

DATE: November 2, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-00684

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Eric C. Hogan, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's conduct raises security concerns over his intentional, repeated omissions of material information from his security form and his problematic and serious alcohol and drug-related behavior. Despite his treatment in May 2000 which led to a diagnosis of Alcohol Dependent and Drug Dependent, Applicant continues to drink. His failure to document positive changes in behavior supportive of sobriety and his misguided omissions on his security form lead to an adverse conclusion. Doubt remains as to whether he is fully rehabilitated given this long history of questionable conduct which indicates a greater need to document a more serious 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 June 6, 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 personal conduct (Guideline E), Alcohol Consumption (Guideline G), Drug Abuse (Guideline H), and criminal conduct (Guideline J). Applicant responded to these SOR allegations in an Answer where he admitted in part, denied in part, and failed to answer in part. He requested an administrative determination, not a hearing. The case was assigned to Department Counsel to prepare for a decision on the administrative record. On August 7, 2001, she 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 August 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 August 14, 2001. Applicant submitted a response (Exhibit A) on September 6, 2001 to which Department Counsel did not object on September 18, 2001. Subsequently, on September

18, 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, 46 years old, has been an employee of Defense Contractor #1 in State #1 since November 1995. In July 1999 he applied for a security clearance by completing a Security Clearance Application (Standard Form 86) (SF 86). He received a BS degree from a state college in ay 1979. He was married in 1980 and separated in August 1997, but now reconciled; he and his wife have four children. (Items 3, 4, 5; Exhibit A)

Personal Conduct, Alcohol Consumption, Drug Abuse, and Criminal Conduct

Applicant admitted in an interview with a Defense Security Service (DSS) investigator in July 2000 that he intentionally omitted adverse information from his SF 86 form where he answered "no" to a series of questions where he should have answered yes. He did so intentionally even though 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. (Items 4, 5)

Illegal Drug Use (Question 27): Applicant intentionally falsified this question. In fact Applicant has used marijuana since he was 16 two to four times per week. He also admitted other drug use. He also misrepresented his drug use to the investigator as he told him in July 2000 that he had stopped using marijuana in 1998 when medical records reveal he continued to use marijuana daily until the time he entered treatment in May 2000 and was diagnosed with Cannabis Dependence. (Items 4, 5, & 10)

Alcohol/Drug Offenses (Question 24): Applicant intentionally falsified this question. In fact Applicant had been arrested in 1980-81 in State #2 for having an open container of beer in a public arena and in February 1985 in State #3 for Driving While Under the Influence (DUI). (Items 4, 5)

Illegal Drug Use in Sensitive Positions (Question 28): Applicant intentionally falsified this question. In fact Applicant has used marijuana while holding licenses with the US Coast Guard and the Department of Transportation. (Items 4,5)

Felony Offenses (Question 21): In fact Applicant had been arrested in 1974 in State #1 and charged with Assault with a Dangerous Weapon; the charges were dismissed. He intentionally did not list the offenses as he thought they were minor and dated and could have an adverse affect on his security clearance or job status. (Items 4, 5, & 8)

In August 1993 he sent a threatening letter to a neighbor after his wife reported that she was afraid of the neighbor because of his threatening behavior. A police officer made a record of both parties' complaints, but no action was taken. (Item 7)

From 1995 to 2000 Applicant reported merely that he would drink an average of six beers every two or three days when socializing with others. He did not believe he had an alcohol abuse problem. However, his alcohol abuse led to marital problems, including his wife's decision to seek a restraining order in August 1997 because of his violent behavior after drinking alcohol, approximately a six pack a day, and smoking marijuana on a daily basis. The order was extended until September 1997. His wife filed for divorce in August 1997, in part because of his intoxication, but they have subsequently reconciled. At his wife's urging Applicant sought treatment at a counseling center in State #1 for four weekly sessions in ay 2000 because of loss of control and blackouts. He was diagnosed with Alcohol Abuse and Cannabis Dependence by a licensed clinical social worker; he made Fair progress during treatment. (Items 3, 4, 5, 6, 9 & 10)

Applicant denies that he is alcohol or marijuana dependent though he admits he has abused alcohol and marijuana in the past. (Item 3)

Applicant believes he is a very capable, competent and trustworthy individual, but he provided no letters to document

what he asserted were favorable views of his peers. Also, he provided no information in his September 2001 submission as to his commitment to abstinence. (Exhibit A)

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 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;

(3) Deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;

Conditions that could mitigate security concerns include:

None

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;

(4) Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

(5) Habitual or binge consumption of alcohol to the point of impaired judgment;

Conditions that could mitigate security concerns include:

None

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);

(4) Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;

Conditions that could mitigate security concerns include:

None

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

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

Personal Conduct

Applicant failed to record in detail his past arrests and current alcohol and drug abuse on his security form, even though he signed a Certification that his answers were true. Subsequently, he was not completely truthful with the DSS investigator in describing his marijuana abuse which continued on a daily basis to May 2000. These intentional material omissions to protect his personal interests led the Government to raise security concerns over personal conduct issues. Applicant's omission of relevant and material information 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 ⁽²⁾ this

concern. His concern over his job is not a valid basis to mitigate his intentional omissions of a wide variety of adverse information. He had a obligation to be truthful 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 any prompt, good-faith efforts to correct the falsification on his security form before being confronted with the facts. Indeed, medical records document he was not even truthful with the DSS agent concerning his daily marijuana use and that he had minimized his alcohol abuse. Hence, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 1.a. through 1.e. under SOR Paragraph 1.

Alcohol Consumption

The Government has security concerns over Applicant's alcohol abuse which eventually led him to seek drug and alcohol-related counseling in ay 2000 which resulted in a diagnosis by a license clinical social work of DSM II 303.90, Alcohol Dependent. 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, (4) Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

and (5) Habitual or binge consumption of alcohol to the point of impaired judgment. His alcohol abuse was so serious that his wife filed for a restraining order in August 1997 and sought a divorce in August 1997; he reports without corroboration that they have subsequently reconciled.

Despite this treatment and diagnosis, which he disputes, he has yet to make a decision not to drink again or to detail any positive changes in his behavior which would support his moderation. Further, he has made no assertion that he regularly attends AA or wants to achieve sobriety. Thus he fails to meet conditions that mitigate⁽³⁾ security concerns. Further, he submitted no letters of support from his work place, family, or the community nor a favorable prognosis by a credentialed medical professional. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 2.a.through 2.c. under SOR Paragraph 2.

Drug Abuse

Applicant's drug abuse raised security concerns as he used marijuana from 1971 to May 2000 on an intermittent to daily basis. His marijuana use included the period after he applied for a security clearance in July 1999 as he used marijuana on a daily basis until he sought treatment in May 2000 and was diagnosed as marijuana dependent by a licensed clinical social worker who is a staff member of a recognized drug treatment program. The recency and extent of his marijuana use⁽⁴⁾ does not meet the mitigation⁽⁵⁾ guidelines.

First, his drug involvement was not an isolated or aberrational event. I have looked at him as a whole person, but conclude it is too soon to come to the conclusion that he has persuasively demonstrated his ability to avoid any drug use for the future. While he values his job, his choice to use marijuana when he held a license with the U.S. Coast Guard and the Department of Transportation and while in a job requiring a security clearance shows deplorable judgement. Thus, I conclude he does not meet conditions that could mitigate these security concerns over his marijuana use. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on Paragraph 3 and subparagraph 3.a. and 3.b.

Criminal Conduct

The Government maintains security concerns over criminal conduct issues because of Applicant's wife's success in having a restraining order issued against him in August 1997 and because of a threatening letter to a neighbor. While there were criminal records offered in evidence to support these actions as a police officer made a record of both parties' complaints, no action was taken. Thus, these two deeds alone are not sufficient to sustain a criminal conduct concern. On the other hand his other criminal conduct in omitting the material and relevant information from his security form in 1999 was a violation of Title 18, United States Code Section 1001 and has not been mitigated⁽⁶⁾ as these omissions are recent and not isolated. Further, he has not established clear evidence of rehabilitation. Therefore, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 4.a.and 4.b., but against Applicant on subparagraph 4.c. incorporated 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 E: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Paragraph 2. Guideline G: AGAINST APPLICANT

Subparagraph 2.a.: Against Applicant

Subparagraph 2.b.: Against Applicant

Subparagraph 2.c.: Against Applicant

Paragraph 3. Guideline H AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Paragraph 4. Guideline J: AGAINST APPLICANT

Subparagraph 4.a.: For Applicant

Subparagraph 4.b.: For 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. 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.

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. The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 mandated restrictions on the granting or renewal of security clearances which was implemented within the Department of Defense by a June 7, 2001, Memorandum, and within DOHA by Operating Instruction (OI) 64, issued on July 10, 2001. Provision (2) disqualifies persons who currently are unlawful users of, or addicted to, controlled substances. The policies apply to all pending cases in which a final decision had not been issued as of the June 7, 2001, date of the memorandum. In this instance I have determined that the Smith Amendment (10 U.S.C. Section 986) does not apply as the Applicant's drug use ceased in May 2000.

5. Conditions that could mitigate security concerns include:

1. The drug involvement was not recent; 2. The drug involvement was an isolated or aberrational event; 3. A demonstrated intent not to abuse any drugs in the future; 4. Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable diagnosis by a credentialed medical professional.

6. 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.