

DATE: April 25, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-03766

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Joseph Egan, Jr., Esq.

SYNOPSIS

Applicant, with three alcohol-related arrests in 14 years (1986, 1993, and 1999), had been arrested most recently in October 1999. Since that arrest, Applicant has completed an alcohol treatment program, participated in AA regularly, and totally abstained from alcohol for more than 30 months. Clearance is granted.

STATEMENT OF THE CASE

On November 20, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*," dated February 20, 1960, as amended, and modified, and Department of Defense Directive 5220.6, "*Defense Industrial*

Personnel Security Clearance Review Program" (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant Applicant's security clearance and recommended referral to an Administrative Judge to determine whether he should be granted a security clearance.

Applicant answered the SOR in writing on December 20, 2001, and on February 12, 2002. In his February 12 answer, he requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on March 8, 2002. On April 4, 2002, a hearing was convened for the purpose of considering whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of 12 exhibits. Applicant relied on his own testimony and on the testimony of one additional witness. A transcript (Tr.) of the proceeding was received on April 15, 2002.

FINDINGS OF FACT

The Statement of Reasons (SOR) alleges Applicant abused alcohol in varying degrees from 1976 to 1999, that he was arrested for alcohol-related misconduct in 1986, 1993, and 1999, that his employer suspended his unescorted access

privileges (to his place of employment), and that he received treatment/counseling for alcohol abuse in 1992, 1993 and 1999.

In his answers to the SOR, Applicant admitted--with explanations--all allegations set forth in the SOR, except the allegation he had received five days in-patient treatment in 1992. After a complete and thorough review of Applicant's admissions and denials and the evidence of record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 46-years-old and an employee of the same Department of Defense (DoD) contractor for the past 14 years (Tr. 49). Previously, he had pursued the same vocation as an employee of the local community (for 12 years), after spending time in the military and working for a building contractor (Tr. 50). Records submitted at Applicant's administrative hearing establish he was granted a secret clearance in October 1988 (Gov. Exh 10) and in January 1999 (Gov. Exh. 1). Applicant is married and the father of two children.

Similar to many individuals with alcohol-related arrests in their 30's and 40's, Applicant recalled being exposed to alcohol initially as a teenager (Tr. 53). He began drinking excessively for the first time while he was serving in the military (Tr. 54). His first alcohol-related arrest did not occur until July 1986 when he was arrested and charged with driving while intoxicated (DWI). The

charges were disposed of with a \$250.00 fine and an order that Applicant complete a safe driving course⁽¹⁾. Applicant completed the course requirements.

Applicant was arrested for a second alcohol-related incident--driving under the influence (DUI)--in October 1993. He was fined \$390.50, sentenced to six months supervised probation and ordered to serve 100 hours community service.

Applicant's most recent alcohol-related arrest occurred in October 1999 when he was arrested for DUI. For this infraction, his driver's license was suspended for six months, his car was impounded for 10 days and he was fined \$493.00. He was also ordered to attend an alcohol education class, to be evaluated for possible alcohol dependency, and to attend 50 hours community service (later converted to a \$500.00 fine).

Following his October 1999 DUI arrest, Applicant signed up for his employer's employee assistance program (EAP). He spent five days in a residential treatment program as part of an alcohol detoxification (Tr. 64). He then attended weekly out-patient sessions for 13 weeks and attended 90 AA meetings in 90 days. Applicant has abstained from alcohol since his October 1999 arrest and continues to attend AA meetings "as often as possible; once or twice a week" (Tr. 65-66).

While Applicant clearly and admittedly abused alcohol during the 20 years that preceded his current period of abstinence--October 14, 1999 (Tr. 65), the abuse has not been continuous. After his first alcohol-related arrest in 1986, Applicant began to suspect he had a problem with alcohol and could not drink like other people (Tr. 72). He claims periods of abstinence of varying length (up to 2½ years) since his 1986 arrest. These periods of abstinence were preceded by counseling/awareness classes and regular Alcoholics Anonymous (AA) attendance. He had attended AA regularly from January 1991 until just before his October 1993 arrest. And he attended AA regularly again after his October 1993 arrest, until at least April 1994, when he was interviewed by the Defense Security Service (DSS) and reported daily attendance (Gov. Exh. 13). After attending AA and avoiding alcohol for a period of time, Applicant would gain confidence and begin to believe he could drink like other people (Tr. 60, 73). His confidence proved to be unwarranted as evidenced by the succeeding arrests. He has continued to participate regularly in AA after his October 1999 arrest. Because he is now older and his children are older, he does want them to see him "drunk," and he does not want to die of alcoholism in an institution like a jail or a hospital (Tr. 72). He now avoids situations where alcohol will be consumed (Tr. 88-89).

Applicant has never missed work because he was intoxicated or hung over, and could not recall experiencing blackouts because of alcohol (Tr. 76-77).

In November 1999, the court ordered Applicant evaluated for "possible alcohol dependency" after his third DUI arrest. He was referred to Facility X for an alcohol assessment and was diagnosed as "alcohol dep." (Gov. Exh. 7). While Applicant admits this diagnosis in his answer to the SOR, he does not admit the diagnosis was made by a "credentialed

medical professional" as that term is

used in Section E2.A7.1.2.3., Attachment 7 to Enclosure 2 of the Directive. And Government Exhibit 7 is less than persuasive as a "Diagnosis by a credentialed medical professional (physician, clinical psychologist, or psychiatrist)", although initials appear on the line of the form designated for

the "Reviewing Physician." No identifiable name of a credentialed medical professional appears on

this assessment, and it is not apparent Applicant was seen by anyone other than a registered nurse⁽²⁾.

Applicant has an excellent work record. A witness who testified on his behalf described Applicant as open and honest in discussing his problem with alcohol (Tr. 46). In addition to working for a DoD contractor, Applicant operates his own business and is active in community and civic affairs.

POLICIES

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case by case basis with an eye toward making decisions with reasonable consistency which are clearly consistent with the national interest. In making these overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but also in the context of the factors set forth in Section 6.3 of the Directive. In that vein, the Government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to Applicant's lack of security worthiness.

ALCOHOL CONSUMPTION

(Guideline G)

The Concern: 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:

E2.A7.1.2.1. 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:

E2.A7.1.3.1. The alcohol-related incidents do not indicate a pattern;

E2.A7.1.3.3. Positive changes in behavior supportive of sobriety;

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government establishes its case, the burden of persuasion shifts to Applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government raise doubts about an Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518 (1988), "the clearly consistent standard indicates security clearance determinations should err, if they must on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against an Applicant.

CONCLUSION

Having considered the record evidence in accordance with the appropriate legal precepts and guidelines, this Administrative Judge concludes the Government has established its case with regard to Guidelines G. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section E2.2., as well as those referred to in the section dealing with the Adjudication Process, both in the Directive.

A security concern is raised by Applicant's three arrests for alcohol-related misconduct in a 14-year time frame. 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.

In mitigation, Applicant is credited with completing a 13-week alcohol treatment program, with attending 90 AA meetings in 90 days, with totally abstaining from alcohol since October 14, 1999, a period of more than 30 months, and with continuing to participate in AA ⁽³⁾.

Also mitigating Applicant's three alcohol-related arrests is evidence he has now fully accepted his inability to control his use of alcohol. Previously, he had achieved periods of abstinence for as long as two and one-half years and with these periods of abstinence, a sense that he could use, or not use alcohol the same as everyone else (at least as he perceived their use). Now Applicant realizes that regardless of the length of time he has been sober/abstinent, his relationship with alcohol is different than that of most people. An extended period of abstinence does not change that relationship. Applicant clearly recognizes the importance of his continued sobriety; he knows what a relapse will mean to his livelihood and to the well being of his family. While it is never possible to be 100% certain that a recovering alcoholic is not merely mouthing words, but truly understands the nature of his disease and its impact on his life, Applicant's testimony at his administrative hearing, and his current commitment to AA are significant and positive indicators. Guideline G is concluded for Applicant.

FORMAL FINDINGS

Formal findings as required by Section 3, Paragraph 7, of enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 (Guideline G) FOR THE APPLICANT

Paragraph 1.a. For the Applicant

Paragraph 1.b. For the Applicant

Paragraph 1.c. For the Applicant

Paragraph 1.d. For the Applicant

Paragraph 1.e. For the Applicant

Paragraph 1.f. For the Applicant

Paragraph 1.g. For the Applicant

Paragraph 1.h. For the Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's security clearance.

John R. Erck

Administrative Judge

1. In a signed, sworn statement dated April 1994 (Gov. Exh 13), Applicant disclosed he pleaded "guilty or no contest" to a lesser offense of reckless driving in court proceedings following his 1986 arrest. The judge ordered the probation suspended if he completed "counter attack," a safe driving course.
2. Because the threshold of what an applicant must prove in mitigation increases dramatically when there has been a diagnosis of alcohol dependence by a "credentialed medical professional," the record should clearly establish the diagnosis was actually made by a qualified individual. The Directive does not indicate the requirement is satisfied where the diagnosis has been made by a nurse subject to a physician's review.
3. While the record does not establish to the undersigned's satisfaction, that a credentialed medical professional diagnosed Applicant as alcohol dependent, the evidence in mitigation is sufficient to mitigate that diagnosis had it been made by a qualified individual.