

DATE: May 19, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-15869

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant's multiple alcohol-related arrests raised security concerns, Applicant stopped drinking in January 2001 and provided evidence which shows positive changes in his behavior supportive of sobriety for the past two years. According to both the government medical expert and his own treating physician, Applicant is fully rehabilitated and will remain so as long as he is committed to abstinence. Now that Applicant is on medication for his Bipolar disorder, both his doctor and the government's expert evaluation provide him a favorable prognosis. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on January 3, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) The SOR alleges specific concerns over Alcohol Consumption (Guideline G). (Item 1) Applicant responded to these SOR allegations in an Answer notarized and dated January 20, 2003 where he admitted all the allegations.

Appliant did not request a hearing, so the case was assigned to Department Counsel to prepare for a decision on the administrative record. On February 25, 2003, she prepared the File of Relevant Material (FORM) for the Applicant's review and advised Applicant that he had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that he had the right to be represented by counsel.

A Personnel Security Specialist (PSS) sent the FORM to Applicant on February 25, 2003, and again notified the Applicant that he had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge. Applicant received the FORM on March 10, 2003. Applicant submitted a response on March 23, 2003, and submitted an exhibit from his doctor (Exhibit A); on March 31, 2003, Department Counsel indicated she did not object. On March 31, 2003, the case was assigned to me.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 68 years old, has been an employee of Defense Contractor #1 in State #1 since August 1996; previously he worked for Defense Contractor #2 from 1991 to 1996. He has worked on the military base for over twenty years. In February 2001 he applied for a security clearance by completing a Security Clearance Application (Standard Form 86) (SF 86). Applicant was granted a Secret security clearance by the Defense Department in September 1987; he completed a Personnel Security Questionnaire (DD 49) in February 1987. He served in the US military from 1957 to 1963. (Items 4, 5; Exhibit A)

Applicant was married in September 1983 to Wife #2; he was married to Wife #1 in 1958 and divorced in 1979; he has three children born in 1963, 1964, and 1966 and two stepchildren born in 1959 and 1963. (Items 4, 5)

Alcohol Consumption

On his DD 49 in February 1987 Applicant documented a number of Driving under the Influence (DUI) arrests and convictions in 1974, 1978, 1980, and 1985 in State #1. (Item 5) On his SF 86 Applicant reported a November 1999 DUI in State #2 where his license was suspended in State #1 except for driving privileges back and forth to work. (Item 4) In November 1999 Applicant lost control of his vehicle; he had a .149 BAC at the time. He pled guilty to Operating a Vehicle While Intoxicated and the charge of Operating a Vehicle with Blood Alcohol Content of .10 or More was dismissed with prejudice; his sentence of one year was suspended; he was fined \$200 and \$125.50 in court costs and had to pay an alcohol and drug countermeasures fee of \$200. He was placed on probation for one year. (Item 8)

Applicant went for assessment at a hospital in May 2000 as he was referred by the State #2 courts as a condition of probation after the November 1999 DUI; a licensed clinical social worker diagnosed him with Alcohol Abuse and referred him for treatment. In May 2000 he told the hospital that he drank 2-3 beers per weekend for the year prior to the arrest. (Item 10)

When interviewed by the Defense Security Service (DSS) in April 2001, Applicant gave more details on the 1999 arrest in State #2 where he pled guilty, paid fines, and went to alcohol treatment and completed probation. He reported another arrest in January 2001 in State #1 where he was arrested for DUI and marked lane violation; the charges were reduced to "reckless operation" and the marked lanes charge was dismissed. He realized that he has an alcohol problem and has not had any alcohol since January 2001. In April 2001 he stated he had no intention to drink any more. (Item 6)

At the request of DOHA, in July 2002 Applicant agreed to undergo a psychiatric evaluation. He was evaluated by Dr. L, a military doctor, the chief of Preventive and Forensic Psychiatry. Applicant stated he had been sober since his last arrest in January 2001. Dr. L reported Applicant had had alcohol treatment and attended Alcoholics Anonymous (AA) briefly. While he was diagnosed with Bipolar Disorder in 2001 and Alcohol Abuse, Dr. L concluded that even though both diagnoses are by nature recurrent, since neither appeared until late in his life, that usually indicates a good prognosis. Dr. L concluded that each diagnoses contributed to the other: his manic symptoms were apparent after his DUI, and many persons drink to self-medicate mood symptoms. While Applicant is at risk for recurrence, Dr. L observed that Applicant's mood remained stable for 18 months with his voluntary abstinence. This government expert recommended that Applicant retain his security clearance on the condition of complete abstinence. While his past diagnoses presented concern over significant defects in judgment and reliability, this expert concluded that Applicant's diagnoses do not now present any concern and present low risk of doing so in the future. (Item 11)

Applicant's doctor, Dr. B, presented his medical opinion that Applicant is doing very well and is currently in remission for both Bipolar Disorder and Alcohol Dependency. This M.D. has been treating Applicant since November 2002. He reported that Applicant's wife also observes that he is in remission. Dr. B concluded that Applicant should do very well in the future if he continues to refrain from alcohol and continues on his current medication. (Exhibit A)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline G --Alcohol Consumption

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 a security concern and may be disqualifying include:

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;

Conditions that could mitigate security concerns include:

3. Positive changes in behavior supportive of sobriety;

4. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with after-care requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, 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.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Alcohol Consumption

The Government's security concerns arise from Applicant's multiple alcohol-related arrests in 1970, 1980, 1985, 1999 and 2001. He did receive a diagnosis of alcohol abuse from a licensed clinical social worker in May 2000 when he was referred for a court ordered assessment after the 1999 DUI incident. Conditions that could raise a security concern and may be disqualifying include: (1) Alcohol-related incidents away from work, such as driving while under the influence. His alcohol incidents show a pattern even though the incidents were separated by several years.

While he was diagnosed with alcohol abuse in May 2000 by a licensed clinical social worker, the Government's expert who assessed Applicant in October 2002 concluded that Applicant has a good prognosis as his diagnoses of Bipolar Disorder in 2001 and Alcohol Abuse did not appear until late in his life. Each contributed to the other: his manic symptoms were apparent after his DUI, and many persons drink to self-medicate mood symptoms. While he concluded that Applicant was at risk for recurrence, this expert recommended that Applicant retain his security clearance on the condition of complete abstinence as his mood had remained stable for 18 months with his voluntary abstinence. While Applicant's past diagnoses presented concern over significant defects in judgment and reliability, this expert concluded that his diagnoses do not now present any concern and present low risk of doing so in the future.

Similarly, Applicant's doctor, Dr. B, presented his expert opinion in March 2003 that Applicant is doing very well and is currently in remission for both Bipolar Disorder and Alcohol Dependency. This M.D. has been treating Applicant since November 2002. Dr. B also gave Applicant a favorable prognosis if he continues to refrain from alcohol and continues on his current medication.

To his credit, Applicant has been sober for over two years since his last incident in January 2001. Thus he has met conditions that mitigate ⁽²⁾ security concerns: he has shown under MC 3 positive changes in behavior supportive of sobriety and under MC 4, following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with after-care requirements, participates frequently in meetings of AA or a similar organization, 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. In this case Applicant not only has a favorable prognosis from his own expert, but also from the government's expert. While Applicant has had a serious history of alcohol-related problems, both experts believe that now with proper treatment, his prognosis is favorable. He has over two years of sobriety which is confirmed by his medical doctor and his wife's report to the treating physician. While there is limited evidence on his involvement in AA, both the Government's expert and his doctor provided a favorable prognosis for him now that he is on medication. Therefore, I conclude that Applicant has mitigated his long history of alcohol abuse.

After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a. through 1.h. under SOR Paragraph 1.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: 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 a security clearance for the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6,

dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. Conditions that could mitigate security concerns include:

1. The alcohol related incidents do not indicate a pattern; 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 diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with after-care requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, 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.