

DATE: January 14, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-02860

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Linda S. Kayajianian, Attorney At Law

STATEMENT OF THE CASE

On July 12, 2001, 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 August 8, 2001, (notarized on August 15, 2001) and elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on October 9, 2001. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on October 29, 2001. By letter dated November 19, 2001, the Applicant requested a hearing, instead of an administrative determination without a hearing. On December 4, 2001, the matter was scheduled for hearing to be heard on January 10, 2002. By letter dated January 9, 2002, the Applicant withdrew his request for a hearing, and again requested an administrative determination without a hearing based upon the documents he had previously submitted. By order issued January 9, 2002, the hearing was cancelled, and the case was submitted for administrative determination.

The case was assigned to the undersigned for resolution on November 28, 2001.

FINDINGS OF FACT

The Applicant is 65 years old. He is employed by a defense contractor as a Project Manager, 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 criterion 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 the mid-1960's, to at least May 2000. He states that he first consumed beer between the ages of twenty and twenty-five. By age thirty to thirty-five, he had graduated to consuming hard liquor. In 1984, the Applicant divorced his first wife. He remarried in 1987, and the consolidation of his four children and his new wife's two children, became quite stressful. The Applicant's drinking increased from one or two mixed drinks per evening to three or four mixed drinks. His drinking began to have an effect on his relationship with his wife, as she believed that his drinking caused him to become quiet and uncommunicative. That caused even more stress. The Applicant did not believe that his alcohol consumption was a problem. However, at this point, his wife suggested that he enter treatment.

In May 1987, the Applicant voluntarily admitted himself into an alcohol treatment program. From May 18, 1987, through June 6, 1987, the Applicant received treatment for a condition diagnosed, in part, as Alcohol Dependence. Following treatment, the Applicant was discharged and placed on Antabuse. He was also referred to participate in Alcoholics Anonymous meetings and an outpatient aftercare program. (See, Government Exhibit 8).

In his sworn statement to the Defense Security Service (DSS) dated December 1990, the Applicant stated that he continued to drink alcohol, although only on rare occasions. His ultimate goal was to not drink at all. (See, Government Exhibit 6).

In October 1998, the Applicant was arrested for Driving Under the Influence, and Driving Under the Influence with Blood Alcohol Content .08% or higher (.24%). The Applicant explained that prior to his arrest, he had been at his vacation home drinking vodka tonics, and his neighbor was filling his glass constantly. He could not say how many cocktails he actually had. The Applicant pled guilty to Count (2), and imposition of his sentence was suspended. He was placed on conditional probation for three years with conditions, to include, payment of a fine and fees totaling \$1,538.00, completion of a Level Two 9 month first Offender Program by Gold Coast Counseling, consume no alcoholic beverages and do not go to places where alcohol is the chief item for sale, attendance at one MADD Impact Panel meeting, and his driver's license was restricted. For Count (1) he was sentenced to ten hours of community service. The Applicant states that he has completed all of the court's requirements, except for the 36 months of probation. The Applicant's probation is scheduled to terminate in March 2002. (See, Government Exhibit 7). The Applicant sincerely regrets the incident and indicates that it will never happen again.

In his most recent sworn statement to DSS, dated May 15, 2000, the Applicant stated that before his arrest, he usually drank two or three glasses of wine weekly. (See, Government Exhibit 5).

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 Consumption

Conditions 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.

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 which 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 (Criterion 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.

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, and 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 the mid-1960's until at least 2000, over a period of forty years, the Applicant consumed alcohol, at times to excess and to the point of intoxication. The Applicant received treatment in 1987, and has been unsuccessful in his efforts at remaining completely sober for any significant period of time. As he stated, he continued to drink alcohol on rare occasions, and he believed that his drinking was under control. In 1998, his abusive drinking resulted in an arrest for Driving Under the Influence, and he remains on probation for this offense until March 2002.

The Applicant is obviously a person with a very serious alcohol problem, who has only recently come to terms with his disease. In his answer to the Statement of Reasons dated August 8, 2001, the Applicant states that he no longer consumes alcohol, and appears to be on a plan for recovery. He intends to completely abstain from alcohol in the future, and to continue working his rehabilitation program. He is encouraged to continue his alcohol-free lifestyle, and to reapply for a clearance in the future. However, given the recency and extent of his alcohol abuse, he is not sufficiently trustworthy to handle classified information. Based on the totality of the evidence, I find that the Applicant's alcohol consumption establishes doubt about his judgment, reliability and trustworthiness. Accordingly, Criterion 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.

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.

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