

DATE: November 26, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-04038

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On August 17, 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 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 or about September 12, 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 October 3, 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 October 15, 2001, and Applicant's reply was received on November 13, 2001. The case was received by the undersigned for resolution on November 15, 2001. The issues raised here are whether the Applicant's alcohol consumption, and related criminal and personal 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, the File of Relevant Material and Applicant's Response. The Applicant is 60 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant.

Guideline G - Alcohol Consumption & Guideline J - Criminal Conduct

1.a.~1.h., and 2.a. The Applicant consumed alcohol with varying frequency, at times to excess and to the point of intoxication, from about 1960 until he last consumed alcohol on May 4, 2001 (Government Exhibit (GX) 5 at pages 2~3, and Applicant's Response). Initially, he "drank only beer, one or two cans, two or three times a week with friends"

(GX 5 at page 2). In **January of 1971**, he was arrested, for the first time, for Driving Under the Influence (DUI) (GX 3, and Applicant's Response). Ten years later, in **February of 1982**, the Applicant was arrested for, and subsequently found guilty of, DUI (GXs 7 and 8). Eight months later, in **November of 1982**, he was arrested a third time for DUI (GX 3, and Applicant's Response). He was found guilty of the DUI, and also of a Probation Violation, as a result of the previous 1982 conviction (*id*).

Some 15 years later, in **May of 1997**, the Applicant was arrested, and subsequently found guilty of Driving Under the Influence of Alcohol/Drugs (GX 5 at pages 1~2). "During the course of four to five hours," he admits to drinking "five cans of beer" (GX 5 at page 1). The Applicant was last arrested in **July of 1999** (GX 5 at page 2, and GXs 6 and 9). He pled no contest to having a Blood/Alcohol Content of .08 or more (*id*). He admits to consuming a "large sconnner(*sic*) (32 ounce)" of beer prior to this arrest (GX 5 at page 2).

The Government has not demonstrated that the Applicant was also arrested in March of 1982, in November of 1983, and in December of 1983. Therefore, subparagraphs 1.c., 1.e. and 1.f. are found in the Applicant's favor.

Guideline J - Criminal Conduct & Guideline E - Personal Conduct

2.b. and 3.a. In answering question 24 on his July 1999 Security Clearance Application (SCA), the Applicant knowingly and wilfully failed to disclose his three alcohol related charges of the 1970s and the 1980s (GX 4 at page 7). This lack of candor is a violation of 18 U.S.C. Section 1001.

Mitigation

The Applicant offers little in the way of mitigation, except to aver that he has not consumed alcohol in the last six months. Considering all of the evidence, and in light of the fact he was less than candid with the Government, the Applicant bears a heavy burden of persuasion in determining his suitability for security clearance access.

POLICIES

Enclosure 2 and Section E2.2. 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

Condition that could raise a security concern:

1. Alcohol-related incidents away from work, such as driving while under the influence . . .;

Conditions that could mitigate security concerns:

None.

Criminal Conduct

Condition that could raise a security concern:

2. A single serious crime or multiple lesser offenses.

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 . . . or similar form . . . ;

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 which is speculative or conjectural in nature.

The Government must make out a case under Guideline G (Alcohol Consumption), Guideline J (Criminal Conduct) and Guideline E (Personal 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 judgement, untrustworthiness, unreliability, or an unwillingness to comply with rules and regulations; and Criminal Conduct also creates doubt about his judgement, 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 in his private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

Considering first the Applicant's consumption of alcohol, he has a history of alcohol abuse as evidenced by five alcohol related arrests and four convictions. They span a period of nearly thirty years, one occurring in 1971, two in 1982, one in 1997, and most recently, another in 1999. Although the Applicant now avers that he has not consumed any alcohol in the last six months, it is too soon to say that his long history of abusive consumption is not of present security

significance. This guideline is found against the Applicant.

The Applicant was also less than candid with the Government as to his past criminal record on his July 1999 SCA. This wilful falsification is a violation of 18 U.S.C. Section 1001. This criminal conduct, coupled with his four other convictions, clearly shows a pattern of criminal conduct. Both Guidelines E and J are therefore found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his Alcohol Consumption, Criminal Conduct, and Personal Conduct. The Applicant has thus not met the mitigating conditions of Guidelines E, G and J, and of Section E2.2. 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. For the Applicant.
- d. Against the Applicant.
- e. For the Applicant.
- f. For the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.

Paragraph 2: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. 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

