

DATE: July 26, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0597

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Twenty-three year old Applicant's relatively brief period of alcohol abuse during July 1997 through August 1999; and his three alcohol-related incidents, including one charge without arrest (public intoxication and minor in possession) in 1997, and two arrests in 1998 (public intoxication) and 1999 (making alcohol available to a minor); in the absence of any diagnosis of alcohol abuse or alcohol dependence by a credentialed medical professional; are mitigated by his apparent rehabilitation; and his continuing abstinence since October 1999. Clearance is granted.

STATEMENT OF THE CASE

On October 20, 2000, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, "*Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to 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 granted, continued, denied, or revoked.

In a sworn written statement, dated November 10, 2000, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on the written record, in lieu of a hearing. Department Counsel submitted the Government's written case on December 14, 2000. A complete copy of the file of relevant material (FORM) ⁽¹⁾ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He apparently chose not to do so. The case was initially assigned to Administrative Judge Claude R. Heiny II on July 10, 2001, but, due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge on July 23, 2001.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to alcohol consumption under Guideline G (subparagraphs 1.a. through 1.d.). These admissions are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 23 year old male, employed by a defense contractor, seeking to retain a SECRET security clearance.

For a period of a little more than two years, Applicant had an alcohol problem which resulted in three police-related incidents. The initial manifestation of that problem occurred on July 4, 1997⁽²⁾ when, at the age of 19, he was stopped by the police for not wearing a seat belt and administered a field sobriety test, which he failed. He was then administered a blood alcohol breath test, but the results of that test were not revealed. After remaining in custody for about four hours, he was released and issued citations for public intoxication and minor in possession. He eventually paid fines totaling \$375.00. Prior to the incident he had consumed approximately two or three 12 ounce beers and two or three screwdrivers (one ounce of vodka and orange juice per drink).⁽³⁾

The second incident occurred on November 13, 1998. Shortly after midnight, after having consumed two 40 ounce beers, Applicant walked up to the drive-through window of a local fast food restaurant, but was refused service. He and his friends departed only to return within one-half hour. He observed another friend being refused service, and when the police arrived to arrest the friend, Applicant approached and tried to defend his friend. Both individuals were arrested, and Applicant was charged with public intoxication.⁽⁴⁾ After spending the night at the justice center and paying a fine of \$100.00, he was released.

The third, and most recent, incident occurred on March 7, 1999, when, at the age of 21, he was arrested and charged with making alcohol available to a minor.⁽⁵⁾ The problem started when Applicant and a friend (who was under 21) on leave from the Navy purchased a case of beer. Later that evening, they picked up another friend (who was also younger than Applicant). When they stopped to use a pay phone and opened the trunk of the automobile to retrieve three beers, they were observed by an off duty officer of the state Alcohol Beverage Commission who alerted the police. The three individuals were arrested and taken into custody. Applicant spent one night in jail before being released. After entering a plea of guilty, he was fined \$739.25, and sentenced to three days in jail, with credit for three days served.⁽⁶⁾ Applicant explained he thought a person on active duty could legally consume alcohol, regardless of age. He had no explanation regarding the other under-age friend.

As a result of his most recent incident, and at the behest of his girlfriend, Applicant's alcohol consumption has undergone a dramatic modification. Prior to August 1999, he generally consumed eight to ten 12 ounce beers on weekends. Following the arrest, and continuing until about October 1999, the quantity and frequency have diminished to three or four beers on three or four occasions. Effective October 1999, Applicant has abstained from the consumption of alcohol.⁽⁷⁾ There is no evidence to rebut his contention that he has not consumed any alcohol since October 1999.

Applicant has never undergone any treatment or rehabilitation related to his alcohol abuse,⁽⁸⁾ and has never been diagnosed by a credentialed medical professional as being afflicted with alcohol abuse or alcohol dependence.

Applicant has been employed by the same company since prior to September 1997, when he received his current security clearance. The quality of his performance has not been characterized.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E2.2., Enclosure 2, of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

[Alcohol Consumption - Guideline G]: 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:

- (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.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security,"⁽⁹⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded those standards are one and the same. In reaching this Decision, I have endeavored to draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have attempted to avoid drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

One additional comment is worthy of note. Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no

sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline G, the Government has established its case. Commencing in July 1997, and continuing for a period of about two years, Applicant threw caution to the wind and exhibited a pattern of questionable judgment, irresponsibility, and immature behavior by becoming an occasional alcohol abuser who generally consumed eight to ten 12 ounce beers, or more, on weekends. As a consequence of his alcohol consumption, on three separate occasions, he was faced with police involvement. On one occasion, while still a minor, in 1997, he was charged without arrest with public intoxication and minor in possession; On another occasion, he was arrested in 1998, and charged with public intoxication; and on the third occasion, he was arrested again in 1999, and charged with making alcohol available to a minor. These incidents and the conduct which contributed to the incidents fall within Alcohol Consumption Disqualifying Condition (DC) E2.A7.1.2.1. and DC E2.A7.1.2.5.

As previously stated, while there is substantial evidence, in my view, to support a finding Applicant was an alcohol abuser, there has been no such diagnosis provided by a credentialed medical professional. Thus, DC E2.A7.1.2.4. does not apply.

Alcohol has clearly adversely impacted Applicant's life. The pattern of his abuse has caused him to be fined, detained, and even jailed. It appears the most recent evidence of an alcohol problem occurred in August 1999, when he was last arrested. As indicated above, Applicant's alcohol consumption has undergone a dramatic modification and steadily decreased. Following the August 1999 arrest, and continuing for another two months until about October 1999, the quantity and frequency diminished to three or four beers on three or four occasions. The most dramatic change occurred in October 1999, for at that time, Applicant started abstaining from alcohol.

There is no evidence to rebut Applicant's contention he has not consumed any alcohol since October 1999. The absence of any evidence of an alcohol problem for approximately two years clearly falls within Alcohol Consumption Mitigating Condition (MC) E2.A7.1.3.2. Applicant's initial period of diminished consumption of alcohol during August-October 1999, accompanied by sobriety; and his nearly two years of abstinence are positive changes in behavior which fall within MC E2.A7.1.3.3.

Under the evidence presented, I am confident that Applicant's *undiagnosed* alcohol abuse of the past will not recur. There is convincing evidence of current sobriety. Applicant has taken efforts to rehabilitate himself, and it appears he has, in fact, been successful. Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to the issue of alcohol consumption. Accordingly, allegations 1.a. through 1.d. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline G: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the 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 Applicant.

Robert Robinson Gales

Chief Administrative Judge

1. The Government submitted six items in support of its contentions.
2. *See* Item 6 (Statement of Subject, dated February 4, 2000), at 1.
3. *Ibid.*
4. *Id.*, at 2. *See also* Item 4 (Adverse Incident Report, dated November 17, 1998).
5. *Ibid.*
6. *See* Item 5 (Court Records, dated March 7, 2000), at 2.
7. *See* Item 6, *supra* note 2, at 3.
8. *Ibid.*
9. *See* Executive Order 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (*see* Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (*see* Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (*see* Enclosure 2, Sec. E2.2.2.)