

DATE: December 6, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-11142

DECISION OF ADMINISTRATIVE JUDGE

BARRY M SAX

APPEARANCES

FOR GOVERNMENT

William S. Fields, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 43-year-old pipefitter for a defense contractor has a history of alcohol use that began in 1976, caused five alcohol-related arrest from 1982 to 1991, resulted in inpatient treatment in 1991, which recommended sobriety but, after which, Applicant continued to consume significant amounts of beer, and has done so up to the present. No mitigation has been shown. Clearance is denied.

STATEMENT OF THE CASE

On April 1, 2002, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On May 15, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on May 24, 2002. The Form instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. The response was due on August 9, 2002, but no response was received and the record was closed. The matter was assigned to me for resolution on September 23, 2002.

FINDINGS OF FACT

Applicant is a 43-year-old pipefitter employed by a defense contractor that is seeking a security clearance for Applicant in connection with his employment. In his response to the SOR, which contains eight allegations (1.a. - 1.j.), Applicant denied the general use of alcohol allegation in SOR 1.a. and admitted all of the remaining seven specific allegations (SOR 1.b. - 1.h.).

After considering the totality of the evidence derived from the FORM and its attachments, including but not limited to Applicant's response to the SOR, I make the following FINDINGS OF FACT as to each SOR allegation:

1. Guideline G (Alcohol)

a. Applicant consumed alcohol, at times to excess, from 1976 to at least January 25, 2001. He suffered alcohol-induced blackouts on at least ten occasions.

Applicant was arrested, charged, and/or convicted of alcohol-related offenses on the following occasions:

b. December 30, 1982 - Driving While Intoxicated (DWI). He was found guilty, fined, and ordered to attend an alcohol awareness class.

c. 1986 - DWI. He fell asleep at the wheel at a train crossing. He was acquitted.

d. May 6, 1990 - (1) DWI and (2) Unreasonable Refusal of a Blood or Breath Test.

He was convicted of both counts in a District Court, but after a jury trial in a Circuit Court, he was acquitted of the DWI count and convicted of the Unreasonable Refusal count. Applicant does not deny he had been drinking (GX 5 and GX 6).

e. September 28, 1991 - DWI. Applicant was convicted in General District Court,

but was subsequently acquitted after a jury trial in a Circuit Court. Applicant does not deny he had been drinking (GX 5 and GX 6).

f. November 24, 1991 - DWI - Applicant was convicted and sentenced to 30 days in jail, suspended, and ordered to pay fines and court costs (GX 6).

g. Applicant received inpatient treatment for alcohol abuse from December 8, 1991 to January 2, 1992. He was diagnosed as suffering from alcohol dependency and it was recommended that he undergo an outpatient treatment program, attend Alcoholics Anonymous (AA) meetings, and obtain an AA sponsor. Applicant failed to follow through with these recommendations.

h. Applicant has continued to consume alcohol, at times to excess, despite the above cited legal problems and having been diagnosed as alcohol dependent.

In his August 4, 2000 response to Interrogatories, Applicant described his drinking habits as: "on weekends, usually a twelve pack of beer," and stated that he became intoxicated about "3 or 4 times a year, usually around a holiday. New Years, 4th of July, Christmas, etc. Last time was July 4, 2000" (GX 4). Also in his response to the Interrogatories, Applicant describes himself as an above average employee without any problems at work (*Id.*)

In his January 25, 2001 sworn statement (GX 8), Applicant admits all of the cited alcohol-related arrests in SOR 1.b. - 1.f., but claims he has not had any more such arrests "in the past seven years," which I take to mean since the last arrest cited in the SOR. However, while speaking to the Defense Security Service Agent on that date, Applicant also described his current drinking habits as "about twelve beers or less a week, but generally only on weekends" and his last intoxication as being "Christmas and New Years of 2000," i.e., less than a month prior to the sworn statement. In his May 15, 2002 response to the SOR, Applicant denial of SOR 1.a. is accompanied by an explanation that questions some details (which were derived from his earlier statement), but does not contain any indication that Applicant has reduced his consumption of alcohol. On this basis, I find that Applicant's consumption of alcohol did not end on January 25,

2001, as alleged in SOR 1.a., but continued to at least May 15, 2002 (the date of his response to the SOR).

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

Because each security case presents its own facts and circumstances, it should not be assumed

that the factors cited above exhaust the realm of human experience or that the factors apply equally

in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct. Because Applicant chose to have this matter decided without a hearing and without submitting any additional information in response to the FORM, all credibility determinations and findings of fact are necessarily based entirely on the contents of the FORM.

Considering the evidence as a whole, I find the following specific adjudicative guidelines to be most pertinent to this case:

GUIDELINE G (Alcohol)

Conditions that could raise a security concern and maybe disqualifying include:

1. Alcohol-related incidents away from work, such as driving under the influence, child or spousal abuse, or other criminal incidents related to alcohol use.
3. Diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence. [\(1\)](#)
5. Habitual or binge consumption of alcohol to the point of intoxication.
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 include:

None that are applicable under the facts of this case. [\(2\)](#)

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a

reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make

critical judgments as to the credibility of witnesses.

In the defense industry, the security of classified information is entrusted to civilian workers

who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an

applicant for a security clearance, in his or her private life or connected to work, may be involved

in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately

or inadvertently fail to properly safeguard classified information.

An applicant's admission of the information in specific allegations relieves the Government

of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either

by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

A person seeking access to classified information enters into a fiduciary relationship with the

Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended,

at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

This case presents a troubling picture of an individual who has not been able to recognize and implement good judgment in his use of alcohol. All of the SOR allegations are supported by the Applicant's admissions and the totality of the record. This 43-year-old Applicant's history and pattern of consuming alcohol, which began in 1976, when he was about 17 or 18 years old, and continues, admittedly up to May 2001, and impliedly to the present day, is troublesome. Based on the record, there is a possibility that the absence of any alcohol-related arrests since 1991 is due mostly to luck, since the level of alcohol he admits consuming could make him legally intoxicated if he drove a motor vehicle while, or shortly after, consuming alcohol.

The 1991/1992 diagnosis of alcohol dependency has not been refuted by a more recent professional diagnosis or opinion, and appears to have continued applicability based on Applicant's current drinking level.

I have carefully considered Applicant's statements about his conduct at work, but security clearance eligibility is based as much on a person's private life as on his conduct at work. A number of disqualifying conditions clearly apply, but Applicant has not demonstrated the applicability of any of the possible mitigating conditions. His problems with alcohol cannot be considered an aberration in an otherwise sober life. Rather, the alcohol abuse appears to be a part of his overall character, and I cannot conclude that future problems and incidents are unlikely to recur.

DOHA decisions are not an evaluation of a person's loyalty to the United States but of the risks that result from a person's conduct, if that conduct violates one or more of the Guidelines in the Directive. In the present case, the Government's underlying concerns have not been mitigated and continue to show questionable judgment, unreliability, and/or untrustworthiness. The totality of the evidence also establishes a nexus or connection with Applicant's security clearance eligibility.

FORMAL FINDINGS

Formal Findings as required by Section 3, Paragraph 7 of Enclosure 1 of the Directive are hereby rendered as follows:

Guideline G (Alcohol) Against the Applicant

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. Against the Applicant

Subparagraph 1.g. Against the Applicant

Subparagraph 1.h. 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 Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. This information is derived from Applicant's security clearance application SF 86 (GX 5) and his response to Interrogatories (GX 4), in which he cites a medical center as the treatment site. Since the individual from whom he received the treatment is described as a "CSAC," which experience suggests is an alcohol counselor rather than a "medical professional" as that term is used in the Directive, I have also considered the findings of fact under Disqualifying Condition 4. In both cases, I reached the conclusion that either Condition leads to the same result.

2. Mitigating Condition 2 requires that the "problem occurred a number of years ago and there is no indication of as recent problem." Applicant is correct when he points out that his last alcohol-related arrest was in November 1991. He is incorrect, however, in claiming the arrests have no current security implications. His continuing to consume alcohol at the level he admits to, after the problems alcohol has caused in his life, suggests a current level of both denial and questionable judgment that raises doubts about his eligibility to hold a security clearance. The alcohol "problem" continues even if the arrests are in the past.