

DATE: November 26, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-14938

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Martin H. Mogul, Esquire, Department Counsel

FOR APPLICANT

Kenneth M. Roberts, Esquire

SYNOPSIS

Applicant is a 44-year-old employee of a defense contractor. He has a 25-year history of alcohol use, sometimes to excess, but has had no alcohol-related arrests or incidents at work or in his private life. In 2000, he self admitted himself to a rehabilitation program and has not used alcohol since. He frequently attends AA meetings and has a sponsor. He recently received a favorable prognosis from a psychiatrist. Mitigation has been established. Clearance granted.

STATEMENT OF THE CASE

On June 3, 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 June 25, 2002, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made after a hearing before a DOHA Administrative Judge. The matter was assigned to me for resolution on August 8, 2002. A Notice of Hearing was issued on August 29, 2002, setting the matter for September 10, 200o, but at the request of newly retained counsel, the hearing was rescheduled to October 8, 2002. At the hearing, Applicant testified and called four additional witnesses. The Government did not call any witnesses except for Applicant himself, and offered four exhibits, which were marked as Government Exhibits (GX) 1 - 4, to which Applicant did not object. Applicant offered 17 exhibits, which he marked as Applicant's Exhibits (AX) A - W. However, examination showed that those documents marked Q, R, and S were not actually evidence, and that those marked T, U, V, and W were duplicates of GX 1 - 4. As a

result, only those documents marked A - P were admitted into evidence, as were all four of the Government's exhibits. The transcript (Tr) was received at DOHA on October 16, 2002.

FINDINGS OF FACT

Applicant is a 44-year-old (DOB 11/17/1958) computer network administrator for a defense contractor. His employer is seeking a security clearance for Applicant in connection with his employment. In his response to the SOR, which contains four allegations under Guideline G (Alcohol), Applicant denied allegation 1.a. and admitted allegations 1.b., 1.c., and 1.d.

After considering the totality of the evidence derived from Applicant's response to the SOR, his testimony and that of his witnesses, and all of the Government's and Applicant's exhibits, I make the following FINDINGS OF FACT as to each SOR allegation:

GUIDELINE G (Alcohol)

1.a. - Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1977 to October 2000 (Response to SOR, GX 1 at Item 30, and GX 2).

1.b. - Applicant voluntarily entered a substance abuse (alcohol) treatment program in June 1995, when he was engaged in a binge drinking session. After completion of the program, Applicant attended meetings of Alcoholics Anonymous (AA) for a period of time and remained sober until the summer of 1999, when he began drinking again to the point that he consumed "an occasional six pack of beer" and "eventually [he] would drink a fifth of vodka a day for a couple of days at a time" (GX 4).

1.c. - As a result of the drinking cited in 1.b., above, Applicant voluntarily entered a three-day inpatient substance abuse (alcohol) program at Hospital A from October 1, 2000 to October 4, 2000 for a condition diagnosed, in part, as alcohol dependence. Applicant had "gone on one of [his] heaviest drinking [binges], and [he] couldn't maintain sobriety." He discussed it with his present wife and "we felt [entering the treatment program] was the best course of action" (Tr at 109). The final diagnosis was "alcohol dependence continuous and relapse." Applicant had consumed alcohol on the day of his admission to Hospital A. This was prior to Applicant's completion of the security clearance application that began the present adjudication process (Tr at 108, 109) and resulted from his recognition of his problem with alcohol after his last a drinking episode (Tr at 109).

1.d. - In June 1990, Applicant underwent surgery for a perforated intestine and was told by a doctor that his "drinking days were over" (GX 2). Notwithstanding the above cited treatment and advice, Applicant began drinking alcohol again in 1995 and engaged in binge drinking (*Id.*).

Applicant presented a number of positive letters of recommendation from friends and work colleagues (AX A, B, C, D, E, F, G, H, I, J, and K) and two awards for exemplary work performance (AX O and P). Most of Applicant's witnesses knew about his "former problem with alcohol abuse," but none of them ever saw Applicant consume alcohol and none have ever seen him be careless in the handling of classified material. One witness expresses his opinion that Applicant "now has a job for which he is proud, a wife, children, and life which are stable and friends which support his lifestyle - a lifestyle without alcohol" (GX H). Applicant's recent work evaluations are all "good" or "high" (AX N).

One of his witnesses travels extensively with Applicant on company business and, although aware of Applicant's past problems, has never seen him consume alcohol (Tr at 85 - 87). Another witness was Applicant's AA sponsor. He is aware of Applicant's last "slip" (Tr at 90) but is encouraged by Applicant's overall progress. He speaks with Applicant "2 or 3 times a week" and they both attend AA meeting 2 or 3 times a week (Tr at 91). This witness has been active in AA for 17 years and has been a sponsor for about 30 individuals. He provided a thorough discussion of the basis for his evaluation of Applicant (Tr at 89- 103) as a "winner" (Tr at 92, 93).

Applicant presented the testimony of a psychiatrist (Tr at 59 - 72 and AX L, his resume) who prepared a written report, dated September 30, 2002, in which he explains what Applicant told him, his own observations of Applicant, and his generally favorable conclusions. The final diagnosis is: "Substance dependency, Alcohol, in remission" (AX M). The

doctor views Applicant's history as showing that his rehabilitation began in 1989, until a relapse during a stress period of his life (Tr at 62). The doctor states that although Applicant's recovery was compromised, he recognized the problem and reentered the treatment program. He views Applicant as a "good bet for maintaining his sobriety" (Tr at 63 - 66), despite his past problems with following through with his promises to abstain (Tr at 71). He again attends AA meetings and has a strong sponsor (Tr at 77 - 79).

In response to a question by Department Counsel about whether he realized he was jeopardizing his security clearance by consuming alcohol, Applicant stated:

No, because I thought I could drink successfully and I proved again that I cannot. And I would like to reiterate the fact that I need to daily remind myself of that, and again with the people that are in my life, and my sponsor and other people in AA, and my group, and that I can't drop out (Tr at 111).

POLICIES

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

GUIDELINE G (Alcohol Consumption)

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 security concerns and may be disqualifying include:

4. Diagnosis by a credentialed medical professional; of alcohol abuse or alcohol dependence.
5. Habitual or binge consumption of alcohol to the point of impaired judgment.
6. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following the completion of an alcohol rehabilitation program. This is applicable to Applicant's 1995 program but not to the more recent 2000 treatment program.

Conditions that could mitigate security concerns include:

1. The alcohol-related incidents do not constitute a problem, since no such incidents are alleged in the SOR or cited in the record.
2. The problem occurred a number of years ago and there is no indication of a recent problem.
3. Positive changes in behavior supportive of sobriety.
4. Following a diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates in meetings of Alcohol Anonymous or similar organizations, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

I have also evaluated the totality of the evidence under both the specific additional guidance found in Enclosure 3 to the Directive and the nine general guidelines found in Section E2.2.1. of Enclosure 2 to the Directive.

CONCLUSIONS

This 44-year-old Applicant has had a drinking problem for many years. He began consuming alcohol in 1977, at about age 19. His drinking increased to the point that he sometimes became intoxicated and blacked out. After a period of treatment in 1994/1995, he stopped drinking for five years, until about 1999, when he dropped out of AA and began

drinking again, "on and off" (GX 4). In the year prior to his last period of treatment (October 1, 2000 to October 4, 2000), he mixed periods of sobriety with drinking binges of about a week at a time, usually vodka and two to four beers a day. He sometimes blacked out, and last consumed alcohol on the day of his admission to treatment in October 2000 (*Id.*).

The record contains no indications of any alcohol-related violations of the law or problems at work. Applicant has suffered serious medical problems, in 1990 (perforated intestines) and again in 1999 (pancreatitis) (*Id.*, at page 13). He has completed treatment programs and attended AA meetings in the past, but subsequently began drinking again. As of October 2000, his "job [was] beginning to suffer because of [his] drinking," as was his relationship with his girlfriend, now his wife (GX 4 at page 13 and Tr at 56).

My evaluation begins with the premise that the longer and more extensively an individual is engaged in a negative course of conduct, the longer the period of rehabilitation must be AND the

more comprehensive any evidence of rehabilitation must be to reduce the risks of potential mishandling of classified information to an acceptable level.

In the present case, several Disqualifying Conditions (DC), 3, 5, and 6) are established by the record AND have a logical and factual connection or nexus with Applicant's eligibility to hold a security clearance. Without substantial evidence in mitigation and/or extenuation, this case would have to be determined *against* Applicant.

Mitigating Conditions (MC)

MC 1 applies because, although Applicant has been drinking for many years, there is no record of his having been involved in *any* alcohol-related incidents, at work or in his private life (Tr at 52).

MC 2 applies because the problem occurred more than two years ago and there is no evidence of a recent problem.

MC 3 applies because the totality of the record demonstrates "positive changes in behavior supportive of sobriety."

MC 4 applies because Applicant has established all of the required elements, specifically completion of the treatment program, complying with aftercare requirements, abstaining from alcohol for at least one year (actually two years), and presenting a favorable prognosis from a psychiatrist with an impressive background (GX L and M and Tr at 58 - 80).

Under these circumstances, I conclude that in 2000, Applicant had reached the point in his use and abuse of alcohol that he was finally able to recognize the necessity of rehabilitating himself to protect his life, his relationship with his wife, his security clearance, and his job. Over the past two years, his improved life style has been evident to many people who know him on the job and in his private life, and to his AA sponsor, who has been around long enough to distinguish between denial and candor when dealing with recovering alcoholics. After considering the entire record, I conclude there is clear evidence of rehabilitation.

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." After considering all

of Applicant's evidence along with that of the Government, making findings of fact, and determining which Disqualifying and Mitigating Conditions are applicable under the facts of record, I conclude that Applicant has successfully mitigated the concerns expressed in the SOR and that he has demonstrated that he possesses the requisite judgment, reliability, and trustworthiness required of anyone seeking access to the nation's secrets.

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 Consumption) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.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.

BARRY M. SAX

ADMINISTRATIVE JUDGE