

DATE: May 14, 2002

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-19554

DECISION OF ADMINISTRATIVE JUDGE

JOHN R. ERCK

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

W. John Gadd, Esquire

SYNOPSIS

Since being arrested for two alcohol-related incidents within 5 months (August 2000 and January 2001), Applicant, a 44-year-old software engineer with an excellent work record and no prior arrests for alcohol-related misconduct, has completed a required alcohol counseling program, been given a good prognosis by one of the addictions counselors, abstained from alcohol for 10 months, and improved the relationship with his wife. Clearance is granted.

STATEMENT OF THE CASE

On September 12, 2001, the Defense Office of Hearings and Appeals, (DOHA), pursuant to Executive Order 10865, "*Safeguarding Classified Information Within Industry*," dated February 20, 1960, as amended, and modified, and Department of Defense Directive 5220.6, "*Defense Industrial Personnel Security Clearance Review Program*" (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant which detailed reasons why DOHA could not make the preliminary finding under the Directive that it is clearly consistent with the national interest to grant a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether a security clearance should be granted.

Applicant answered the SOR on October 30, 2001, and requested a hearing before a DOHA Administrative Judge. The case was assigned to this Administrative Judge on January 14, 2002. On April 5, 2002, a hearing was convened for the purpose of considering whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of six exhibits. Applicant relied on his own testimony and on the testimony of three additional witnesses. A transcript of the hearing was received on April 16, 2002.

FINDINGS OF FACT

The Statement of Reasons (SOR) alleged Applicant had consumed alcohol excessively from approximately 1976 to at least June 2001, that he had been arrested for alcohol-related misconduct in August 2000 and January 2001, and that he had received alcohol counseling from February 2001 to May 2001. Applicant denied, with explanations, all allegations

set forth in the SOR. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 42-year-old software engineer for a DoD contractor. He has worked for his current employer since 1996, and has worked in the same general career field since graduating from college in 1982. He is married and the father of two children. He has not previously applied for or held a security clearance. His suitability for holding a security clearance has been questioned because of his involvement in alcohol-related incidents in August 2000 and January 2001.

Applicant's history of alcohol consumption began when he was a teenager. He would drink at parties "about once a month and only drank beer." He drank to the point of intoxication about 2 or 3 times a year. His alcohol consumption increased while he was in college--when he began drinking regularly and would become intoxicated "about every other weekend" (Gov. Exh 2). Applicant decreased his alcohol consumption when he graduated and began working; he then drank only once "every three or four weeks," and would not get intoxicated. He increased his alcohol consumption in 1996 when he and his wife began to have marital problems. He would go through stages--occasionally drinking "six to eight beers every three to four days," and then he would not drink at all for three or four weeks.

In August 2000, Applicant had consumed several (six) beers when he discovered the family dog had defecated again in the pool and patio area of the family home. He became very upset and began shouting at the dog. His behavior was sufficiently loud and aggressive that his wife became concerned and called the police. According to the police report (Gov. Exh. 4) prepared incident to their being called by his wife, Applicant was "throwing items throughout the house (and) then punched the bedroom door and broke it." When Applicant yelled "you fat ass bitch, I am going to kill her," his wife was "unsure" if the threats were directed toward her or the dog. His wife reported this was not the first time Applicant "acted like that."

Although Applicant has steadfastly insisted he never became physical with his wife, and that all of his anger was directed toward the dog and not to his wife or to other members of the family, the police arrested him and charged with domestic violence. He remained in jail overnight, appeared before a judge the following morning and was then released on his own recognizance (Gov. Exh 2). He was instructed not to return home or have any contact with his wife. He stayed in a hotel for three weeks and then rented an apartment. The charge of domestic violence was dismissed.

In September 2000, Applicant's father became ill and he (Applicant) began spending considerable time with him and his mother. His father died in December 2000 (Gov. Exh. 2).

In early January 2001 when Applicant was still separated from his wife and grieving his father's death, he went to a bar and drank "about twelve beers" (Gov. Exh. 2). He was arrested for driving under the influence (DUI) when he attempted to drive home. He failed a field sobriety test, and the Breathalyzer results were .17 and .209. He was taken to jail and held overnight. Later after being released the following morning on his own recognizance, Applicant pleaded guilty to driving under the influence. His driver's license was suspended for 30 days; he was sentenced to nine months probation, assessed \$546.00 in court fees and fines, and required to perform 50 hours of community service.

The state agency which conducted an initial evaluation of Applicant following his DUI arrest determined he should be referred for alcohol counseling. He was referred to Facility A where the admitting diagnosis was alcohol abuse. (1) He was required to attend 12 weekly "Level One (2)" counseling sessions from March through May 2001. He also attended 16 meetings of Alcoholics Anonymous (AA). He attended 4 meetings more than required because he believed he benefitted from them (Gov. Exh 2). Upon completing the 12 counseling sessions at Facility A, he was discharged with a "good" prognosis by an addictions counselor. She explained, during testimony at his hearing, she had given Applicant one of the very rare "good" prognosis (that she has given) because of his positive attitude, his honesty with himself and others, his perfect attendance, and his overall level of participation (Tr. 79).

Although Applicant did not consume any alcohol during the 12 weeks he was attending counseling at Facility A, he did consume two beers at a social occasion in June 2001. After that occasion, Applicant made a personal decision to stop using alcohol because he was trying to improve his marriage and he did not want any further problems (Tr. 50). He has not consumed any alcohol since June 2001, and he does not intend to consume alcohol in the future. He returned home

to his wife shortly after his January 2001 arrest. He testified his marriage has improved and he now has a network of friends who do not drink alcohol (Tr. 50).

During the time Applicant was using alcohol, he never experienced blackouts, he never used alcohol at work, and he never missed work because of alcohol use or hangovers.

A supervisor who has been employed by the same company as Applicant for more than 39 years described Applicant as an excellent employee using terms such as: self starter, very dependable, honest and straightforward. Applicant informed him of his DUI the day after it occurred. Another employee testified Applicant is uniquely qualified for the work he is doing; he has the necessary technical skill and experience to make a significant contribution to their employer.

POLICIES

The Adjudicative Guidelines of the Directive are not a set of inflexible rules of procedure. Instead, they are to be applied by Administrative Judges on a case by case basis with an eye toward making decisions with reasonable consistency which are clearly consistent with the interests of national security. In making these overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but also in the context of the factors set forth in Section 6.3 of the Directive. In that vein, the Government not only has the burden of proving any controverted fact(s) alleged in the SOR, it must also demonstrate the facts proven have a nexus to Applicant's lack of security worthiness.

The following Adjudicative Guidelines are deemed applicable to the instant case:

ALCOHOL CONSUMPTION

(Guideline G)

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 a security concern and may be disqualifying include:

E2.A7.1.2.1. 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.

E2.A7.1.2.4. Evaluation of alcohol abuse or alcohol dependence by a licensed social work who is a staff member of a recognized alcohol treatment program.

Conditions that could mitigate security concerns include:

E2.A7.1.3.1. The alcohol-related incidents do not indicate a pattern

E2.A7.1.3.3. Positive changes in behavior supportive of sobriety;

Burden of Proof

The Government has the burden of proving any controverted facts alleged in the Statement of Reasons. If the Government established its case, the burden of persuasion shifts to Applicant to establish his security suitability through evidence which refutes, mitigates, or extenuates the disqualifying conduct and demonstrates it is clearly consistent with the national interest to grant or continue his security clearance.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. When the facts proven by the Government raise doubt about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate he is nonetheless security worthy. As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), "the

clearly consistent standard indicates security clearance determinations should err, if they must, on the side of denials." As this Administrative Judge understands the Court's rationale, doubts are to be resolved against an Applicant.

CONCLUSION

Having considered the record evidence in accordance with appropriate legal precepts and factors, this Administrative Judge concludes the Government has established its case with regard to Guideline G. In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section 6.3, as well as those referred to in Section E2.2. dealing with adjudicative process, both in the Directive.

A security concern is raised by Applicant's occasional, excessive alcohol consumption, by his two arrests for alcohol-related misconduct within a five month time frame (August 10, 2000 and January 5, 2001), and by the alcohol abuse diagnosis rendered by an addictions counselor at Facility A. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of an authorized disclosure of classified information.

Mitigating Applicant's occasional, excessive alcohol consumption is evidence his two recent alcohol-related arrests do not indicate a pattern (E2.A7.1.3.1). One arrest occurred at home where he had been drinking when he became angry with the family dog who had defecated *again* on the patio. The other arrest occurred less than five months later when he overindulged in a bar because of depression over his father's death and separation from his wife and family. Also mitigating his past, excessive alcohol consumption are the positive changes in his behavior supportive of sobriety (E2.A7.1.3.3). He has stopped using alcohol, having not consumed any alcohol since June 2001; he does not keep alcohol in his home; his marriage has improved; he spends his spare time playing racket ball, and he has developed a network of friends who do not drink alcohol. Also mitigating his past alcohol consumption is the favorable prognosis he has received from the addictions counselor at Facility A (E2.A7.1.3.4.).

In concluding the security concern raised by Applicant's past alcohol consumption has been mitigated, favorable consideration has been given to his excellent work record and to his supervisor's positive statements about his work ethic and professional reputation.

FORMAL FINDINGS

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

Paragraph 1 (Guideline G) FOR THE APPLICANT

Paragraph 1.a. For the Applicant

Paragraph 1.b. For the Applicant

Paragraph 1.c. For the Applicant

Paragraph 1.d. For the Applicant

Paragraph 1.e. 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 Applicant's security clearance.

John R. Erck

Administrative Judge

1. According to the addictions counselor who testified on Applicant's behalf, neither Facility A, nor the state agency which conducted the initial

evaluation, employees a credential medical professional (Tr. 88-89) as that term is defined in E2.A7.1.2.3. Thus Applicant has not been diagnosed as an alcohol abuser or as alcohol dependant by a credentialed medical professional.

2. The addictions counselor from this facility--who testified on Applicant's behalf--described Level One as the basic level of counseling, the lowest level that a client can enter for counseling. It is a level of counseling for individuals who had "no extreme issues...(no) alcohol-type problem" (Tr. 75)