

DATE: February 24, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-21706

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's multiple minor traffic offenses, alcohol-related arrests, and other miscellaneous misconduct casts serious doubt on his judgment, reliability, and trustworthiness. Although he stopped drinking 15 months ago, record evidence is insufficient to conclude that he will not return to alcohol abuse. Clearance denied.

STATEMENT OF THE CASE

On 3 October 2002, 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 30 October 2002, 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 9 January 2003 because of case load considerations, and received by me the same day. On 16 January 2003, I issued a Notice of Hearing (NOH) for a hearing on 3 February 2003.

At the hearing, the government presented fourteen exhibits--admitted without objection--and no witnesses; Applicant presented five exhibits--also admitted without objection--and his testimony. DOHA received the transcript on 13 February 2003.

FINDINGS OF FACT

Applicant admitted the factual allegations of the SOR except subparagraphs 1. s. and 2.a.⁽²⁾; accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 41-year-old employee of a defense contractor--seeks to retain the access to classified information he has held since approximately 1993.

Applicant has a history of minor traffic offenses interspersed with three alcohol-related arrests and an auto theft charge between March 1987 and October 1999.

Between March 1987 and October 1999, Applicant was stopped, cited, charged, and/or arrested on 16 occasions, resulting in 32 separate charges.⁽³⁾ With the exception of DUI arrests in November 1998, December 1996, October 1990, and the auto theft charge in March 1987, the traffic stops all represent variations on a theme: Applicant is stopped for a comparatively minor traffic offense (running a light or stop sign; illegal turn; speeding). Once stopped, he is found to have no valid driver's license (valid license not in possession; suspended or revoked because of failure to pay required liability insurance; suspended or revoked due to DUI conviction), and/or no valid safety inspection, and/or no proof of liability insurance (valid insurance not in possession; expired), and/or not wearing seatbelts. He is then typically fined, and occasionally confined to jail for a few days; the license, insurance, and inspection citations are usually dismissed once Applicant produces his valid license, renews his insurance, and get his car inspected. Applicant acknowledges his poor judgment in these paper offenses (Tr. 39). Since getting his driver's license, he has lived in states that require you to drive with your license in your possession, have valid liability insurance on your car, and obtain periodic safety inspections (Tr. 56-62).

In March 1987, Applicant was arrested for auto theft when he used "self help" to repossess an automobile stolen from him about a year earlier.⁽⁴⁾ However, although Applicant had apparently not reported the car stolen, no formal charges were brought against him. In October 1990, Applicant was arrested for DUI after being stopped for doing 68 mph in a 35 mph zone. Although he failed a field sobriety test, and provided two breath samples that tested over the state-limit .01% B.A.C., Applicant was acquitted of DUI in jury trial. However, he was convicted of speeding.⁽⁵⁾ In December 1996, Applicant was again arrested for DUI, but refused to take the required breath test. He was given deferred judgment, one-year supervised probation, and ordered to complete an alcohol safety course, which he did. In November 1998, he had his third DUI. He pleaded nolo contendere and was given 30-days, suspended, fined \$200.00, and ordered to attend outpatient alcohol awareness courses. Again he complied with the sentence requirements (G.E. 3; A.E. C).

Throughout his earlier background investigations, Applicant has minimized his alcohol abuse issues.⁽⁶⁾ He continued that trend in his latest investigation (G.E. 2) when he stated that he thought he had an alcohol problem, but nevertheless continued to drink. During his 1994 background investigation, he minimized the seriousness of his minor traffic offenses when he falsely claimed to have not been given any jail time as a result of these citations (G.E. 6). He later acknowledged that this was a lie (G.E. 7). However, his clearance was continued.

At the hearing, Applicant produced documents demonstrating his satisfactory work record (A.E. A, D) and financial responsibility (A.E. B). However, he also produced a current police record (A.E. E) that corroborated most of the government's allegations of minor traffic offenses as well as documenting that he had another minor traffic citation (with no valid state inspection) in late January 2001. He testified that he had decided to stop drinking on his 40th birthday in November 2001 because of the adverse effects it had in his life. However, he was not involved in any support groups, and acknowledged that he had stopped drinking in the past only to return to it later on (Tr. 48).

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 6.3. 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:

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.A5.1.2.1. Reliable, unfavorable information provided by associates, employers, coworkers, neighbors, and other acquaintances;

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.A5.1.2.3. A pattern of dishonesty or rule violations. . .

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

E2.A5.1.3.2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;

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;

Burden of Proof

Initially, the government must prove controverted facts alleged in the SOR. 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 E. Applicant's pattern of minor traffic offenses, alcohol-related arrests, and other miscellaneous misconduct casts serious doubt on his judgment, reliability, and trustworthiness. Although he has previously been granted a clearance despite this misconduct, the misconduct has continued since 1987. In this regard, his 1994 falsification has security significance not so much as a falsification, but as part of the larger pattern of poor judgment. The three alcohol-related arrests are the most serious of the misconduct, and only confirm my doubts about Applicant's fitness for access to classified information. I resolve Guideline E against Applicant.

The government has established its case under Guideline G, and the alcohol abuse is not mitigated. The record reflects that Applicant has three alcohol-related arrests within a ten-year period 1990-1999, and continued to drink well into 2001 notwithstanding his recognition that it was causing him problems. Deciding to stop drinking on his 40th birthday (15 months ago) is a positive sign, but one that does not completely mitigate the concern because Applicant demonstrates little true insight into his problem and does not appear to have any support system in place to ensure that he does not return to drinking or engage in alcohol-related misconduct. 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 against Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline E: 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

Subparagraph j: Against the Applicant

Subparagraph k: Against the Applicant

Subparagraph l: Against the Applicant

Subparagraph m: Against the Applicant

Subparagraph n: Against the Applicant

Subparagraph o: Against the Applicant

Subparagraph p: Against the Applicant

Subparagraph q: Against the Applicant

Subparagraph r: Against the Applicant

Subparagraph s: Against the Applicant

Subparagraph t: Against the Applicant

Paragraph 2. Guideline G: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: 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).
2. Although Applicant asserted--and the record evidence confirms--that the arrests listed at 1.d. and f. (1998) and 1.k. and l. (1996) are duplicate entries.
3. In addition, he was orally reprimanded by his employer for a security violation in approximately 1988.
4. Although Applicant asserted that the car had been stolen from him about six months before his "self-help" repossession and had reported it stolen to the police at the time of the original theft, the police report (G.E. 14) reflects that Applicant did not report the car stolen, and the complainant in the 1987 arrest had purchased it for value (from the putative thief) over a year before March 1987.
5. Notwithstanding the jury finding on Applicant's criminal responsibility, I conclude that this arrest constitutes an alcohol-related arrest within meaning of the Directive. Applicant's claimed level of alcohol consumption (3-4 beers) is inconsistent with the record alcohol content and failed sobriety tests.
6. And his earlier investigations disclosed a 1988 arrest for public intoxication that was not alleged in the SOR (and thus not before me on the merits of the case).