

DATE: October 29, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-09830

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant mitigated his alcohol abuse and his related criminal history. However, the Applicant did not mitigate his falsification of a sworn statement in July 2000 concerning his alcohol related arrests. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On January 17, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) 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.

The Applicant responded to the SOR in writing on February 12, 2002, and requested a hearing. The case was received by the undersigned on April 19, 2002, and a Notice of Hearing was issued on May 1, 2002.

A hearing was held on May 24, 2002, at which the Government presented 12 documentary exhibits. Testimony was taken from the Applicant, who also submitted five hearing exhibits and one post-hearing exhibit. Applicant's Exhibit F is a Discharge Summary concerning the Applicant's treatment for alcohol abuse. The transcript was received on June 3, 2002.

FINDINGS OF FACT

The Applicant is 40, divorced and has an Associate of Arts degree in Electrical Engineering. He is employed by a defense contractor as an Engineer II, and he seeks to retain a Top Secret-level DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline J - Criminal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in criminal acts.

The Applicant has been arrested five times for Domestic Violence. These arrests occurred in September 1995, December 1996, June 1997, January 1999 and September 2000. During this period the Applicant was living with the person who is now his ex-wife. (SOR subparagraphs 1.a. through 1.e.) The Applicant testified that both he and his wife were alcoholics, and had been drinking alcohol before all of these arrests. (Transcript at 55-58.)

All of the above arrests resulted in the Applicant being charged with Harassment and/or Domestic Violence. The Applicant plead Guilty and received sentences involving domestic violence counseling and probation after the 1995, 1996 and 1997 offenses. The charges in the January 1999 and September 2000 cases were dismissed because the Applicant's wife refused to appear. However, the Applicant does not deny the fact that the incidents occurred. (Government Exhibit 1.)

The Applicant and his wife were divorced in January 2002.

Paragraph 2 (Guideline G - Alcohol abuse). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he uses intoxicants to excess.

The Applicant admits that he is an alcoholic and has been one for some time. He testified credibly that he last drank alcohol on September 19, 2000. That was the date of his last alcohol-related arrest. While he had alcohol problems for several years, they accelerated during 1999 and 2000.

As discussed under Paragraph 1, above, the Applicant's alcohol problems primarily manifested themselves at home in violent acts with his wife. However, by 1999, they were affecting his job performance, primarily in terms of absence from work. Government Exhibit 3 is a Formal Warning from his supervisor dated August 4, 2000, which discusses these matters in detail. (*See*, Government Exhibit 1 at 3.)

The Applicant attempted to control his drinking several times in the 1990s. He eventually began using Antabuse, prescribed for him by his personal physician, in 1997. However, he continued to drink to abusive levels during this time.

In October 2000, after his last arrest for domestic violence, the Applicant began a treatment program that seemed to work for him. He was discharged from this program in May 2001 with a "Fair" prognosis. (Applicant's Exhibit F.) Since his discharge the Applicant has been attending a church based abstinence program twice a week. (Transcript at 66-67, 76-77.) He does not intend to drink in the future.

Paragraph 3 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

On July 27, 2000, the Applicant was interviewed by a Special Agent of the Defense Security Service. In a sworn statement, the Applicant stated, "I was never involved in any embarrassing incidents when I was drinking that could lead to being blackmailed. I was never arrested because of my drinking." (Government Exhibit 2 at 4.) This was a false statement as the Applicant had in fact been arrested four times before July 2000 because of domestic violence incidents brought about by his drinking.

The Applicant was re-interviewed on September 22, 2000. During this interview he discussed the four earlier arrests, as well as his arrest on September 19, 2000, for domestic violence. He stated, "In my prior statement I stated that I had not been arrested. I said this because I'm embarrassed and ashamed. I thought I could hide these arrests." (Government Exhibit 1 at 1.)

At the hearing, the Applicant stated, "The Applicant's Exhibits 1 and 2, I think I misunderstood what she was asking about had I ever been arrested for drinking before. I thought that was a DUI or something directly related to alcohol because every time I was arrested, it was domestic violence was the charge. Now, if I misinterpreted that and said it wrong at that particular time, I was not thinking very clearly, I'll be honest." (Transcript at 52.)

I have reviewed the statements and it is clear that the Applicant's drinking was the emphasis of the interview. Government Exhibit 2 discusses in great detail the Applicant's alcohol use and the problems he experienced because of it. It was not reasonable for the Applicant to believe that the question only concerned arrests due to drinking and driving. Accordingly, I find that the Applicant did intentionally falsify his statement about his four arrests from 1995 to 1999.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline J (Criminal conduct)

Conditions that could raise a security concern:

- (1) Allegations or admission 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:

- (6) There is clear evidence of successful rehabilitation.

Guideline G (Alcohol consumption)

Conditions that could raise a security concern:

- (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 abuse;
- (2) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;
- (3) diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;
- (5) habitual or binge consumption of alcohol to the point of impaired judgment;

Condition that could mitigate security concerns:

- (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 Alcoholics Anonymous or a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a

recognized treatment program.

Guideline E (Personal conduct)

Condition that could raise a security concern:

(3) deliberately providing false or misleading information concerning relevant and material matters to an investigator, security official, competent medical authority, or other official representative in connection with a personnel security or trustworthiness determination;

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of criminal conduct, alcohol abuse and falsification of sworn statements that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge 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. 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

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 used alcohol to excess (Guideline G); that he has had several alcohol related arrests (Guideline J); and that he intentionally made false material statements to DoD (Guideline E).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part. The Applicant admitted his powerlessness against alcohol in September 2000, and went to an outpatient treatment program that ended in May 2001. He received a favorable prognosis from the treatment program, has attended a church based abstinence support group on a consistent basis since then, and has abstained from alcohol use for fifteen months as of the date of the hearing. Paragraph 2 and its subparagraphs are found for the Applicant. Under paragraph 3, subparagraph 3.a. is found for the Applicant because, in my opinion, the Applicant did not have the intent to falsify when he stated that he would not drink in the future. (Transcript at 82-86.)

The Applicant's criminal misconduct was all related to alcohol and to his marriage to his ex-wife. The Applicant is now divorced and abstinent from alcohol for fifteen months. In my opinion, this constitutes successful rehabilitation. Paragraph 1 is found for the Applicant.

The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for security clearance purposes where an Applicant has deliberately provided false information about material aspects of his or her personal background. I have considered the Applicant's explanations for his false statements and find them wanting. He has not mitigated the security significance of his falsification in July 2000. Guideline E is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraph 3 of the Government's Statement of Reasons. As set forth above, Paragraphs 1 and 2 are found for the Applicant.

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: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

Subparagraph 1.c.: For the Applicant.

Subparagraph 1.d.: For the Applicant.

Subparagraph 1.e.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraph 2.a.: For the Applicant.

Subparagraph 2.b.: For the Applicant.

Subparagraph 2.c.: For the Applicant.

Subparagraph 2.d.: For the Applicant.

Subparagraph 2.e.: For the Applicant.

Paragraph 3: Against the Applicant.

Subparagraph 3.a.: For the Applicant.

Subparagraph 3.b.: 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.

Wilford H. Ross

Administrative Judge