

DATE: October 11, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-14674

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

William S. Fields, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's excessive use of alcohol from 1995 until at least February 2002, involving five alcohol-related convictions, the most recent of which occurred in 2002, have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On May 20, 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, issued the attached 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing on June 27, 2002, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on July 10, 2002. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on July 18, 2002, and he submitted no reply. The case was assigned to the undersigned for resolution on September 24, 2002.

FINDINGS OF FACT

The Applicant is 24 years old. He is employed by a defense contractor as an Engineering Analyst Technician, and he seeks a security clearance in connection with his employment.

The Government opposes the Applicant's request for a security clearance, on the basis of allegations set forth in the attached Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and criterion in

the SOR:

Paragraph 1 (Criterion G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant has admitted to a pattern of abusive drinking, at times to the point of intoxication, from approximately 1995 to at least February 2002. The Applicant began consuming alcohol at the age of eighteen. His normal consumption is between twelve and fifteen beers per week. This drinking pattern has continued until at least 2002. As a result of his abusive drinking he has been arrested and convicted of five alcohol-related incidents. (*See*, Item 6 of FORM).

In June 1998, the Applicant was given a citation charging him with Possession of Malt Beverage/Unfortified Wine Underage. On August 24, 1998, he waived trial, pled responsible, and was sentenced to pay to pay a fine of \$25.00. (*See*, Item 3 of FORM).

In March 1999, the Applicant was charged with being drunk in public. The Applicant explained that he had been drinking at a bar and then decided to walk home. His friend pulled up beside him in his car and ran into the Applicant. The Applicant fell to the ground but was not hurt. He was subsequently arrested. He pled not guilty, but was found guilty. He was fined \$25.00 plus court costs. (*See*, Item 3 of FORM).

That same day, the Applicant was arrested and charged with Underage Possession of Alcohol. He was released on a \$500.00 surety bond. He pled not guilty, but was found guilty and sentenced to (1) 10 days in jail, suspended, (2) 50 hours in a community Diversion Program (no record of completion) and (3) pay \$90 in court costs. The court records disclose that the Applicant admitted to a prior underage possession charge. (*See*, Item 3 of FORM).

In June 1999, the Applicant was given another citation for the Possession of Malt Beverage Underage. The Applicant was at the beach with some friends with an open can of beer when the police cited him. He was scheduled to appear in court on August 3, 1999, but failed to appear. On December 1999, the case was dismissed with leave to re-file because the Appellant could not readily be found. This case remains pending. (*See*, Items 3 and 5 of FORM).

In February 2002, the Applicant was arrested for Driving Under the Influence of Alcohol. In March 2002, he went to court and was convicted of the charge. He was sentenced to (1) a Driver's License suspension (2) a fine of \$150.00 and court fees, (3) 3 days in a Farm (4) Enroll in a 10 week Virginia Alcohol Safety Action Program (5) Attend AA meetings and, (6) Attend a Driver Improvement course. (*See*, Item 3 of FORM).

The Applicant states that he has not had any alcohol to drink since his arrest in February 2002. He states that the hurt he has caused his family has made him realize the need for him to grow up and start taking life seriously. (*See*, Item 3 of FORM).

Paragraph 2 (Guideline E - Personal Conduct).

The Applicant completed a Security Clearance Application dated April 27, 1999, wherein he was required to answer whether he has ever been charged with or convicted of any offenses related to alcohol or drugs? (*See*, Item 4 of FORM, Question 24). The Applicant failed to list his arrest and charge for Underage Possession of Alcohol in March 1999. The Applicant explained that he did not omit this information in an effort to conceal or falsify material information from the Government. He simply confused the dates of his offenses. (*See*, Items 3 and 6 of FORM). It is understandable that while the Applicant candidly revealed several offenses he committed, mistakenly he omitted this one. Accordingly, I find that he did not intentionally conceal this information from the Government. Guideline E is found for the Applicant.

POLICIES

Enclosure 2 of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Alcohol Consumption

Conditions that could raise a security concern:

1. alcohol-related incidents away from work, such as driving under the influence
4. habitual or binge consumption of alcohol to the point of impaired judgement.

Conditions that could mitigate security concerns:

None.

Guideline E (Personal Conduct)

Conditions that could raise a security concern:

None.

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 general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- 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, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. All available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have 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

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 per day, seven days per week. The Government is

therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in repeated instances of alcohol abuse that demonstrates poor judgment or unreliability.

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 abused alcohol (Guideline G). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case.

As previously discussed, with regard to the Applicant intentionally concealing his alcohol-related offense of March 1999, on his security clearance application, I find that he did not. Although he did not reveal this particular offense, obviously a simple oversight, he did reveal several others. There is no evidence in the record that establishes that he deliberately attempted to conceal this offense. Accordingly, Guideline E (Personal Conduct) is found for the Applicant.

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, a failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an Applicant has demonstrated a lack of respect for the law in his private affairs, there then exists the possibility that he or she may demonstrate the same attitude towards security rules and regulations.

Upon careful review of the record, it is clear that from 1995 to at least February 2002, over a period of seven years, the Applicant consumed alcohol, at times to excess and to the point of intoxication. There is no evidence as to whether the Applicant received treatment for his abusive drinking, whether he was formally diagnosed with alcoholism, or whether he has ever tried to remain completely sober for any significant period of time. However, there is clear evidence that the Applicant has had numerous alcohol-related incidents, specifically five alcohol-related convictions, the most recent of which occurred in February 2002. The Applicant still remains on probation from this conviction. The Applicant states that he has not consumed alcohol since his last arrest in February 2002. Accepting this, he has approximately eight months of sobriety.

Given the recency and extent of his alcohol abuse, evidenced by these five convictions, the most recent of which occurred just eight months ago, he is not sufficiently trustworthy to handle classified information at this time. Based on the totality of the evidence, I find that the Applicant's alcohol consumption establishes doubt about his judgment, reliability and trustworthiness. More time is needed in rehabilitation to determine that the Applicant will not return to his old ways of alcohol abuse. Accordingly, Guideline G (Alcohol Consumption) is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara. 1.g.: Against the Applicant.

Paragraph 2: For the Applicant.

Subpara. 2.a.: For 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.

DARLENE LOKEY ANDERSON

Administrative Judge