

DATE: December 21, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0708

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On December 1, 2000, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on January 4, 2001.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on February 8, 2001. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on or about February 12, 2001, and submitted nothing in reply. This case was originally assigned to another Administrative Judge, but was reassigned to the undersigned for resolution on December 17, 2001. The issues raised here are whether the Applicant's alcohol consumption, and related personal and criminal conduct militate against the granting of a security clearance.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The Applicant is 41 years of age, and his employer seeks a security clearance on behalf of the Applicant.

Guideline G - Alcohol Consumption

1.a.~1.h. The Applicant consumed alcohol with varying frequency, at times to excess and to the point of intoxication, from about 1978 until at least December 22, 2000 (Item 3). The Applicant describes himself as "a social drinker . . . I usually drank beer, maybe a six pack on the evenings that I drank" (Item 5 at page 2).

In **January of 1990**, the Applicant was arrested for, and subsequently pled guilty to, Driving Under the Influence of Alcohol (DUI) (Item 5 at page 1, and Item 6 at pages 3 and 12). The Applicant was separated from his former spouse from about January of 1995 to July of 1996 (Item 5 at page 2). His former spouse "considered . . . [his] drinking to be a large part of . . . [their] problems" (*id*). In **January of 1997**, the Applicant was again arrested for, and subsequently pled guilty to, DUI (Item 5 at page 1, Item 6 at page 3, and Item 8 at page 2). As a result of this second conviction, the Applicant underwent alcohol-related counseling, and was assessed as suffering from Alcohol Abuse (Item 5 at page 1). He also separated from his former spouse a second time from about April of 1997 to April of 1998 (Item 5 at page 2).

In **June of 1998**, was arrested, and subsequently pled No Contest to Fighting (Item 5 at page 2, Item 6 at pages 1~2, and Item 8 at page 3). He "had been out drinking, and when . . . [he] returned home . . . [his] wife and . . . [the Applicant] got into an argument about . . . [his] drinking" (Item 5 at page 2). Between late 1998 to early 1999, the Applicant reported to his place of employment, on more than one occasion, under the influence of alcohol (Item 5 at page 2). He continues to consume alcohol (*id*).

Guideline E - Personal Conduct & Guideline J - Criminal Conduct

2.a. and 3.a. In answering question 23.d. on his July 1998 Questionnaire for National Security Positions (QNSP), the Applicant knowingly and wilfully failed disclose his alcohol related conviction of 1997 (Item 4 at page 7). This lack of candor is a violation of 18 U.S.C. Section 1001.

Mitigation

The Applicant offers little, if anything, in the way of mitigation.

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors, and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Alcohol Consumption

Conditions that could raise a security concern:

1. Alcohol-related incidents away from work, such as driving while under the influence, fighting . . . ;
2. Alcohol-related incidents at work, such as reporting for work or duty in a n intoxicated or impaired condition . . . ;

Conditions that could mitigate security concerns:

None.

Personal Conduct

Condition that could raise a security concern:

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 . . . ;

Conditions that could mitigate security concerns:

None.

Criminal Conduct

Condition that could raise a security concern:

1. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;

Conditions that could mitigate security concerns:

None.

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2, including as appropriate:

- a. Nature and seriousness of the conduct and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future."

The Administrative Judge, however, can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence that are speculative or conjectural in nature.

The Government must make out a case under Guidelines G (alcohol consumption), E (personal conduct), and J (criminal conduct); which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

Unacceptable personal conduct is conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations; and criminal conduct also creates doubt about a person's judgment, reliability and trustworthiness. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

The Applicant has demonstrated a history of alcohol abuse, as evidenced by three alcohol related convictions: one in 1990, another in 1997, and, most recently, one in 1998. In 1997, he was assessed as suffering from Alcohol Abuse, and in 1998 and 1999 he reported to work under the influence of the intoxicant. Despite all of the above, the Applicant still

consumes alcohol. His alcohol consumption is thus clearly of security concern.

Considering next the Applicant's personal conduct and related criminal conduct, he failed to disclose the existence of his 1997 conviction on his 1998 QNSP. This wilful falsification of his QNSP is also a violation of 18 U.S.C. Section 1001. Both guidelines are therefore found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his alcohol consumption, and his related personal and criminal conduct. The Applicant has thus not met the mitigating conditions of Guidelines E, G and J, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines E, G and J.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.

Paragraph 2: AGAINST THE APPLICANT

- a. Against the Applicant.

Paragraph 3: AGAINST THE APPLICANT

- a. Against the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of 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.

Richard A. Cefola

Administrative Judge