

DATE: August 28, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-09983

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

Matthew E. Malone, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

After being arrested for DUI three times within ten years, most recently in September 1997, and receiving outpatient treatment after his two most recent arrests, Applicant answered "no" to questions on the *Security Clearance Application* (SF 86) designed to elicit information about alcohol abuse and alcohol treatment. His explanation for not disclosing his three DUIs is not found to be persuasive. Although Applicant reduced his alcohol consumption after his second DUI, and reduced it further after his third DUI, he continues to consume as much as six twelve-ounce beers (in a two to three hour period) as often as twice monthly. His history of alcohol abuse is not found mitigated, considering he has been evaluated as alcohol dependent; he admits he likes alcohol and does not intend to stop drinking. Clearance is denied.

STATEMENT OF THE CASE

On January 14, 2002, 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 Personal Security 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 a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether s security clearance should be granted, denied or continued.

Applicant answer the SOR on February 5, 2002, and stated he wanted his case decided without a hearing. Applicant received the File of Relevant Material (FORM) consisting of 11 Items on May 7, 2002. He did not submit a response. The case was assigned to this Administrative Judge on June 29, 2002.

STATEMENT OF THE CASE

In his answer to the SOR, Applicant admitted allegations (under Guideline E) he had falsified material facts in response to question 24 on a *Security Clearance Application* (SF 86), admitted allegations (under Guideline G) he had consumed

alcohol excessively, and admitted allegations (under Guideline J) he had engaged in a pattern of criminal activity. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is 42 years old and has been employed by the same DoD contractor for almost 22 years (since October 1980). He was granted a secret personal security clearance in December 1980 and has held it continuously since that date. Applicant's suitability to continue to hold his security clearance is being questioned because of three alcohol-related arrests and his failure to disclose these arrests on the *Security Clearance Application* (SF 86) Applicant completed in December 1998.

Applicant began consuming alcohol regularly when he was 21 years old. He recalled his alcohol consumption history in an October 1999 signed, sworn statement to the Defense Security Service (DSS):

I would go out to bars two or three time per week in the evening to socialize with my friends and drink beer and an occasional whiskey for three or four hours, consuming anywhere from 12 to 18 twelve-ounce bottles of beer and one or two shots of whiskey. Although I was probably intoxicated, I believed I that was in control of my physical abilities. I continued this level of consumption until after my second DUI arrest in 1994 (Item 5).

Applicant's first arrest for alcohol-related misconduct had occurred in September 1987 when he was arrested and charged with operating a motor vehicle while intoxicated. Prior to being arrested, Applicant had been out with his friends and had consumed "approximately 12 to 15 twelve-ounce beers" during a three or four hour period. The alcohol-related charge was disposed of in January 1988 when he was accepted into the Court of Common Pleas Accelerative Rehabilitation Program; his driver's license was suspended for three months, and he was sentenced to one-year probation.

The alcohol-related arrest referenced in the above excerpt occurred in August 1994 when Applicant was stopped for speeding--55 in a 40 MPH zone--after he had been out with his friends. Again, he had consumed between 12 and 15 twelve-ounce beers during a three to four hour period. He refused to take a blood-alcohol test and was charged with DUI. His driver's license was suspended for one year; he was sentenced to five weeks in the county prison⁽¹⁾ and to 20 days house arrest. In addition, he was required to attend one hour of alcohol counseling weekly for 26 weeks.

After his second alcohol-related arrest, Applicant reduced his alcohol consumption; instead of going out to bars with his friends three or four times a week, he would go out to bars only "once or twice a month." However, he admitted on those occasions when he did go out to bars: "(he) still consumed approximately the same amount and type of alcohol as (he) previously consumed." (Item 5).

Applicant was arrested for alcohol-related misconduct most recently in September 1997. On that occasion as on the previous occasions, he had been out with his friends and had consumed "approximately the same amount of beer as the other two occasions." He received "exactly the same sentence that (he) received..." for the August 1994 DUI arrest.

After his September 1997 arrest, Applicant decided to "reduce (his) alcohol consumption considerably." He still goes out to bars with friends "about twice a month, but for only two or three hours." He no longer consumes whiskey, and now drinks "at the most only six twelve-ounce beers in one night." He does not drink that much "if (he) feel(s) as if it is effecting (him)." Applicant "no longer believe(s) (he) becomes intoxicated when (he) drink(s)." He enjoys the taste of beer and does not intend to stop drinking it, but he does intend to moderate the amount he drinks. He has an occasional beer at home when he is mowing his lawn, and he drinks beer on those occasions (once or twice a month) when he is socializing with his friends.

While being treated on an out-patient basis at Facility X in 1998, Applicant was diagnosed as alcohol dependent.⁽²⁾ According to entries in Applicant's treatment records, his attendance and participation in the program were consistent. Much of the information in the treatment records corroborates information in Applicant's signed, sworn statement (Item 5): Applicant liked the taste of alcohol, the social setting in which it is consumed, and saw himself as having a problem only because of the unfortunate circumstance of being arrested. The notes prepared during his exit interview (January 1999) reflect that he "minimized the severity of (his) drinking," enjoys alcohol," and had "no intention to stop drinking."

In December 1998, Applicant completed a *Security Clearance Application* (SF 86) and certified:

...that the entries made by me are true, complete, and accurate to the best of my knowledge and belief and are made in good faith...

However, Applicant's answers were not true, accurate and complete. In response to question 24 which asked if he had ever been "charged with or convicted of any offense(s) related to alcohol or drugs" Applicant answered "no." He also answered "no" to question 30 which asked if his use of alcohol had resulted in any alcohol-related treatment in the last 7 years. "No" was not the "true, accurate, and complete" answer to either of these questions as Applicant had been arrested, charged and convicted of DUI in 1987, 1994 and 1997, and had attended sessions at an alcohol treatment facility after his 1994 and 1997 arrest.

When Applicant was questioned by the Defense Security Service in October 1999, he provided information about each of the above DUI arrests. He explained that he had not listed the arrests on his December 1998 SF 86 because he "thought (he) had to only list criminal arrests." He attributed his omission to not reading the questionnaire "closely." He did not explain why he answered "no" to question 30 when he had received alcohol-related treatment after each of his two most recent DUIs.

Applicant does not believe he has a problem with alcohol; alcohol has never caused him to behave in an "anti-social manner," and has never caused problems with law enforcement officials except for his three DUI arrests. He has never been accused of any inappropriate or undesirable conduct while under the influence of alcohol, and he has never had any financial problems because of alcohol consumption. Applicant further asserts he has never talked about classified information while drinking. See Item 5. There is no further evidence in the record which reflects on Applicant's professional expertise or competence.

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 interests of national security. 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.

The following Adjudicative Guidelines are deemed applicable to the instant matter:

PERSONAL CONDUCT

(Guideline E)

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying also include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Conditions that could mitigate security concerns include:

None Applicable

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;

E2.A7.1.2.4. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of recognized alcohol treatment program;

Conditions that could mitigate security concerns include:

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

CRIMINAL CONDUCT

(Guideline J)

The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

E2.A10.1.2.1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;

Conditions that could mitigate the security concerns include:

None Applicable

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government established 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 doubt about 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, 531 (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 appropriate legal precepts and factors, this Administrative Judge concludes the Government has established its case with regard to Guidelines E, G, and J. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section 6.3, as well as those referred to in the section dealing with Adjudicative Process, both in the Directive.

A security concern is raised by Applicant's three DUI arrests in a ten-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.

Applicant has attempted to quiet the concerns raised by his alcohol-related arrests by providing assurances he has considerably reduced his alcohol consumption. After his August 1994 arrest, he did not drink alcohol on as many occasions each month as he did before the arrest, and he did not drink alcohol in the same quantity on those occasions when he drank. Applicant asserts he reduced his alcohol consumption even further after his September 1997 arrest--drinking on only one or two occasions each month, and then drinking only beer, "at the most six twelve-ounce beers in one night." In addition to assurances that he has reduced his alcohol consumption, Applicant reviews the different areas of his life with which alcohol has not interfered to convince himself and the U.S. Government he does not have a problem with alcohol.

Applicant's efforts to mitigate the security concern raised by his alcohol consumption and alcohol-related arrests falls short of the mark. Even if his statements about current levels of alcohol consumption are accepted in their entirety, Applicant still drinks to the point of impairment one or two occasions each month. He continues to consume a quantity of alcohol each month which puts him at risk for additional, alcohol related misconduct and arrests. Moreover, his admission that he consumes six twelve-ounce beers once or twice each month cannot be considered in isolation, but must be considered in the context of three alcohol-related arrests, his admission that he enjoys the taste of alcohol and the social atmosphere in which alcohol is consumed, and in the context of the "alcohol dependant" evaluation by Facility X's professional staff. But Applicant's statements about his current level of alcohol consumption are not accepted in their entirety. He was not truthful in owning up to his alcohol-related arrests when he completed his SF 86, and his explanation for omitting them was/is not credible (see below). An additional consideration against Applicant is his failure to admit that he has a problem with alcohol, even after three DUIs in ten years. Guideline G is concluded against Applicant.

A security concern is raised by Applicant's failure to disclose his three DUI arrests on the SF 86 he completed in October 1999. His failure to provide honest and truthful answers to the questions on the security questionnaire suggests questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations. Such conduct could indicate Applicant may not properly safeguard classified information.

Applicant's explanation that he answered "no" to question 24 and did not list his DUI arrests because he believed he was only required to list criminal arrests is not credible. He does not explain what DUI arrests are, if they are not criminal. According to his own signed, sworn statement, the sentences for Applicant's second and third DUIs included five weeks in prison. Neither Applicant nor anyone else is sentenced to prison for one day or ten years for conduct which is not criminal. Since he has had a security clearance for more than 20 years, Applicant undoubtedly completed security questionnaires on previous occasions. He knew or should have known the importance of reading the questions carefully and providing truthful answers. Guideline E is concluded against Applicant.

Finally a security concern is raised under Guideline J. Applicant three arrests for DUI and his failure to provide "true, complete, and accurate" answers to questions 24 and 30 of the SF 86 represent a pattern of criminal conduct. Such a pattern creates doubt about a person's judgment, reliability and trustworthiness.

The criminal conduct represented by Applicant's actions and omissions has not been mitigated. The criminal conduct began with his first DUI arrest in 1987 and continued through at least December 1998 when he falsified his SF 86. His criminal conduct was not limited to an isolated incident, and spanned a period of time through his signed sworn statement when he explained he did not list his DUIs because he did not think they were criminal arrests. Although Applicant claims he had reduced his alcohol consumption, this claim is not sufficiently persuasive (because of considerations cited above) to conclude there is evidence of successful rehabilitation. Guideline J is concluded against 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 E) AGAINST APPLICANT

Paragraph 1.a. Against the Applicant

Paragraph 1.b. For the Applicant

Paragraph 1.c. Against the Applicant

Paragraph 2 (Guideline G)

Paragraph 2.a. Against the Applicant

Paragraph 2.b. Against the Applicant

Paragraph 2.c. Against the Applicant

Paragraph 3 (Guideline J)

Paragraph 3.a. Against the Applicant

Paragraph 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 Applicant's security clearance.

John R. Erck

Administrative Judge

1. The SOR informs Applicant that 10 U.S.C. 986 applies to this case because he was sentenced "to 30 days to 23 months confinement..." for his August 1994 and September 1997 DUIs. Because the "30 days," and "23 months" entries appear in boxes on a form under "Minimum" "Maximum" labels (See Items 9 and 10), this Administrative Judge does not find a basis for concluding Applicant has been "sentenced to imprisonment for a term exceeding one year."
2. There is insufficient information in the record to conclude this "diagnosis" was made by a "credentialed medical professional" as that term is defined in E2.A7.1.2.3. , Guideline G, DoD Directive 5220.6. This "evaluation" appeared to have been made by a "licensed clinical social worker." See E2.A7.1.2.4., Guideline G, DoD Directive 5220.6.