

DATE: September 30, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-20686

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 1980 until at least 1999, involving five alcohol related convictions, the most recent of which occurred in 1999, have not been mitigated by sufficient evidence of reform and rehabilitation. Clearance is denied.

STATEMENT OF THE CASE

On June 19, 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 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 31, 2002. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on August 22, 2002, and he submitted a reply dated September 4, 2002. The case was assigned to the undersigned for resolution on September 9, 2002.

FINDINGS OF FACT

The Applicant is 52 years old. He is employed by a defense contractor as an Electrical Manager, 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 the period between 1980 to at least 1999. As a result of his abusive drinking he has been arrested for Driving Under the Influence of Alcohol on at least five separate occasions.

In September 1980, the Applicant was arrested for Driving Under the Influence of Alcohol. He was found guilty, and ordered to pay a fine. (*See*, Government Item 4 and Applicant's Answer to SOR).

In April 1984, the Applicant was arrested for Driving Under the Influence of Alcohol. He was found guilty, and ordered to pay a fine. (*See*, Government Item 4 and Applicant's Answer to SOR).

In June 1989, the Applicant was arrested for Driving Under the Influence of Alcohol. He was found guilty, and ordered to pay a fine. (*See*, Government Item 4 and Applicant's Answer to SOR).

In April 1992, the Applicant was arrested for Driving Under the Influence of Alcohol. He was found guilty, and ordered to pay a fine. (*See*, Government Item 4 and Applicant's Answer to SOR).

In May 1999, the Applicant was arrested for Driving Under the Influence of Alcohol. He was found guilty, and ordered to pay a fine. (*See*, Government Items 5 and 6).

Paragraph 2 (Guideline E - Personal Conduct). The Government alleges that the Applicant is ineligible for clearance because he has engaged in conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor dishonesty, or an unwillingness to comply with rules and regulations.

Since his most recent arrest in 1999, the Applicant has continued to consume alcohol. As of May 2001, he has usually consumed one beer to two glasses of wine a few times a week. On several occasions from March 2000 to March 2001, the Applicant has driven his vehicle after one or two drinks.

There is no evidence in the record as to whether the Applicant has received any treatment for his abusive drinking, whether he has been formally diagnosed as alcohol dependent by a competent medical authority, or whether he has ever tried to stop consuming alcohol.

Mitigation.

There are several letters of recommendation that speak highly about the Applicant.

A letter dated September 4, 2002, from the Special Agent who is the site Security Manager for the Department of State, who conducted the personal interview of the Applicant, and who has befriended the Applicant, indicates that he has observed the Applicant at six to eight embassy and project events. He has further observed him drinking one or two drinks at these social functions. He has never witnessed or heard of the Applicant's use of alcohol resulting in questionable judgment, affecting his reliability or trustworthiness. He has never known him to be involved in any alcohol related disturbances. He has never observed him to drive a vehicle after he has been consuming alcohol. (*See*, Applicant's Response to FORM).

A letter dated September 4, 2002, from the Project Manager at the construction company, who hired the Applicant, indicates that he holds the Applicant in the highest regard. He has only observed the Applicant drink wine at dinner and go out of his way to allow his wife to drive or arrange to take local transportation after he has had consumed alcohol. (*See*, Applicant's Response to FORM).

A letter dated September 3, 2002, from the Project Manager of the Overseas Building Operations, who has known the Applicant for past two years, indicates that the Applicant has demonstrated a strong sense of responsibility and a high

level of judgment. (*See*, Applicant's Response to FORM).

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)

Condition that could raise a security concern:

4. Personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or pressure.
5. A pattern of dishonesty or rule violations

Conditions that could mitigate security concerns:

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 which 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) and engaged in poor personal judgment (Guideline E). 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.

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, and 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 the 1980 to at least 1999, over a period of nineteen 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 1999. Despite this, he has continued to consume alcohol, even though admittedly, he now calls upon his wife or public transportation to get him home from the social events where he has consumed alcohol. Furthermore, it is unclear from the record whether the Applicant still remains on probation from his most recent conviction in 1999.

Given the recency and extent of his alcohol abuse, evidenced by these five convictions, the most recent of which occurred just three years 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) and Guideline E (Personal Conduct) are 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 Paragraphs 1 and 2 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: Against the Applicant.

Subpara. 2.a.: Against 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