

DATE: January 4, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-05605

DECISION OF ADMINISTRATIVE JUDGE

JOSEPH TESTAN

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Department Counsel

FOR APPLICANT

Kenneth M. Roberts, Esq.

STATEMENT OF THE CASE

On June 21, 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 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 applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant responded to the SOR in writing on July 11, 2001. The case was assigned to the undersigned on September 4, 2001. A Notice of Hearing was issued on September 25, 2001, and the hearing was held on November 8 and 14, 2001. The transcripts were received on November 19 and 21, 2001.

FINDINGS OF FACT

Applicant is a fifty-nine year old married man. He has been employed by the same defense contractor since 1985 when he retired from the United States military. He has held a DoD security clearance since 1965.

Alcohol Abuse

Although applicant had consumed alcohol for many years, it did not become a problem for him until approximately 1990 when, after he began experiencing business and personal problems, he began consuming alcohol in order "to dull the reality of life" (TR at 30). As the years passed and his personal problems increased, applicant's consumption of alcohol increased, and it eventually resulted in two arrests and convictions. His first alcohol-related arrest occurred in 1997 when he was arrested and charged with Driving Under the Influence of Alcohol (DUI). Although he was intoxicated at the time of his arrest, he was allowed to plead guilty to a reduced charge of Reckless Driving. Immediately following this incident, applicant moderated his alcohol consumption. However, he soon convinced himself that alcohol consumption by itself was not the problem. In his mind, his mistake was driving after he consumed alcohol. As a result, he resumed his heavy drinking, ultimately consuming as much as two liters of wine per night. His

second alcohol-related arrest occurred during a Mothers Day barbecue at his home in May 1999. Applicant, who was intoxicated at the time, reacted to a negative comment made by his wife by physically assaulting her and his daughter's boyfriend. Applicant was arrested and charged with Battery/Domestic Violence. He eventually pleaded guilty to an amended charge of Disturbing the Peace (G-5).

Following this incident, applicant enrolled in an outpatient alcohol program. Records from the program indicate that during the initial assessment on May 15, 1999, applicant stated "my life is a mess" as the reason he sought help from the program, and that the initial assessment was Alcohol Dependence (G-4). The treatment records and a letter from applicant's program counselor (Exhibit C) further indicate that applicant attended twenty outpatient sessions from May 18 to June 21, 1999, and that upon his successful completion of the outpatient portion of the program, he was advised to continue his association with Alcoholics Anonymous (AA). Applicant, who began attending AA when he started the outpatient program, has continued attending AA. He has attended a minimum of three meetings per week since June 1999, and during most weeks, he attends more than three meetings, sometimes as many as seven (TR at 61-62). He intends to continue being an active participant in AA (TR at 96). Applicant has not consumed any alcohol since May 1999, and he does not intend to consume alcohol in the future. A psychiatrist who initially treated applicant for Major Depressive Disorder, but later expanded the treatment to address applicant's alcohol dependence, is of the opinion that applicant is in remission and that "the prognosis for continued remission . . . is very good" (G-6).

Falsification

The Government alleges that applicant intentionally falsified material facts (1) in response to a number of questions (Questions 19, 24, 26 and 30) on a Security Clearance Application (SCA) (G-2) that he executed on July 27, 1999, (2) during an interview with a Special Agent of the Defense Security Service (DSS) on October 15, 1999, and (3) in a signed, sworn statement dated October 27, 1999 that he gave to a DSS Special Agent.

SCA

Question 19

Question 19, which was actually two separate questions, appeared on the SCA as follows:

19. Your Medical Record

In the last 7 years, have you consulted a mental health professional (psychiatrist, psychologist, counselor, etc.) or have you consulted with another health care provider about a mental health related condition?

Did the mental health related consultation(s) involve only marital, family or grief counseling not related to violence by you?

Applicant responded "yes" to both questions. The Government alleges applicant's response to the second question was false because applicant had received treatment for a condition diagnosed, in part, as Major Depressive Disorder from a psychiatrist from approximately September 1992 to at least July 1999.

The evidence establishes that applicant received treatment for Major Depressive Disorder from a psychiatrist during the seven years prior to the time he executed the SCA (TR at 62-64). Accordingly, the proper response to second question was "no." Applicant maintains that at the time he answered the question, he was thinking that he had seen the psychiatrist because of family and marital problems, and that he did not intend to falsify his answer. Considering the evidence presented, particularly the fact that applicant had answered "yes" to the first question, and the fact that he had previously disclosed that he had been treated by this psychiatrist on a security clearance application he had executed in 1994 (G-1), I find that applicant did not intend to conceal any information from the Government when he responded "no" to the second question.

Questions 24 and 26

Questions 24 and 26 appeared on the SCA as follows:

Question 24. **Your Police Record - Alcohol/Drug Offenses**

Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs? For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.

Question 26. **Your Police Record - Other Offenses**

In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s) not listed in modules 21, 22, 23, 24, or 25? (Leave out traffic fines of less than \$150 unless the violation was alcohol or drug related.) For this item, report information regardless of whether the record in your case has been "sealed" or otherwise stricken from the record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607.

Applicant responded "no" to both questions. The Government alleges that applicant's responses were false because, as noted above, he was (1) arrested for DUI in 1997 and (2) arrested for, and initially charged with, Battery/Domestic Violence in May 1999.

Applicant testified that he did not reveal his DUI arrest in response to Question 24 because, although he was arrested for DUI, he was ultimately charged with, and pleaded guilty to, Reckless Driving (TR at 101-103). When asked why he didn't mention the DUI arrest in response to Question 26, applicant testified that, at the time he completed the SCA, it "did not occur" to him that he should mention the DUI, but that he now realizes he should have mentioned it (TR at 104-105). With respect to why he didn't disclose the Battery arrest in response to Question 26, applicant offered a lot of confusing testimony. ⁽¹⁾ After considering all of the evidence on this issue, I find that applicant should have disclosed both incidents in response to either Question 24 or Question 26, and that he intentionally falsified his responses in order to conceal these two arrests and convictions from the Government.

Question 30

Question 30 appeared on the SCA as follows:

Question 30. **Your Use of Alcohol**

In the last 7 years has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)? Do not repeat information reported in module 21 on form SF86 (Your Medical Record).

Applicant responded "no" to Question 30. The Government alleges that this response was false because, as noted above, he had received outpatient treatment, in part, for a condition diagnosed as Alcohol Dependence, from May 15 to June 16, 1999, and he had received alcohol-related treatment from the same psychiatrist who was treating him for his Major Depressive Disorder prior to the time he executed the SCA.

With respect to his failure to disclose the 1999 outpatient treatment, applicant testified that when he answered the question, he rationalized that he had been treated for Depression and family problems - "with an associated alcohol problem." He further testified that he would respond "yes" if he answered the question today because he is now "far more educated as to what the problems (he) had were and (he) is more educated as to what (the Government) really want(s) (on the SCA)." (TR at 113-115, 303-304). With respect to the alcohol-related treatment from the psychiatrist, it is unclear from the evidence if applicant received alcohol-related treatment prior to the time he executed the SCA. After considering all of the evidence on this issue, I find that applicant should have disclosed his 1999 outpatient treatment in response to Question 30, and that he intentionally falsified his response in order to conceal this treatment from the Government.

Interview

The Government alleges that applicant omitted material facts during an interview with a DSS Special Agent on October 15, 1999. Specifically, the Government alleges that applicant (1) failed to disclose that he had received treatment, and was at the time receiving treatment, for Alcohol Dependence and/or Major Depressive Disorder, (2) failed to disclose his 1997 DUI arrest, and (3) failed to disclose that his May 1999 arrest for Battery/Domestic Violence was alcohol-related and that it *only* involved applicant physically assaulting his wife.

The Special Agent testified that he didn't recall if applicant disclosed his alcohol treatment during the interview (TR at 167). Given this testimony, the first part of this allegation must fail. Whether applicant had a duty to disclose his treatment for Major Depressive Disorder and/or his DUI arrest during the interview is not clear from the evidence. The fact that the Government is not alleging that applicant lied during the interview leads me to believe that he was not asked direct questions about any mental health treatment or alcohol-related arrests. With respect to the Battery/Domestic Violence incident, the Special Agent testified that applicant volunteered the information about it (TR at 164), including the fact that he had been drinking prior to the incident, and that it was an "alcohol-related" incident (TR at 166, 218-219). This testimony completely contradicts the allegation. The second part of this allegation is also contradicted by the evidence. Specifically, the evidence establishes that the incident involved an altercation between applicant and the daughter's boyfriend, as well as between applicant and his wife.

Statement

This particular allegation is poorly worded and difficult to understand. It appears that the Government is alleging that applicant failed to disclose in either his written statement dated October 27, 1999, or during a second interview with the DSS Special Agent that occurred immediately prior to the time he gave the written statement, (1) his 1997 DUI arrest and (2) the fact that he had been treated, and was still being treated, by the psychiatrist for Major Depressive Disorder and Alcohol Dependence.

Applicant did not mention his DUI arrest or the fact that he was being treated by a psychiatrist for Major Depressive Disorder and Alcohol Dependence in his statement. However, based on the evidence in the record, I cannot conclude that applicant had a duty to provide this information, or that he "omitted" this information as alleged.

Mitigation

Applicant testified that for several months after he stopped drinking in May 1999, he was "awakening from a long, long nightmare." He further testified that he "was like a robot. (He) was just taking one day at a time, putting one foot in front of the other and doing what people told (him) to do in the (AA) program. (He) didn't want to take on challenges. (He) didn't want to do anything that would raise more issues in (his) life" (TR at 297-298).

A psychiatrist was called as an expert witness for applicant. The psychiatrist testified that

because alcohol can continue to affect the central nervous system for quite some time after a person stops consuming it, psychiatric standards require a period of six months of abstinence before an underlying psychiatric illness can be clearly identified. He further testified that the amount of alcohol applicant was consuming would probably affect his judgment for the first few months of his abstinence. He further testified that from a clinical point of view, applicant was a "dry drunk" at the time he completed the SCA. In other words, although he was in treatment, it "hadn't really taken hold." In this state, applicant "could in that momentary thinking that goes along with denial and alcoholism be so anxious at certain questions and the impact and consequences of the future that he would rush without giving careful consideration which is necessary for judgment" (TR at 77-79, 91-92).

Three fellow members of AA appeared at the hearing and testified on applicant's behalf. All three corroborated applicant's testimony that he regularly attends AA. In addition, all three testified that after an alcoholic stops drinking, it takes months to begin thinking clearly and exercising good judgment.⁽²⁾ At least one of applicant's former therapists shares this opinion (Exhibit I).

Two of applicant's supervisors appeared at the hearing and testified on applicant's behalf. The first, a retired United States Air Force Colonel, first became acquainted with applicant in 1987, and has been applicant's supervisor during the

past seven years. This witness testified that applicant has never committed a security violation, and that he has never had a reason to question applicant's honesty or trustworthiness. The second witness, a retired United States Air Force General, has been applicant's second level supervisor since 1994. He testified that he is not aware of any security incidents involving applicant. He further testified that he has no reason to question applicant's trustworthiness, and has no reservations recommending him for a security clearance.

POLICIES

Enclosure 2 of the Directive sets forth Guidelines (divided into conditions that could raise security concerns and conditions that could mitigate security concerns) which must be followed by the Administrative Judge. Based on the foregoing Findings of Fact, the following Guidelines are applicable:

Alcohol Consumption

Disqualifying Conditions:

1. E2.A7.1.2.1: Alcohol-related incidents.
2. E2.A7.1.2.3: Diagnosis by a credentialed medical professional of alcohol dependence.
3. E2.A7.1.2.5: Habitual or binge consumption of alcohol to the point of impaired judgment.

Mitigating Conditions:

1. E2.A7.1.3.1: The alcohol-related incidents do not indicate a pattern.
2. E2.A7.1.3.2: The problem occurred a number of years ago and there is no indication of a recent problem.
3. E2.A7.1.3.3: Positive changes in behavior supportive of sobriety.
4. E2.A7.1.3.4: Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of AA, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional.

Personal Conduct

Disqualifying Conditions

1. E2.A5.1.2.2: The deliberate omission of relevant and material facts from any personnel security questionnaire.

Mitigating Conditions

None.

CONCLUSIONS

With respect to the alcohol issue, the evidence establishes that applicant consumed alcohol for many years without any significant adverse consequences. However, in the 1990s, after he began experiencing business and personal problems, he began drinking excessively to "dull the reality of life." In May 1999, after several years of out-of-control drinking, he had an alcohol-related incident that finally made him realize he had to stop drinking, and that he needed professional help to do so. After entering and successfully completing an outpatient alcohol program in mid-1999, applicant became an active member of AA. He has continued to be an active member, attending at least several AA meetings per week. Although there are no guarantees when it comes to maintaining sobriety, applicant has done everything humanly possible to avoid a recurrence of his alcohol problem. Based on his two and one-half years of abstinence and his strong commitment to continued sobriety, I conclude that applicant's alcohol abuse is most likely a thing of the past. For this reason, Guideline G is found for applicant.

With respect to the Falsification issue, it is clear that during his background investigation in 1999, applicant intentionally falsified and concealed material facts from the Government concerning his alcohol abuse and alcohol-related criminal conduct. And, on other occasions, specifically during his interview and in his signed, sworn statement, although he may not have intentionally falsified material facts, he was certainly not as forthcoming as he should have been. Applicant's lack of candor is a very serious matter which, in most cases, would require a denial of a clearance request. This case is somewhat unusual, however, in at least two respects. First, unlike most applicants, applicant's lack of candor during 1999 was preceded by over thirty years of exceptional service to this country, during which time he exercised incredibly good judgment and exhibited tremendous reliability and trustworthiness.⁽³⁾ In short, applicant has an unusually long track record of good judgment, reliability and trustworthiness that must be considered under the "whole person" concept discussed in the Directive.⁽⁴⁾ Second, applicant has presented convincing evidence that at the time of his background investigation in 1999, he was still under the influence of alcohol in the sense that it was still adversely affecting his judgment. Although this fact does not excuse his dishonest conduct, it does help explain why he acted so out of character.

It is clear that when he was abusing alcohol in the 1990s, applicant was not qualified to hold a security clearance. Based on the evidence in the record, had this DOHA proceeding taken place in 1999, applicant's clearance request would have been denied. For whatever reason, however, the DOHA hearing process did not begin until June 2001. This delay gave applicant the opportunity to demonstrate that he has reformed, and he has done so. He has not only completely abstained from the use of alcohol since May 1999 (over two years), but the evidence indicates that he has replaced his addiction to alcohol with a strong commitment to AA and the openness and honesty that AA teaches and demands. The evidence further indicates that applicant has returned to being the same reliable and trustworthy individual that he was prior to the time he began abusing alcohol. These facts lead me to believe that as long as applicant does not consume alcohol, he is trustworthy and can be relied upon to safeguard classified information. Since I have concluded that in all likelihood applicant will not abuse alcohol in the future, I further conclude that it is now clearly consistent with the national interest to grant him access to classified information. For this reason, Guideline E is found for applicant.

FORMAL FINDINGS

PARAGRAPH 1: FOR THE APPLICANT

PARAGRAPH 2: 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

grant or continue a security clearance for applicant.

Joseph Testan

Administrative Judge

1. *See*, TR at 105-112; 147-152.

2. *See*, TR at 338-340; 348-350, 353; 371-373, 376.

3. *See*, Exhibits A1 through A7, D and E.

4. Directive, Section E2.2.1., "The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination."