

DATE: September 23, 2002

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-11575

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a group field engineer, with a history of periodic excessive alcohol consumption (none since 1998) and several alcohol-related incidents (last one in 1994) mitigates security concerns related to alcohol abuse. He is exonerated from any intentional omission of his marijuana use while in the Navy and has not been involved with any illegal substances since 1987. With an excellent reputation for overall honesty and trustworthiness amongst co-workers and supervisors, he is credited with mitigating his prior abuse of illegal substances as well. Clearance is granted.

STATEMENT OF THE CASE

On January 17, 2002, the Defense Office of Hearings and Appeals, 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 granted, continued, denied or revoked.

Applicant responded to the SOR on May 22, 2002, and requested a hearing. The case was assigned to this Administrative Judge on May 29, 2002. Scheduling of the hearing was delayed pending Applicant's return from training, and was eventually scheduled on July 24, 2002 for hearing on August 9, 2002. A hearing was convened on August 9, 2002, to consider whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. At hearing, the Government's case consisted of three exhibits; Applicant relied on one witness (himself) and one exhibit. The transcript (R.T.) of the proceedings was received on August 19, 2002.

PROCEDURAL ISSUES

Before the close of the hearing, Department Counsel moved to amend the SOR to add another allegation: sub-paragraph 2.b, which alleges Applicant smoked marijuana while possessing a secret-level security clearance while on active duty with the US Navy (*see* R.T., at 19-21). This information was already covered in the SOR as drug use while holding a

security clearance that was not disclosed by Applicant in his security clearance application (SF-86) under Guideline E (sub-paragraph 2.a). Good cause being shown, and there being no objections from Applicant, Department Counsel's motion was granted. To this amendment, Applicant admitted the alleged allegation.

STATEMENT OF FACTS

Applicant is a 48-year-old group field engineer for a defense contractor who seeks a security clearance.

Summary of Allegations and Responses

Applicant is alleged to have (a) engaged in excessive alcohol consumption from 1969 to at least November 2000, (b) been arrested for DuI in the 1970s, found guilty, and fined less than \$300.00, (c) been arrested for DuI in 1980, found guilty, fined less than \$400.00, and ordered to perform community service, (d) arrested for DuI in November 1990, found guilty, fined \$800.00, and ordered to perform community service, and (e) arrested for DuI in February 1994, found guilty, fined \$500.00, placed on a year's unsupervised probation, and ordered to serve 44 hours in jail.

Additionally, Applicant is alleged to have falsified his security clearance application of January 2000 by omitting his smoking of marijuana while holding a DoD secret-level security clearance during an active duty tour while in the Navy. Applicant's omissions are also alleged to constitute criminal conduct, in violation of 18 U.S.C. Sec. 1001.

For his response to the SOR, Applicant admitted each and every allegations and supplements his admissions with explanations. He claims to have grown up as a "beer freak" who maintained good grades in high school. He claims to have moderated his drinking somewhat between 1970 and 1996 to include occasional hard liquor before entering into a phase between 1996 and November 2000 where he would binge from to time during temporary duty assignments, but never to the point where it affected his work performance. He claims he took the keys from the designated driver preceding his 1994 DuI and substituted himself to drive the other passengers home. He claims he doesn't do drugs of any sort and only occasionally has a beer. When any of his team goes out he claims he assures they have a designated driver. Addressing his alleged omission of marijuana use while in the Navy and holding a security clearance, he claimed to have mistakenly assumed this aged use was previously covered and was not directed to non-recent, isolated marijuana use in any event. Finally, he claimed his alcohol use is minimal today and to provide verification, he is amenable to submitting in writing to taking randomly administered urinalysis.

Relevant and Material Factual Findings

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Applicant began drinking at the age of 15 or 16 (during high school), and between 1969 and 1970 he drank any and everything, but was basically a "beer freak" (*see* R.T., at 35). He increased his alcohol consumption after he graduated from high school. Drinking became a way of life during his Navy tour (1972-1978): He regularly consumed alcohol during his Navy enlistment, which was readily accessible during pool playing and luncheon breaks (*see* ex. 1; R.T., at 36).

Once discharged from the Navy, Applicant continued his drinking. After a brief period of relatively little drinking (between 1981 and 1982), he returned to heavy drinking while assigned by a new employer to deployment in a far northern outpost. In this northern assignment, he stayed in barracks that had a bar. With so much darkness to content with, he and his co-workers off-passed the time with beer drinking during off-duty hours. This job lasted several years (until 1985). With his next job (1985-1986), he reduced his drinking to minimum levels.

During a brief period of unemployment (1987), Applicant returned to full-time classes (unemployed at the time), still holding his drinking to minimum levels. Not long after he joined his spouse abroad (in 1988), he found a new job. Marriage pressures, though, contributed to his increased drinking as a way of self-medicating his episodes of depression. Unable to resolve their marriage difficulties, he separated from his first spouse and returned to the US in 1990.

Accepting an assignment with a new employer on his return to the States, Applicant relocated to his current location in

1991. During his first five years at his new location, he continued to drink at moderate to excessive levels between 1991 and 1996. His drink of choice became mixed drinks. He became especially fond of a drink commonly known as a greyhound: It consisted of grapefruit juice and vodka (ex. 1). While Applicant cannot recollect the exact frequency of his mixed drink consumption over the course of his employ with this company, he admits to drinking excessively during a five-year period spanning 1991 and 1996; albeit still below his pre: 1990-1991 levels (*see* R.T., at 42). He attributes his excessive drinking during this time frame to youth and the absence of responsibility.

Applicant cut back on his drinking somewhat for a spell after he met his new spouse in 1995, but returned to heavy beer drinking in 1996 while on temporary duty assignments for his defense contractor, regularly consuming one to fifteen beers over the course of a day between 1996 and 2000. On only two occasions, though, does he recollect consuming 14 to 15 beers over the course of a day: Once in February 1998 while on a deep sea fishing cruise with friends, and on opening day of the 1997 football season when he gathered with friends for a day of barbecued food and drink. Essentially, since he met his current spouse in 1995, he has seldom frequented bars (*see* R.T., at 33).

Applicant has always consumed alcohol for the love of the taste, and not because he has any compelling need for it. He acknowledges to becoming physically and verbally abusive to others when he is under the influence of alcohol, but not physically so since a last altercation in the 1980 time frame. Applicant cannot recollect even experiencing a blackout before 1996 (albeit acknowledging to be sure he did), and has never been diagnosed or apprised of any kind of drinking problem (*see* R.T., at 46, 57). He has never been counseled or treated either for any alcohol problems (*see* R.T., at 47).

Drinking was a contributing factor to a number of alcohol-related incidents involving Applicant over a twenty-year period. He was first arrested and convicted of DuI in the early 1970s and fined less than \$300.00. Ten years later he was arrested and convicted again of DuI. This time he was also required to attend an alcohol education awareness program. Applicant was arrested a third time for DuI offense in November 1990, found guilty, fined \$800.00, and ordered to perform community service, which by all accounts he successfully completed.

While deployed in a US territory abroad (in February 1994), Applicant and some friends had attended a small going away party (after completing a company project) and were at a local bar to celebrate. After making a cite assessment that each of his co-workers were too intoxicated to drive home, he quickly agreed to drive them home. Applicant was subsequently cited by a police officer. Asked by the arresting officer to perform a breathalyser test, Applicant complied and blew a .12 BAC. In court Applicant was found guilty, fined \$500.00, placed on one year's unsupervised probation, and ordered to serve a total of 44 hours in jail. He complied with these conditions.

Applicant continues to drink at light consumption levels (mostly on special social occasions) without any further alcohol-related incident since his last one in 1994 (*see* R.T., at 43-44). Only once since 1994 can he recall drinking to intoxication, this in 1999 (*see* R.T., at 48). Applicant has never missed a day of work because of alcohol abuse, and has never been counseled or cited at work for any kind of work-related alcohol problems. Applicant doesn't consume hard liquor anymore and occasionally has a beer (*see* R.T., at 44-45). His current spouse keeps liquor in the house mainly for social guests (R.T., at 44).

Besides alcohol, Applicant has tried illegal drugs. Between 1970 and 1973, he experimented with a variety of illegal drugs: cocaine, marijuana, psilocybin mushrooms, LSD, and meth-amphetamines (ex. 1). He continued to smoke marijuana from 1973 to 1987, but never to the extent where it in anyway impacted on his use of alcohol. His last use of illegal drugs occurred in February 1987, when he shared a marijuana cigarette in an adjoining apartment while his spouse and kids were away (*see* R.T., at 49). His current intention is to never use illegal substances again (R.T., at 53). His stated intentions are backed by over fifteen years of seasoned abstinence, appear credible under the circumstances, and are accepted. Applicant's use of marijuana while in military service represented a breach of Navy guidelines known to Applicant at the time; even though he was never apprehended, counseled, or punished for the breaches.

When asked to complete a security questionnaire (SF-86) in January 2000, he answered **no** to question 28, which inquired about his use of controlled substances while holding a security clearance with the US Navy (*i.e.*, between 1974 and 1978) and thereafter. Applicant attributed his omission to misreading of the reference in the question to "ever illegally used," believing his prior drug use had been already covered in previous investigations preceding his grant of clearances in 1974, 1982, 1989 and 1991, respectively (*see* ex. 1). How he covered his use of marijuana in security

clearance applications covering these investigations is not clear.

To be sure, the word **ever** is plainly stated in question 28. Applicant's marijuana use during his Navy tour and during ensuing periods while he held a clearance was considerable by his own accounts and of security significance, given his holding of security clearances at the time. That he wasn't charged or punished for his use of illegal substances doesn't make his use any less material.

Still, Applicant was forthcoming in listing his alcohol-related incidents in the same SF-86 (omitting only his 1982 incident for attributable memory lapses). Because he was able to correctly deny any use of marijuana within the last seven years (the question put to him in question 28 of his SF-86), it is not implausible for him to be a little confused about the scope of inquiry of question 28. Adding credence to his honest mistake claims is the high regard he is held in by his supervisors and co-workers at work for his honesty, trustworthiness, dedication and professionalism (*see ex. A*). This honesty was tested again in an ensuing DSS interview in November 2000. When asked about his alcohol and substance abuse history in this interview, Applicant disclosed his prior drug use during his military service free of any indicated confrontation from the interviewing agent (*see ex. 1; R.T., at 50-51*).

Taking into account all of these considerations when appraising Applicant's claims of a good-faith mistake claims over the meaning of question 28, his claims of misreading the question, while not entirely logical, are accepted.

POLICY

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires the Judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the Judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Alcohol Consumption

Basis: excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk fo unauthorized disclosure of classified information due to carelessness.

Disqualifying Conditions:

DC 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.

DC 5 Habitual or binge consumption of alcohol to the point of impaired judgment.

Mitigating Conditions:

MC 2 The problem occurred a number of years ago and there is no indication of a recent pattern.

MC 3 Positive changes in behavior supportive of sobriety.

Personal Conduct

Basis: conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Disqualifying Conditions:

DC 2 The deliberate omission, concealment, falsification or misrepresentation 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.

DC 5 A pattern of dishonesty or rule violations.

Mitigating conditions:

MC 1 The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability.

Criminal Conduct**Disqualifying Conditions:**

DC 1 Allegations or admission of criminal conduct.

DC 2 A single serious crime or multiple lesser offenses.

Mitigating Conditions:

MC 1 The criminal behavior was not recent.

Burden of Proof

By dint of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant presents as a respected field engineer with many years of meritorious service in the defense industry, who brings a history of prior alcohol abuse, use of illegal substances while holding a security clearance, and more recently, omission of his prior illegal use of marijuana while holding a security clearance. Analysis follows.

Applicant's alcohol history

A moderate to heavy drinker for much of his adult career that traces to his high school years, continuing through 1990,

who experienced several alcohol-related incidents, he trimmed his drinking considerably since 1990 and maintains a current drinking pattern (mostly beer) at light consumption levels. Before cutting back to light social drinking, Applicant experienced several alcohol-related incidents between 1970 and 1994: four altogether, for which he was convicted, fined and in the more recent cases, ordered to attend either alcohol education classes or perform community service. Never diagnosed with either a dependence or abuse problem, he assures he has no trouble controlling his drinking, or has any kind of drinking problem that he is personally aware of. He is credited with completing all of the conditions attached to his various guilty pleas. Based on his established alcohol history, two disqualifying conditions of the Adjudicative guidelines for alcohol may be invoked: DC 1 (alcohol-related incidents away from work) and DC 5 (habitual or binge drinking).

By his actions and improved understanding, Applicant demonstrates he has taken the necessary restorative and corrective measures in his personal affairs to ensure he does not repeat the same or similar judgment lapses associated with his prior problems with alcohol abuse. His mitigation efforts not only reflect important seasoning without any further incidents or problems in these covered areas (for almost eight years now), but manifest impressive and sustaining positive steps to ensure that he does not experience any alcohol abuse relapses or recurring problems with law enforcement authorities. It is noteworthy that Applicant's maintained light drinking pattern over the past eight years has not involved him with any problems with either law enforcement authorities or his supervisory force at work. Applicant's efforts to remedy his judgment lapses associated with alcohol abuse provide sufficient demonstrative indications of sustained mitigation to overcome any residual security risks associated with his past judgment lapses. He may take advantage of two of the Guidelines' mitigating conditions for alcohol: MC 2 (problem occurred a number of years ago) and MC 3 (positive changes in behavior).

Considering the record as a whole, Applicant makes the convincing showing he has both the maturity and resource support at his disposal to avert any recurrent problems with judgment lapses related to alcohol and criminal conduct, enough to warrant safe predictions that he is no longer at risk to judgment impairment associated with such conduct. Favorable conclusions warrant with respect to the judgment impairment allegations covered by Guidelines G and J (re: the covered alcohol-related incidents).

Applicant's SF-86 omission

Security concerns are not confined to Applicant's drinking history: They involve omission of his illegal use of marijuana while possessing a security clearance in the Navy. Because his use of marijuana occurred during a period he held a security clearance in the Navy (over twenty five years previous), it retains its materiality to a clearance investigation; even though marijuana use generally is excepted on clearance applications that is more than seven years old.

Applicant assures he misunderstood question 28 of his SF-86 and had no intent to deliberately omit the information. Credibility of his mistaken understanding claims are buttressed by the correct information he supplied in the balance of his SF-86 relative to his more recent alcohol-related incidents and the use of marijuana generally. He draws credibility support, too, from the unprompted candor he displayed in his ensuing DSS interview, and the overall reputation for honesty and trustworthiness he has established at work. Claims of deliberate omission of his marijuana use while holding a security clearance earlier are concluded, accordingly, to be unsubstantiated by the evidence. Applicant, in turn, may take full advantage, as such, of MC 1 (information not substantiated). Favorable conclusions warrant with respect to sub-paragraph 2.a of Guideline E, as well as with sub-paragraph 3.b of Guideline J.

Applicant's actions as they pertain to pattern rule violations

Applicant's admitted use of marijuana while holding a security clearance in the Navy also draw security concerns relative to actions that reflect a pattern rule violation. His actions warrant initial application of DC 5 (pattern rule violations) of the Adjudicative Guidelines for Personal Conduct. While still material enough to draw security-clearance concerns, Applicant's actions are considered mitigated by the passage of time, taking account of the factors covered by E.2.2 of the Adjudicative Process. Favorable conclusions warrant as well with respect to sub-paragraph 2.b of Guideline E.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the factors set forth in the Procedures section (paragraph 6) of the Directive, as well as E.2.2 of the Adjudicative Process of Enclosure 2 of

the same Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE G (ALCOHOL CONSUMPTION): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

Sub-para. 1.e: FOR APPLICANT

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

GUIDELINE J (CRIMINAL CONDUCT): FOR APPLICANT

Sub-para. 3.a : FOR APPLICANT

Sub-para. 3.b: FOR 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge