

DATE: October 30, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0588

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Arthur A. Elkins, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's conduct raises security concerns over his repeated problematic alcohol-related behavior that led to six alcohol-related arrests from 1977 to 1997 which Applicant failed to disclose on his security form. While the dated arrests in the 1970's and 1980's might be overlooked, Applicant continues to drink. His failure to document positive changes in behavior supportive of sobriety and his omission of his alcohol-related arrests on his security form lead to an adverse conclusion despite his favorable work record. Doubt remains as to whether he is fully rehabilitated given this repeated pattern and given his 20-year history of questionable conduct. This long-term pattern of alcohol-related arrests indicates a need to document a greater commitment to rehabilitation on his part. 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 April 19, 2001. 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 criminal conduct (Guideline J), Alcohol Consumption (Guideline G), and personal conduct (Guideline E). Applicant responded to these SOR allegations in an Answer notarized but undated where he admitted paragraphs 1.a. through 1.e., but denied with explanations 1.f.; he admitted paragraph 2.a. and denied 3.a. He submitted attachments but did not request a hearing, so the case was assigned to Department Counsel to prepare for a decision on the administrative record. On July 17, 2001, he prepared the File of Relevant Material (FORM) for the Applicant's review and 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 July 17, 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 July 25, 2001. Although the response was due on August 24, 2001, Applicant submitted no response. On September 13, 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 and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 45 years old, has been an employee of Defense Contractor #1 in State #1 since April 1999. In March 1999 he applied for a security clearance by completing a Security Clearance Application (Standard Form 86) (SF 86). He attended a State #2 technical institute from January 1996 to September 1997 when he received his diploma where he had an overall Grade Point Average of 3.96. He had earlier attended a State #2 technical and vocational school and received a diploma in March 1978. He is single. (Items 3, 4, 5)

Criminal Conduct, Alcohol Consumption and Personal Conduct

Applicant for several years had a pattern of drinking beer with his co-workers when he got off work as it was his "way of life then." For a twenty-year period he had a series of alcohol related arrests and convictions; he reported that after several of the driving under the influence (DUI) charges he did have to attend educational sessions and Alcoholics Anonymous (AA) meetings. However, he reported no continuing involvement in AA nor a commitment to sobriety. (Items 3, 5, & 6)

In May 1977 Applicant pleaded *nolo contendere* to DUI in State #2. (Items 3, 5, & 6)

After being charged with DUI in December 1977 in State #2, Applicant forfeited bond. (Items 3, 5, & 6)

In October 1982 he was charged with DUI in State #2 and plead guilty. (Items 3,5, & 6)

In August 1987 he was charged with DUI in State #2 and plead guilty. He was also charged with a violation of habitual violators probationary license in August 1987. He was awarded six months of probation which was discharged in November 1988. (Items 3,5, & 6)

In November 1992 he was charged with DUI in State #2 and plead *nolo contendere*. He was fined \$675 and given ten days of community service which he completed (Items 3,5, & 6)

In November 1997 he was charged with DUI in State #2 after he hit a utility pole which he had to pay to replace as he had made an improper lane change. He claims that the DUI charge was dismissed, and he was given a copy of the verdict to provide to state officials. However, the record provided in Item 6 merely shows his not guilty plea in December 1997; the municipal court document shows no ruling by the judge on guilty or not guilty. The citation does show a "not guilty" ruling by the judge in December 1997. Nevertheless, an attachment shows that Application was awarded a Certificate of Completion from the State #2 DUI Alcohol or Drug Risk Reduction Program in December 1997 for having completed a 24-hour intensive intervention for DUI after a *Nolo* plea. The attached blood alcohol test is not legible. (Items 3, 5, & 6) On this record I cannot conclude that the charge was dismissed.

Applicant reported that he was never hospitalized nor prescribed any medication. He was never enrolled in any treatment or counseling program. He now has a valid driver's license in State #1 and State #2 though he concedes he had a limited use license in the early 1980's. Applicant was interviewed by a Defense Security Service (DSS) investigator in July 2000 and asserted he has almost quit drinking as he is now older. At that interview he claimed that when he completed "a paper copy of the security clearance questionnaire," he listed that he had a DUI charge and claimed that the omission was merely on the computer version of the form. (Item 5) However, his hand-written copy of the SF 86 from March 1999 does not include any admissions of a DUI charge in response to Question 23d which requires applicants to report charges related to alcohol. Nevertheless, he signed a Certification that his answers were true and that he understood that a knowing and willful false statement could be punished by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code. (Item 4) (The computer generated SF 86 was not offered in evidence.)

In his Answer Applicant claimed that he had "a preconceived notion" that the concern for DUI offenses was limited to a three-year period of time but he did not clearly explain why he reached this conclusion. He further explained that he was

under time pressure at the time he completed the form and did not have the necessary time "to read and think through each question thoroughly." However, he did make extensive explanatory notations in the employment section of the form. (Item 3)

Evaluations

Applicant's Hourly Employee Performance Appraisals from June 1999 report that he was performing above standard. One noted that he "has given 110% in every day since his arrival." His supervisor found him very well trusted and dependable. Applicant explained that evaluations in his company are only done during the probationary period. (Item 3)

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;

Conditions that could mitigate security concerns include:

None

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 multiple arrests and convictions as detailed in the Findings. His alcohol-related arrest pattern was repeated over a 20-year period and serious.

However, given their dated nature, I conclude that the two arrests in 1977, the 1982 and 1988 arrests and conviction may be mitigated under condition (1) as the criminal behavior was not recent.

On the other hand his other criminal conduct in 1992 and 1997 has not been mitigated⁽²⁾ as those two arrests are recent and not isolated. While Applicant argued that the 1997 arrest was dismissed, the court record is not clear on that point; and he failed to submit any clarifying documents. I question that conclusion as a court document dated December 1997 shows that Applicant was awarded a Certificate of Completion from the State #2 DUI Alcohol or Drug Risk Reduction Program for having completed a 24-hour intensive intervention for DUI after a Nolo plea. Further, Applicant has presented insufficient evidence of successful rehabilitation for the charges in 1992 and 1997 to be mitigated. Doubt remains as to whether he is fully rehabilitated given this repeated pattern of criminal conduct.

Further, Applicant has not voluntarily sought counseling nor provided other evidence of his rehabilitation as discussed below under Guideline G. Thus, he has not established clear evidence of rehabilitation as his criminal conduct recurred in the 1990's after a series of earlier DUI arrests and convictions. Therefore, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 1.a. through 1.d., but against Applicant on subparagraphs 1.e. and 1.f. incorporated under SOR Paragraph 1.

Alcohol Consumption

The Government has security concerns over Applicant's six alcohol-related arrests, which span a twenty year period from 1977 to 1997. 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. His six alcohol incidents are serious and show a pattern even though the more recent incidents were separated by several years. Despite this long-term pattern he has yet to make a decision not to drink again.

There is no indication he was ever diagnosed with an alcohol abuse problem. While he has recently made a decision to "almost quit drinking," he failed to quantify and detail the positive changes in his behavior which would support his moderation. Further, he has made no assertion that he has sought counseling, regularly attends AA or wants to achieve sobriety. Thus he fails to meet conditions that mitigate⁽³⁾ security concerns. To his credit, he documented a positive work record in 1999, but he submitted no subsequent reviews or letters of support from his work place or in the community. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 2.a. under SOR Paragraph 2.

Personal Conduct

Applicant failed to document his six DUI arrests on his security form which led the Government to advance security concerns over personal conduct issues. Applicant's omission of relevant and material information about his alcohol-related arrests from his security form is conduct that reflects questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that he may not properly safeguard classified information. To rebut and overcome the Government's case, Applicant would have to demonstrate that he has mitigated (4) this concern.

At his DSS interview Applicant claimed that when he completed "a paper copy of the security clearance questionnaire," he had listed a DUI charge. He claimed that the omission was merely on the computer version of the form. However, his hand-written copy of the SF 86 does not include any admissions of any DUI charge in response to Question 23d which requires reporting of any charges related to alcohol. While he has presented some evidence of mitigating circumstances over his rush to complete his security form, he took the time to add clarifying information on his employment background and had a duty to take the same care in answering Question 23d on his alcohol-related offenses. If he was unsure of the time frame covered, he had a obligation to ask for clarification as he certified that his answers were complete and true when they were not. Further, there is no evidence in the DSS statement that Applicant made prompt, good-faith efforts to correct the falsification on his security form before being confronted with the facts. Hence, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 3.a. under SOR Paragraph 3.

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.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Paragraph 3. Guideline E AGAINST APPLICANT

Subparagraph 3.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 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.

3. 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.

4. Conditions that could mitigate security concerns include:

1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; 3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; 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; 5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; 6. A refusal to cooperate was based on advice from legal counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; 7. Association with persons involved in criminal activities has ceased.