

DATE: April 17, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-10005

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

William S. Fields, Esquire, Department Counsel

FOR APPLICANT

Pro Se

STATEMENT OF THE CASE

On 10 December 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 19 December 2001, Applicant answered the SOR and requested a hearing. The case was originally assigned to a different Administrative Judge who issued a notice of hearing on 23 January 2002, but then realized he had a scheduling conflict for the original date. The case was then reassigned to me on 24 January 2002; however, I rescheduled the case on 11 February 2002 because of other scheduling conflicts and changed the hearing site to a more convenient location for Applicant. Unfortunately, I had to cancel the second hearing date because of a medical emergency in my family. I issued the third notice of hearing on 6 March 2002 for hearing on 26 March 2002.

At the hearing, the Government presented three exhibits--admitted without objection--and no witnesses; Applicant presented no exhibits and the testimony of one witness, himself. DOHA received the transcript on 2 April 2002.

FINDINGS OF FACT

Applicant admitted the factual allegations of the SOR; accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 31-year old employee of a defense contractor--seeks access to classified information.

Applicant has a history of alcohol abuse which has resulted in three alcohol-related arrests between 1993 and 1999.

On 16 February 2002, Applicant executed a Security Clearance Application (SCA)(SF 86)(G.E. 1). Applicant truthfully answered "yes" to question 24 (regarding alcohol arrests) and disclosed his May 1993 and June 1999 arrests for Driving Under the Influence (DUI).⁽²⁾ On 3 November 2000, Applicant described his alcohol abuse history to an agent of the Defense Security Service (DSS)(G.E.3):

I first started drinking alcoholic beverages at about age 19 or 20. I usually drink beer. From the time I first started drinking up to the time I was going through my divorce, about May 1999, I would drink about a six pack of beer over a weekend. I drank at home or out with friends. From about May 1999 to October 1999 the quantity of beer consumed increased significantly. During this period I would get together with friends, a group of about 4 or 5. We would take anywhere from one to three cases of beer and go driving through the mountains. We go about once a week leave work at about 3:00 p.m. and drive around until 5:00-7:00 a.m. the next morning. We always had a designated driver. Since moving to [city, state] my drinking has been reduced to about once every one to three weeks. I'll get together with some friends from work, shooting pool, I'll drink anywhere from 6 to 12 beers over seven to nine hours. When I drink I don't become angry or violent, just happy and I like to dance.

In about May 1993, I was charged with Driving Under the Influence (DUI), [city, state where I was living at the time]. I had been out with some friends and on the way back from a party, I was stopped for speeding. I had my license suspended for one year, paid a fine of about \$350.00 and attended ASAP which I completed. In about April 1999, in [city, state where I was living at the time] I was again charged with DUI. . . I was found guilty, had my license suspended for three years, sentenced to 30 days in jail/suspended and fined \$750.00 and court costs which were paid.⁽³⁾

At the hearing, Applicant accepted responsibility for his past misconduct, but reasserted that his alcohol consumption dropped dramatically once he moved away from his old haunts:

Okay. Everything that I said I did, I did do, Your Honor, which was back in my younger days is the first DUI. I do believe I was only maybe 21/22, in that area.⁽⁴⁾ That I clearly was in the wrong on both situations, but I mean--and I do take full responsibility of them. The second one was kind of on a--not--it was my fault, I did drive, but the situation of that night I was not pertaining to drive, and I was kind of forced into the situation. And a phone call was made. Due to that situation being forced into.

And since moving to the area of [city] in November of '99, I have gotten away from the crowd and situations that I was in. And since moving here I have also bettered myself, and that was the reason for moving here, if getting away from all of that. And, like I say, I do not deny that I did do--you know, I drank and I did the DUIs. But my drinking habits since then have changed dramatically to where there is possibly a week to a month or two months with no drinking, or if there is, sometimes there's maybe a six pack to a 12 pack through the course of a weekend. I have since--moving away, getting away from them situations, I have been able to afford to purchase two vehicles and renting a two bedroom apartment on my own with no help.

And there's really--like I say, I--I--I made the mistakes of doing the drinking and driving, with the drinking like--but as since then of getting away from those situations, the fellow that I was running with has dramatically changed. (Tr. 20-21).

Applicant further testified that he had met all the conditions set by the courts for his two DUIs--including counseling requirements--and had his driving privileges restored for purposes of transportation related to work. He has had no further alcohol-related incidents since 1999. He clarified that the six to twelve beers he might consume over a weekend covered Friday night through Sunday night (Tr. 23-24). None of his counselors indicated that he was an alcoholic or alcohol dependent. He has had no work-related incidents, nor has he had any difficulty reporting to work as a result of his current level of alcohol consumption.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

ALCOHOL CONSUMPTION (GUIDELINE G)

E2.A7.1.1. 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.

E2.A7.1.2. 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 abuse.

E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;

E2.A7.1.3. Conditions that could mitigate security concerns:

E2.A7.1.3.2. The problem occurred a number of years ago and there is no indication of a recent problem;

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

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The Government has established its case under criterion G; however, the alcohol abuse is mitigated. The record reflects that Applicant abused alcohol between 1989 and 1999, with the heaviest consumption during a period of time in 1999 when he was divorcing his wife. His three alcohol-related arrests between 1993 and 1999 raise a security concern regarding his ability to handle classified information. However, Applicant took responsibility for his misconduct and took steps to ensure that it did not recur. He complied with court-ordered counseling requirements, and developed some insight into the adverse consequences of abusive alcohol consumption. Moreover, he moved from the part of the state where he had engaged in the alcohol abuse with his friends, changed his lifestyle, and his circle of friends. He obtained a better job, and recognizes that the better job and his ability to refrain from alcohol abuse have enabled him to be more financially secure. Applicant's new insights lead me to conclude that he is unlikely to abuse alcohol in the future. I find criterion G. for Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion G: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: 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.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).
2. Although in each instance, Applicant's recollection of the approximate month of each offense was incorrect. Applicant also admits a July 1999 arrest and conviction for Drunk in Public--an offense not disclosed on the SCA nor discussed in Applicant's sworn statement. The only evidence of record on this offense is the SOR allegation Applicant admitted.
3. Applicant's description of his arrests is largely consistent with the police/court records contained in G.E. 2.
4. Applicant was 22 in April 1993.