instead he improperly certified that his answers were "true, complete, and correct." While he has mitigated, in part, concern over continuing alcohol abuse as he stopped drinking, he did not mitigate the overall concern as he has not demonstrated twelve months of sobriety in his after care program after a diagnosis of alcohol abuse. He mitigated the drug abuse charge as he stopped using drugs and has had subsequent clean drug tests. 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 November 30, 2000. 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⁾ (Item 1) The SOR alleges specific concerns in criminal conduct (Guideline J), alcohol abuse (Guideline G), drug abuse (Guideline H), and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized on December 19, 2000, where he admitted paragraphs 1.a. through 1.c. and provided explanations; he admitted paragraphs 2.a. through 2.c. and provided explanations; he admitted paragraph 3.a. and provided explanations; and he admitted paragraph 4.a. through 4.c. He requested a determination on the record. (Item 3)

The case was assigned to Department Counsel; on February 5, 2001, he prepared the File of Relevant Material (FORM) for the Applicant's review. Department Counsel advised Applicant that he had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that he had the right to be represented by counsel. A Personnel Security Specialist (PSS) sent the FORM to Applicant on February 7, 2001, and again notified the Applicant that he had 30 days from receipt of the letter to submit objections and/or information before the FORM was

submitted to an administrative judge.

Applicant received the FORM on February 22, 2001. However, he did not submit any response before the deadline of March 24, 2001. On May 7, 2001, the case was assigned to me.

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 additional Findings of Fact:

Applicant is a 39 year old employee of a defense contractor in State #1. He began work there in February 1999; and he applied for a security clearance in February 1999 by completing a Security Clearance Application (Standard Form 86) (SF 86). He is married and has bought a new home in State #1. He attended a community college and received an AAS degree in December 1992. (Answer; Item 4)

In September 1999 he completed a course in his speciality at a corporate training center. (Answer; Exhibit B)

Criminal Conduct, Alcohol Consumption, and Personal Conduct

On the SF 86 Applicant reported a September 1998 arrest for Driving under the Influence⁽²⁾ of alcohol (DUI) where he was fined. However, Applicant did not reveal an earlier arrest in July 1996 for public intoxication⁽³⁾ where he plead guilty, paid fines and costs of \$110 and was placed on unsupervised probation until July 1998 under a special program which he completed in November 1996. (Answer, Items 4, 5)

Despite his failure to reveal information about this earlier 1996 alcohol-related arrest and his treatment, Applicant certified that his statements on the form were "true, complete, and correct." He was advised that a knowing and willful false statement of this form could be punished by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code. (Item 4)

He was interviewed three times by Defense Security Service (DSS) investigators. Applicant in July 1999 explained the July 1996 incident where he was charged with Public Intoxication after he got into an argument at a club. The September 1998 alcohol-related incident happened after he drove after he had ten to twelve beers. He was fined over \$600 and had his driver's license suspended for 90 days; he completed level one DUI school. Applicant started drinking in 1990; however, in his Answer he stated he began drinking alcohol in 1986. (Item 5; Answer) On the average he consumed three beers on the weekend with his maximum being ten to twelve beers. He admitted the two alcohol-related arrests were acts of poor judgment. (Item 5) He completed the DUI Substance Abuse Course in May 1999 in State #2. (Exhibit A)

In a second interview in January 2000 Applicant admitted that, after he completed the education portion of the DUI school, a warrant was issued as he failed to do required outpatient counseling. He had decided he could not afford the \$2,000-\$3,000 cost of the programs he explored. (Item 6) In this second DSS interview he learned of the warrant issued in July 1999 for his failure to complete a treatment program, so he then immediately contacted an outpatient treatment program which he attended for two weeks in April 2000. He decided to stop drinking in January 2000. (Answer)

Applicant entered an alcohol treatment program in April 2000 because of the court order to complete treatment for substance abuse following his 1998 DUI . He had a pending May 2000 court date to suspend his probation, which was to be in effect until November 2000. He was diagnosed with Alcohol Abuse (305.00) with a history of binge drinking along with an assessment that his judgement was fair and his insight was poor. His discharge diagnosis by a medical doctor was Alcohol Abuse; on discharge he was advised to maintain his sobriety and to attend two Alcoholics Anonymous (AA) meetings per week. (Item 8) Applicant did not respond to the FORM by submitting a current diagnosis or prognosis or to report on whether he followed this plan.

Drug Abuse, Personal and Criminal Conduct

In June 2000 DSS interviewed him about his past drug use; he admitted his marijuana use started in high school in

approximately 1987 and continued until January 1999. He has bought marijuana for his own use but never sold or distributed any illegal substance. He has no drug related arrests and has not received any medical treatment for his past use of marijuana. His recent drug tests in the alcohol abuse treatment program and at his workplace have been negative. (Answer; Items 7, 8)

On the SF 86 in February 1999 Applicant revealed no adverse information about this drug abuse, yet he certified that his statements on the form were "true, complete, and correct." He was advised that a knowing and willful false statement of this form could be punished by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code. (Item 4)

Weighing all of this evidence, I conclude Applicant did intend to mislead the U.S. government by omitting the 1996 arrest, alcohol treatment and drug abuse information from his SF 86. Further, the multiple DSS interviews do not indicate any effort on his part to voluntarily disclose this adverse information before he was confronted.

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 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:

(2) A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

(1) The criminal behavior was not recent;

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;

(3) Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

Conditions that could mitigate security concerns include:

(3) Positive changes in behavior supportive of sobriety;

Guideline H - Drug Involvement

Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning,

increasing the risk of an unauthorized disclosure of classified information.

Drugs are defined as mood and behavior altering:

[First] Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and

[Second] Inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

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

(1) Any drug abuse (see above definition);

Conditions that could mitigate security concerns include:

(3) A demonstrated intent not to abuse any drugs in the future;

Guideline E - Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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

(2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities

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**Criminal Conduct**

The Government maintains security concerns over criminal conduct issues because of Applicant's two alcohol-related arrests and convictions as well as his omission of relevant and material information from his security form detailed in the Findings above. While the 1996 conviction for public intoxication may be mitigated under condition (1), as the criminal behavior was not recent, the 1998 incident led to a motion to revoke his probation in May 2000 which was only cancelled after he completed his alcohol treatment program in April 2000. That is too recent to mitigate, and he has not sufficiently shown evidence of the other mitigation factors⁽⁴⁾ such as clear evidence of successful rehabilitation.

Further, the Government has established a case of criminal falsification under 18 U.S.C. section 1001 as he was clearly put on notice of that section of the criminal code to clarify his duty to reveal all adverse information on the SF 86. Instead he incorrectly certified that his answers were "true, complete, and correct." For the reasons discussed above in my Findings, I conclude his conduct in omitting this material adverse arrest and drug use information was knowing and willful.

Thus, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 1.a. but against Applicant on subparagraph 1.b. and 1.c. under SOR Paragraph 1.

Alcohol Consumption

The Government has security concerns over Applicant's alcohol-related arrests in 1996 and 1998, discussed above and his long-term use of alcohol to excess, all of which led to his treatment in April 2000 where he was diagnosed by an M.D. with Alcohol Abuse with a history of binge drinking. 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, and (3) Diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence.

In April 2000 Applicant completed the court-required counseling and treatment. To his credit, he decided to stop drinking in January 2000 and successfully completed the two week treatment program. Thus Applicant meets some, but not all, conditions⁽⁵⁾ that mitigate security concerns. He has met MC 3: Positive changes in behavior supportive of sobriety. However, in response to the FORM he did not supply any information as to whether or not he has complied with the after care requirements and whether or not he continues to abstain from alcohol nor any favorable prognosis by a credentialed medical professional. Thus, Applicant has not clearly demonstrated he has met MC 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. Thus, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 2.a. as he no longer consumes alcohol, but against him under subparagraph b. and c. under SOR Paragraph 2.

Drug Abuse

The Government has security concerns over Applicant's drug abuse as he used marijuana several times from 1987 to January 1999. This drug abuse was revealed on his alcohol treatment records and confirmed by Applicant in a DSS interview. However, he has subsequently stopped his drug use and passed several drug tests at his treatment center and his workplace. Thus, I conclude he meets conditions that could mitigate these security concerns: (3) A demonstrated intent not to abuse any drugs in the future. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 3.a. as he no longer uses illegal drugs and has no intent to do so in the future.

Personal Conduct

On the same facts as addressed above under criminal conduct, the Government also cited security concerns over personal conduct issues: Applicant willfully falsified his SF 86 by omitting adverse information which was subsequently documented in his arrest and medical reports. Such conduct⁽⁶⁾ reflects questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information. While Applicant declared he did not intentionally omit this information from his SF 86, that assertion is an deficient defense to the requirement to be forthcoming on a security investigation. The adverse incidents were current at the time he completed the form so his reasons for the omissions are not credible. Further, he does not meet the mitigating conditions as there his no evidence of MC 3: The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts or of MC 4: Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously

omitted information was promptly and fully provided. Thus, I conclude that Applicant did deliberately mislead the Government by these omissions. Thus, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 4.a. through 4.c. under SOR Paragraph 4.

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 J: AGAINST APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: Against Applicant

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Paragraph 3. Guideline H: FOR APPLICANT

Subparagraph 3.a. For Applicant

Paragraph 4. Guideline E" AGAINST APPLICANT

Subparagraph 4.a.: Against Applicant

Subparagraph 4.b.: Against Applicant

Subparagraph 4.c.: 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. In State #1 Driving under the influence of alcohol is defined as having a blood alcohol content of 0.08 or more to a degree which renders him or her incapable of safely driving. (Item 9)

3. Public Intoxication in State #1 is a crime if an individual appears in a public place under the influence of alcohol, narcotics or other drug to the degree that he endangers himself or another person or property, or by boisterous and offensive conduct annoys another person in his vicinity. (Item 9)

4. Conditions that could mitigate security concerns include: 1. The criminal behavior was not recent; 2. The crime was an isolated incident; 3. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life; 4. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur; 5. Acquittal; 6. There is clear evidence of successful rehabilitation

5. 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.

6. Conditions that could raise a security concern and may be disqualifying also include: (2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.