

DATE: August 20, 2002

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-20954

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Matthew E. Malone, Esquire, Department Counsel

Pamela C. Benson, Esquire, Department Counsel

FOR APPLICANT

Richard T. Brown, Esquire

SYNOPSIS

Applicant's episodic alcohol abuse between 1989 and 1999 was not mitigated where Applicant's lack of insight into the nature and extent of his abuse and counseling conflicted with his apparent two years of abstinence. Applicant's falsification of his clearance application suggested he could not be relied upon to tell the truth if the truth presented potential adverse consequences to his personal interests. Clearance denied.

STATEMENT OF THE CASE

On 12 October 2001, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 12 November 2001, Applicant answered the SOR and requested a hearing. The case was originally assigned to two different Administrative Judges, but the case was reassigned to me on 20 February 2002 with the turnover in regional assignments. I set the case on 26 February 2002, and issued a Notice of Hearing on 1 arch 2002 for a hearing date on 12 March 2002.

At the hearing, the Government presented nine exhibits--admitted without objection--and no witnesses; Applicant presented three exhibits--one admitted over objection--and the testimony of five witnesses, including himself. DOHA received the transcript on 20 March 2002.

FINDINGS OF FACT

Applicant admitted the factual allegations of subparagraphs 1. a.-f. of the SOR and admitted in part, denied in part, the factual allegations of subparagraphs 1. g.-I. and paragraph 2; accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 31-year old employee of a defense contractor--seeks access to classified information. He is a former military reservist who served on active duty for nine months during the Gulf War.

Applicant has a history of alcohol abuse which resulted in five alcohol-related arrests between 1994 and 1998.

On 19 May 1999, Applicant executed a Security Clearance Application (SCA)(SF 86)(G.E. 1). Applicant truthfully answered "yes" to question 24 (regarding alcohol arrests) and disclosed his December 1994 and March 1998 arrests for Driving Under the Influence (DUI) and his April 1998 arrest for criminal damaging. However, he deliberately failed to disclose two arrests for intoxicated disorderly conduct which occurred on 4 March 1994 and 12 March 1994. Applicant has provided conflicting explanations for his false answer. In his January 2000, sworn statement (G.E. 2) he stated that he omitted the two arrests because he did not think they were important. However, at the hearing he first claimed that he got bad advice from his security officer (Tr. 105-106), but later asserted that he had problems with the electronic security form (Tr. 116-117).

On 11 January 2000, Applicant described his alcohol abuse history to an agent of the Defense Security Service (DSS) (G.E.2):

From 1983-1985 I drank 2-3 beers, 2-3 times a week. From 1985-1987 I drank 10-12 beers, 1-2 times a week. For about a year from 1987-1988 I did not drink at all. From 1988-1990 I again drank about 10-12 beers 1-2 times a week. From 1990-1992 I did not drink at all. From 1992-1998 I would drink 15-24 beers, 2-4 times a week. Due to my arrest record and concern of an alcohol problem I decide to cut back on my drinking. As a result, from August 1998 to present I drink about 3 beers, 3-4 times a year. As an example, on New Year's of this year I drank 3 beers and a couple of drinks of champagne. I believe I have an alcohol problems if I drink like I did prior to 1998. I had no control, I tended to have a bad temper, and I was unpredictable. I have spent a lot of money on alcohol over the years which is not good. It caused me to run up balances on my credit cards which I will explain later. I limited my drinking to weekends and days I did not have classes. I never drank on the job and I have never had a drink the first thing in the morning to settle my nerves or to get rid of a hangover. I've had 5 alcohol related arrests and 2 treatments associated with alcohol abuse. I now drink socially. When I was in college at [named] University I attribute my heavy drinking to the party atmosphere associated with the school. My drinking has not affected my ability to get to work or school on time.

As a result of his alcohol-related arrests in March and April 1998, Applicant was ordered by the court to complete a driver intervention program and attend alcohol counseling. The mental health professional who conducted the driver intervention program recommended that Applicant attend AA and referred him to out-patient counseling at a mental health treatment facility (G.E. 4). Applicant attended four treatment sessions between 12 May 1998 and 11 June 1998. The treatment records reveal that while Applicant presented the problem as principally one of anger management, the treatment facility focused primarily on issues related to alcohol abuse. The intake summary and diagnostic assessment reported Applicant's DSM-IV, Axis I diagnosis as "alcohol abuse, 305.00; r/o [rule out] Impulse Control disorders. . ." The progress notes reflect that counseling discussions covered a wide variety topics, including anger issues and alcohol consumption, but that much of the discussion revolves around alcohol issues. Initially, the counselor confronted Applicant about why he was not attending AA meetings if his driver intervention program counselor recommended it. Applicant was nervous about going. Once he attended a couple of meetings, he openly questioned whether he needed to be attending AA meetings. He asserted that the driver intervention counselor had concluded that Applicant was not an alcoholic. However, Applicant's disclosures to the counselor documented many instances of alcohol abuse, and included the disclosure that Applicant had given up doing things because of his alcohol consumption. The treatment termination form indicated a principal diagnosis of "305. Alcohol Abuse," and noted that treatment had addressed alcohol abuse, depression, and alcohol assessment; those issues were also listed as unresolved. Applicant left treatment of his own choice (which also reflected that he was moving out of town) after cancelling his last treatment session (G.E. 4).

In July 1998, Applicant completed the court-ordered driver intervention program. The discharge report (G.E. 3) reflected that Applicant had successfully completed the program, recommended no treatment at the time, but recommended that he complete 6-12 AA meetings. The report also reflected that Applicant had taken the Michigan Alcohol Screening Test (MAST) which indicated Applicant was probably an alcoholic, and the Substances Abuse Subtle Screening Inventory 2 (SASSI-2), which classified Applicant as a chemical abuser.

At the hearing, Applicant's substance abuse expert--a 20-year director of a substance abuse program at a major university--testified consistently with his clinical report (A.E. C) that Applicant drank intensively, frequently, and abusively in the past, but had begun to cut back his drinking when he finished college and cut his drinking back further after he began dating his fiancé, to the point where he believed Applicant's assertion that he had been substantially, if not totally, abstinent from alcohol since approximately January 2000 (Tr 25-34). He considered the results of the liver function test he recommended (A.E. A) to be consistent with a claim of no alcohol abuse within the last year (Tr. 34). The expert noted that Applicant's December 2001MAST score was consistent with the 1998 score because the test measures lifetime drinking patterns (Tr. 42-43). The expert considered Applicant's drinking abuses to be consistent with studies showing higher levels of abusive drinking by college students, spontaneously resolving to lower levels of drinking as they move away from the college experience (Tr.55-56). The expert considered Applicant forthright in disclosing his history of alcohol abuse, but was evasive on the question of Applicant's straightforwardness when confronted with Applicant's continued insistence that his mental health facility treatment was for "anger management" and not "alcohol" issues (Tr. 46-50).

Applicant's fiancé testified about Applicant's drinking habits since she met him in July 1999, and his last-known consumption of alcohol on New Year's Eve 1999 (Tr. 60-63). She also reported that Applicant told her of his alcohol abuse history, but told her the problem he received counseling for was anger more than drinking (Tr. 66).

Applicant's security officer testified that he observed no apparent alcohol problems with Applicant (Tr. 77) and considered him very reliable and responsible, presenting no issues for access to classified information (Tr. 74-75). Applicant also showed him the SOR when it was issued (Tr. 71-72). Applicant attributed his omission of the alcohol-related arrests to bad information received from a different security official (Tr. 73, 79). Applicant's supervisor considers him very reliable, and has no concerns about his access to classified information (Tr. 83-86).

In his own testimony, Applicant admitted his past alcohol abuse, but asserted he had consumed no alcohol since 1 January 2000 (Tr. 96-97), although he did admit consuming 10 beers in approximately September 1999 (Tr. 114-115). He insisted that the mental health facility he attended was for anger management, asserting that the facility does not do alcohol abuse counseling, but assigned him a counselor with prior alcohol counseling experience (Tr. 103). He testified that between graduate school and his new fiancé, everything is different today than in the past and he does not have time to drink (Tr. 106-107). However, he acknowledged he did not get a great deal out of his AA meetings and began to think he did not need to go to them (Tr. 109). He also continued to claim that the mental health facility he attended was for anger management and not alcohol counseling (Tr. 111). He attributed his omitting the alcohol arrests first to receiving bad information from the security officer (Tr. 105) and then to having problems with the electronic clearance application (Tr. 116-117).

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

ALCOHOL CONSUMPTION (GUIDELINE G)

E2.A7.1.1. 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.

E2.A7.1.2. 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 abuse.

E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;

E2.A7.1.3. Conditions that could mitigate security concerns:

E2.A7.1.3.2. The problem occurred a number of years ago and there is no indication of a recent problem;

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

PERSONAL CONDUCT (GUIDELINE E)

E2A5.1.1. **The Concern:** Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The Government has established its case under Guideline G, and the alcohol abuse is not mitigated. The record reflects that Applicant abused alcohol from 1983 to at least 1999; the record reflects that Applicant continued to abuse alcohol after his March 1998 and April 1998 arrest, including some episodes of abusive drinking while he was undergoing court-ordered counseling. He abused alcohol well into 1999. He appears to have consumed little, if any, alcohol since 31 December 1999. However, despite Applicant's progress, I am not convinced that Applicant's alcohol abuse is behind him. While recognizing that AA is not necessarily for everyone, Applicant seems to have gained little insight by his participation in the program. Although he completed the driver intervention program satisfactorily, he does not appear to have gotten a great deal out of that program; the mental health facility program he was in consisted of four sessions and ended when Applicant left the area, never, apparently, to resume treatment. Moreover, Applicant insists that this

program was for anger management, not alcohol abuse, despite the plain findings to the contrary in the treatment records, including a diagnosis of alcohol abuse. Applicant reported this treatment on his SCA, described it in his sworn statement, reported it to his fiancé, and revealed it to his counseling expert in preparation for the hearing. None of Applicant's descriptions include the insight that his counseling was for alcohol abuse. In addition, despite the expert testimony that Applicant's abuse pattern follows recognized patterns which result in no further alcohol abuse, I find it difficult to consider Applicant's arrests at age 27 as part of the "youthful" or "college" experience chronicled in those studies. Further, Applicant's history of alcohol abuse has always been episodic, in some instances with many months or years between any consumption of alcohol or abusive consumption. Insufficient time has passed to ensure that Applicant will not resume drinking. Thus, I am unable to conclude that Applicant is unlikely to return to drinking. Accordingly, I resolve Guideline G. for Applicant.

The Government has established its case under Guideline E. Applicant knew he had the two drinking-in-public arrests and failed to disclose them. Applicant has offered three conflicting explanations, none of them either convincing or adequate to mitigate his omission. Far from being unimportant, the two arrests--a week apart--establish Applicant's history of alcohol-related incidents nearly nine months before his first recorded DUI. Omission of the arrests had the potential to influence the direction of the background investigation, and suggests that Applicant may not be willing to be truthful if the truth presents potential adverse consequences to his personal interests. I resolve Guideline E. against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline G: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph 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 Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996, and by Change 4 dated 20 April 1999 (Directive).

