

DATE: November 9, 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-04460

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On July 19, 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 the 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 August 10, 2001.

The case was received by the undersigned on September 25, 2001. A notice of hearing was issued on October 1, 2001, and the case was heard on October 25, 2001. The Government submitted documentary evidence. Testimony was taken from the Applicant, who also called seven witnesses to testify on his behalf. The transcript was received on November 1, 2001. The issues raised here are whether the Applicant's admitted alcohol abuse and related criminal 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 documents and the live testimony. The Applicant is 35 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 and blackouts, from about 1982 until he last consumed alcohol on August 5, 2001 (Transcript (TR) at page 98 line 6 to page 99 line 13, at page 107 line 10 to page 108 line 18, at page 18 line 21 to page 119 line 13, Government Exhibit (GX) 10 at pages 1~2, and Applicant's Exhibit (AppX) E). He "began drinking alcohol at the age of 16 . . . [and]

would consume a maximum of six beers over a period of three hours" (GX 10 at page 1). This pattern of drinking continued for about a year, when it was reduced to "about three beers on average on each occasion" (*id*).

In February of 1995, the Applicant was arrested for and subsequently pled guilty to Domestic Violence/Assault (TR at page 102 lines 16~18, at page 106 line 7 to page 107 line 3, GX 1 at page 3, GXs 2 and 3, and GX 10 at 7~8). He had consumed hard liquor prior to this arrest (*id*). In ay of 1996, the Applicant received emergency medical treatment for an anxiety attack (GX 4). He had consumed approximately six beers prior to this admission (*id*). In March of 1997, the Applicant was charged with and subsequently pled guilty to Consuming Spiritous Liquor in Public (GX 5, and GX 10 at page 6). Shortly thereafter, he entered inpatient treatment for a condition diagnosed, in part, as Substance Dependence (Alcohol) (GX 6 at pages 3 and 13). Despite this treatment, the Applicant returned to the consumption of alcohol in "June or July" of 1997 (TR at page99 line 14 to page 100 line 7).

In February of 1998, the Applicant was arrested for, and subsequently pled guilty to, Assault/Domestic Violence (GX 1 at page 3, GXs 7 and 8, and GX 10 at page 8). He had consumed alcohol prior to this arrest (*id*). As a result of this conviction, from March to September of 1998 the Applicant received court ordered counseling for alcohol abuse (GX 9). Despite this counseling, he continued to consume alcohol until a little more than two months prior to his hearing (TR at page 114 line 7 to page 117 line 1, and AppX E).

Mitigation

The Applicant attends Alcoholics Anonymous (AA) on a regular basis, and as of the date of his hearing had 80 days of sobriety (TR at page 107 lines 4~9, at page 110 line 24 to page 11 line 5, at page 112 lines 4~10, at page 114 line 7 to page 117 line 1, and AppX E). Those with whom he works only have laudable comments about the Applicant (TR at page 46 line 8 to page 52 line 23, and at page 54 line 8 to page 58 line 4, *see also* AppXs D and G). His wife, mother-in-law, and friends are also very supportive of his sobriety (TR at page 59 line 15 to page 65 line 14, at page 67 line 20 to page 70 line 23, at page 72 line 11 to page 75 line 20, and at page 77 line 6 to page 96 line1).

POLICIES

Enclosure 2 and Section E.2.2. 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

Conditions that could raise a security concern:

1. Alcohol-related incidents away from work, such as . . . spouse abuse, or other criminal incidents related to alcohol use;
3. Diagnosis by a credentialed medical professional (e.g. physician, clinical psychologist, or psychiatrist) of alcohol abuse or dependence;
6. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Conditions that could mitigate security concerns:

None.

Criminal Conduct

Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

Condition that could mitigate security concerns:

1. The criminal behavior was not recent;

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) and under Guideline J (Criminal 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.

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

The Applicant has a long history of alcohol abuse, as evidenced by three alcohol related convictions. In 1997, he was diagnosed as suffering from Substance Dependence (Alcohol). Despite this diagnosis, he continued to consume alcohol. In 1998, the Applicant had his last alcohol related arrest and conviction. As part of his sentence, he was ordered by the court to receive counseling for his alcohol abuse. Despite this counseling, the Applicant continued to consume alcohol until a little more than two months prior to his hearing. Although he now attends AA on a regular basis, and as of the date of his hearing had 80 days of sobriety, it is too soon to say the Applicant's past alcohol abuse is not of security concern. Guideline G is therefore found against the Applicant. **This should not dissuade an employer from applying**

for a future security clearance on behalf of the Applicant, if he can demonstrate an additional year of sobriety.

As to the Applicant past criminal conduct, his last arrest was more than three years ago. As this criminal behavior is clearly not recent, Guideline J is found in favor of the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his Alcohol Consumption. The Applicant has thus not met the mitigating conditions of Guideline G, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline G.

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. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.
- h. Against the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For 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