

DATE: October 17, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-00274

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Steve Vaughn, Personal Representative

SYNOPSIS

Applicant's excessive use of alcohol from 1965 until at least June 2001, involving three alcohol-related convictions, the most recent of which occurred in September 2000, and a failed treatment program have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On March 1, 2002, 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 the attached 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing on March 28, 2002, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on July 3, 2002. A notice of hearing was issued on July 9, 2002, and the hearing was scheduled for August 2, 2001. At the hearing the Government presented ten exhibits. The Applicant presented five exhibits and testified on his own behalf. The official transcript (Tr.) was received on August 12, 2002.

FINDINGS OF FACT

The Applicant is 52 years old. He is employed by a defense contractor as a Crane Operator, and he seeks a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in

the SOR:

Paragraph 1 (Criterion G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant has admitted to a pattern of abusive drinking, at times to the point of intoxication, from approximately 1965 to at least June 2001. The Applicant began consuming alcohol as a teenager in high school. As the years passed, his drinking increased to the point where he was drinking one fifth to two fifths of hard liquor a day. As a result of his abusive drinking, he has been arrested and convicted of three alcohol-related incidents. (*See*, Government Exhibits 1 and 7).

The Applicant was first arrested for Driving Under the Influence of Alcohol in March 1970. He was found guilty and fined \$370.00. He indicated that during this period, he had just returned from the Viet Nam war and was going through a hard time. That same month, he had lost his cousin and his best friend in Viet Nam.

In May 1977, the Applicant was arrested again for Driving Under the Influence of Alcohol or Drugs. He pled guilty, and was sentenced to pay a fine of \$150.00 and a penalty of \$40.00, or serve five days in jail, and attend traffic school.

The Applicant continued to abuse alcohol and ten years later, he voluntarily entered an in-patient alcohol treatment program from October 17, 1987 to October 22, 1987. He states that at the time, he was consuming hard liquor quite heavily. It was during this treatment that he was diagnosed, in part, with Alcohol Dependence, Acute. (*See*, Government Exhibit 2). The Applicant then started an outpatient treatment program that he attended from October 23, 1987 to April 1988. He stated that he was discharged without completing the program for failing to participate in the last four sessions of the program. The Applicant explained that his heavy work schedule prevented him from finishing the program. At the time, he was getting lots of overtime, working late hours and was unable to make it to the program. (Tr. p. 36). The medical records indicate that the Applicant starting missing groups, coming late, and having a dirty urine test for amphetamine. (*See*, Government Exhibit 3).

Following the aftercare program, the Applicant states the he significantly reduced his consumption of alcohol. He states that he stopped drinking hard liquor and started drinking beer. He normally consumed about a twelve pack of beer per week usually on the weekends, until his most recent arrest in 2000.

In September 2000, the Applicant was arrested a third time, this time for Driving Under the Influence of Alcohol. He was fined \$1,176.00, ordered to attend Traffic School, and was placed on probation for three years. The Applicant explained that he had just returned from an out of state vacation and decided to go over to a friend's house. They started drinking beer, and the Applicant consumed about a six pack and a half. He then decided to drive home and was pulled over and arrested.

The Applicant states that he has learned a hard lesson from his last arrest as it caused him to lose everything. His wife divorced him. He lost his home. He was required to spend a lot of money on fines, and he had to attend traffic school. (Tr. pp. 32-33).

The Applicant was evaluated by a competent medical authority on December 20, 2001, and was diagnosed , in part, as being Alcohol Dependent, (binge type). His physician recommended that he discontinue his drinking. (*See*, Government Exhibit 8). The Applicant indicates that he has not stopped consuming alcohol altogether, but he no longer drinks and drives. (Tr. p. 33).

The Applicant believes that he no longer has a problem with alcohol. (Tr. p. 31). He states that he seldom drinks, and when he does he consumes only beer. He drinks only at home and does not go to bars. He states that he usually consumes a couple of beers, two or three times a week at home before going to bed. (Tr. pp. 44 and 61). His most recent drink of hard liquor was on his birthday in March of this year.

The Applicant states that in his spare time he tries to catch up on his sleep, and he goes to church on Sundays. (Tr. p. 52). The Applicant also does a lot of fishing and hunting when he has the time.

Paragraph 2 (Guideline E - Personal Conduct).

The Applicant completed a Security Clearance Questionnaire dated January 23, 2002, wherein he was required to answer whether he has ever been charged with or convicted of any offenses related to alcohol or drugs? (See, Government Exhibit 9, Question 24). The Applicant answered "YES" and listed his arrests of 1970 and 1977 for Driving Under the Influence, but failed to list his arrest and charge for Driving Under the Influence of Alcohol in 2000. The Applicant explained that he immediately told his security office about his arrest in 2000, and was instructed to wait to report the matter to Government security when he was assigned a court date. His court date concerning the matter was May 23, 2001. A letter from his security officer partially corroborates his testimony. (See, Tr. p. 70 and Applicant's Exhibits A and B).

Mitigation.

A letter of recommendation from the Commander indicates that the Applicant is one of the more respected employees, who is an asset and whose performance is above average. Other letters of recommendation submitted on the Applicant's behalf indicate that he has a high level of expertise in safely towing aircraft to and from hangers and flight lines among other related skills. He is considered honest, trustworthy, and dedicated to his job. He is also considered a professional in every sense of the word and is an outstanding American and a great person. (See, Applicant's Exhibit D).

A letter from his past supervisor, who is now retired, indicates that the Applicant was always dependable and one of his best workers. He required little supervision and always did more than what was expected of him. He always had a good attendance record and a great attitude. (See, Applicant's Exhibit B).

The Applicant is a United States Marine combat veteran who was injured during the Viet Nam war. He states that he has always displayed the highest level of honesty and respect for his fellow workers and supervisors. He is patriotic, loyal and devoted to the United States of America.

POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Alcohol ConsumptionConditions that could raise a security concern:

1. alcohol-related incidents away from work, such as driving under the influence
4. habitual or binge consumption of alcohol to the point of impaired judgement.

Conditions that could mitigate security concerns:

None.

Guideline E (Personal Conduct)Conditions that could raise a security concern:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation

- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing 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 reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in repeated instances of alcohol abuse that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has abused alcohol (Guideline G). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

With regard to the Applicant intentionally concealing his alcohol-related offense of September 2000, on his security clearance application, I find that he did not. He states that he immediately informed his security office of the arrest and was told to wait until the matter was resolved before reporting it to Government security. After reviewing the letter from his security officer, clearly the Applicant misunderstood the security officer's instructions and should have reported the offense to Government security when he was assigned a court date, not after the matter was resolved. Notwithstanding

this, although he did not list this particular arrest on his application, he did reveal the other two. There is no evidence in the record that establishes that he deliberately attempted to conceal this offense. Accordingly, Guideline E (Personal Conduct) is found for the Applicant.

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, a failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. 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 in his private affairs, there then exists the possibility that he or she may demonstrate the same attitude towards security rules and regulations.

Upon careful review of the record, it is clear that from 1965 to at least July 2001, over a period of thirty-seven years, the Applicant consumed alcohol, at times to excess and to the point of intoxication. Despite the fact that he has been diagnosed by competent medical authority as being Alcohol Dependent, has undergone a treatment program, and has been advised by his doctor to stop drinking altogether, he continues to drink. He has suffered serious consequences as a result of his abusive drinking. He has lost his marriage and his home. But he continues to drink. This shows extremely poor judgment. The Applicant has also been convicted of three alcohol-related incidents, the most recent of which occurred in September 2000.

Given the recency and extent of his alcohol abuse, evidenced by his last conviction just over two years ago, and the fact that he is still drinking, he is not sufficiently trustworthy to handle classified information at this time. Based on the totality of the evidence, I find that the Applicant's alcohol consumption establishes doubt about his judgment, reliability and trustworthiness. Accordingly, Guideline G (Alcohol Consumption) is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons. As stated above, Paragraph 2 is found for the Applicant.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g.: Against the Applicant.

Paragraph 2: For the Applicant.

Subpara. 2.a.: For the 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.

DARLENE LOKEY ANDERSON

Administrative Judge