

DATE: June 30, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-23156

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Jonathan Beyer, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

My finding for Applicant under the alcohol consumption guideline is based on the persuasive evidence from the licensed professional counselor indicating Applicant has been sober for the last 28 months. In that period, he has regularly attended Alcoholics Anonymous (AA) and individual therapy. However, Applicant's current refusal to admit he relapsed after 1996, and his refusal to admit he also received additional treatment on December 30, 1998, requires a finding against Applicant under personal conduct and the whole person concept. Clearance is denied.

STATEMENT OF CASE

On August 26, 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, amended by Change 4, April 20, 1999, issued a Statement of Reasons (SOR) to 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked. Applicant filed his Answer to the SOR on September 19, 2002. Applicant elected to have his case decided on a written record. The Government provided a copy of the File of Relevant Material (FORM) on March 20, 2003. Applicant received the FORM on March 24, 2003. His response to the FORM was received on April 21, 2003. The case was assigned to the undersigned for decision on May 8, 2003.

FINDINGS OF FACT

The SOR alleges alcohol consumption and personal conduct. Applicant admitted 1.a., 1.b., and 1.c., but denied 1.d. Applicant also denied 2.a., 2.b., and 2.c. Applicant's admissions shall be incorporated into the following factual findings:

Applicant is 54 years old and employed as a security analyst by a defense contractor. He seeks a secret clearance.

Alcohol Involvement (Guideline G): Applicant completed a 28 day, in-patient treatment program in 1989. (SOR subparagraph 1.a.) Applicant's alcohol abuse was the reason for treatment. After his discharge from treatment, Applicant experienced approximately five years of sobriety.

On August 14, 1996, Applicant was admitted by a staff counselor to outpatient treatment for alcohol dependency. (Subparagraph 1.b.) The treatment was necessary because Applicant's alcohol problem met five of the seven DSM II (*Diagnostic and Statistical Manual on Mental Disorders*) criteria for psychoactive substance abuse. While he maintained abstinence during treatment, he was not very active during treatment group sessions. Applicant decided not to advance to the sober living phase of treatment. At discharge on October 30, 1996, Applicant still needed active involvement in the 12 step program with use of an AA sponsor. Following his discharge, Applicant maintained sobriety for two years.

After an approximate three week period of binge drinking, Applicant was admitted for treatment on December 30, 1998 and diagnosed alcohol dependent. (Item 6)⁽¹⁾ On January 18, 1999, Applicant was discharged from the treatment group because he failed to attend group sessions. (Subparagraph 1.c.)

On December 11, 1998, Applicant agreed to stop drinking and enroll in treatment in order to maintain employment. On January 8, 1999, Applicant was terminated from employment (subparagraph 1.d.) for violating four conditions of the employment agreement which included: (a.) enter an outpatient substance abuse program and successfully complete three months of treatment and counseling; (b.) attend Alcoholics Anonymous (AA) meetings; (c.) have progress reported to employer's customers on a monthly basis; and (4) after working through the side effects over the weekend, Applicant would stop drinking.

Treatment records (chemical dependency outpatient program) produced by Applicant reflect he enrolled in an outpatient treatment program for alcohol dependence beginning in January 1999 and ending in February 2002. These records⁽²⁾ also reflect Applicant initiated regular treatment for alcohol dependence (beginning in October 1999), which included individual therapy on a regular basis and AA attendance four times a week. The records include a notation Applicant had been sober for 28 months.

Psychiatric evaluation records show Applicant began treatment in October 1999 for another mental condition.

A letter dated September 17, 2002, from Applicant's counselor during treatment in 1996 and 1998 (subparagraphs 1.b., 1.c.) provides a more favorable view of Applicant's compliance with treatment terms than is described in Item 6.⁽³⁾

A letter from Applicant's counselor⁽⁴⁾ during his treatment between November 1999 and February 2002, found Applicant to be active in therapy. Applicant's consistent attendance and active participation in therapy helped Applicant resolve interaction issues with family and peers. Given Applicant's intention to continue with AA, the counselor believed Applicant would remain committed to sobriety.

Personal Conduct (Guideline E): On March 29, 1999, Applicant intentionally falsified his Questionnaire for National Security Positions, Standard Form 86, by answering "NO" to question 20 (subparagraph 2.a.), requiring information about adverse job terminations in the last 10 years.

On August 6, 1999, Applicant intentionally provided false information in a sworn statement (subparagraph 2.b.) when he stated he had not consumed any alcohol since 1996. In the same statement, Applicant falsely indicated (subparagraph 2.c.) he had not received any treatment or counseling since his discharge from treatment in October 1996. See, subparagraph 1.b. of the SOR.

Applicant's uncorroborated claim he was terminated from his employer (2.a.) based on his selection of another comprehensive treatment program rather than his alcohol abuse, is not credible. Similarly, Applicant's claim he did not falsify 2.b. and 2.c. are not credible and unsupported by the documentary evidence that reflects Applicant resumed drinking in November 1998 and was readmitted to the treatment program on December 30, 1998.

Character evidence: Applicant received nine certificates or awards for his participation on certain projects or courses.

POLICIES

Enclosure 2 of the Directive sets forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

Alcohol Consumption (Guideline G)

Disqualifying Conditions:

2. Alcohol-related incidents at work;
4. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized treatment program;
5. Habitual or binge consumption of alcohol to the point of intoxication;
6. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Mitigating Conditions:

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 aftercare 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.

Personal Conduct (Guideline E)

Disqualifying Conditions:

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire ... to determine security clearance eligibility;
3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator ... in connection with a personnel security or trustworthiness determination.

Mitigating Conditions:

1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided the correct information voluntarily;

3. The individual made prompt good-faith efforts to correct the falsification before being confronted with the facts.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable. The decision must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an Applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish all the factual allegations under alcohol consumption (Guideline G), and personal conduct (Guideline E) which establishes doubt about a person's judgment, reliability and trustworthiness. Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

Under the alcohol involvement guideline, excessive alcohol consumption often leads to the exercise of questionable judgment and increases the risk of security violations due to carelessness. Applicant's alcohol dependence since approximately 1974 falls within disqualifying conditions (DC) 2, 4, 5, and 6. DC 2 is applicable to the circumstances because Applicant's numerous absences from work were caused by his excessive alcohol involvement. For example, Item 5 reflects Applicant missed many work days between November 1998 and January 1999 (subparagraph 1.c.) because he had been drinking excessively.

DC 4 of the alcohol involvement guideline refers to an evaluation of alcohol dependence by a licensed clinical social worker who is a staff member of a recognized treatment program. Between August 14 and October 30, 1996, the licensed clinical counselor (staff member of a recognized alcohol treatment program, subparagraphs 1.b. and 1.c.) diagnosed Applicant's alcohol problem as alcohol dependence.

DC 5 refers to the habitual or binge consumption of alcohol to the point of impaired judgment. DC 5 is applicable to the facts of this case as the records repeatedly reflect binge drinking by Applicant prior to admission for treatment between 1996 and January 8, 1999.

After Applicant's successful completion of the 28 day treatment program in 1989, Applicant resumed binge consumption of alcohol abuse in 1996. The circumstances under which he resumed drinking would normally place Applicant within the scope of DC 6. However, DC 6 does not apply to 1989 treatment because there is no evidence Applicant received a diagnosis of alcohol abuse or alcohol dependence in 1989 by a medical professional. However, DC 6 does apply to Applicant's treatment in 1996 (subparagraph 1.b.), where Applicant's diagnosis of alcohol dependence was countersigned by the medical director. After successfully completing the treatment program in 1996, Applicant relapsed in November 1998. (Subparagraph 1.c.)

The alcohol involvement guideline lists four mitigating conditions (MC) which may be applicable to Applicant's history

of excessive consumption of alcohol. C 1 applies when the alcohol-related incidents do not indicate a pattern. MC 2 applies when the alcohol problem occurred a number of years ago and there is no indication of a recent problem. The record shows the last alcohol-related incident occurred in October 1999 when Applicant went through detoxification for drinking to excess. With no alcohol relapse in over three years, MC 1 and 2 should be given extensive consideration in mitigating the evidence of excessive alcohol consumption.

MC 3 of the alcohol involvement guideline embraces positive changes in behavior supportive of sobriety. Having weighed and balanced the medical records, the counselor letters, and Applicant's statements of position, Applicant's success in obtaining proper treatment for his other condition persuades me to believe he is now in a better position to maintain long-term sobriety under MC 3.

The ultimate finding in Applicant's favor under the alcohol involvement guideline is based on the persuasive evidence submitted by Applicant which falls within the scope of MC 4. First, Applicant's medical records indicate Applicant was suffering from another mental condition besides alcohol-dependence which is currently receiving effective treatment. Second, the medical records reflect Applicant attended individual therapy and AA for 28 months, culminating in a discharge from treatment in February 2003 for having enjoyed 28 months of sustained sobriety. Finally, Applicant received a favorable prognosis from a licensed counselor in April 2003 indicating that, based on his consistent attendance in the treatment program, and his changed attitudes allowing more interaction with his family, peers and coworkers, Applicant is committed to sobriety in the future.

Personal conduct is behavior which involves questionable judgment, untrustworthiness, unreliability, or lack of candor. Applicant displayed a lack of candor by intentionally providing false information on his March 1999 security form when he answered "NO" to question 20. (employment termination under adverse circumstances) Item 5 indicates in unequivocal terms Applicant agreed to comply with 4 conditions of an employment agreement. He violated those conditions by continuing to drink and not pursue treatment.

Applicant intentionally falsified his August 1999 sworn statement by providing false information about his alcohol consumption and additional treatment. Even in his response to the FORM, Applicant continues to deny he relapsed in November 1998, necessitating additional treatment at the end of December 1998, even though Items 5 and 6 indicate the contrary.

All mitigating conditions under the personal conduct guideline have been considered but none apply because Applicant's intentional falsification of his security form in March 1999, and his continuing refusal to admit he relapsed after 1996 while also attending additional treatment after 1996.

Having rendered specific findings under both the alcohol involvement and personal conduct guidelines, the case shall now be evaluated under the general policy factors of the whole person concept. While the positive evidence in rehabilitation reflects Applicant should be able to maintain future sobriety, the pattern of personal conduct warrants an adverse finding under the whole person concept.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (alcohol consumption-Guideline G): FOR THE APPLICANT.

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.

Paragraph 2 (personal conduct-Guideline E): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. 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.

Paul J. Mason

Administrative Judge

1. In Summary of History, it was noted, "Patient is alcohol dependent, reporting a binge pattern of drinking. Patient's life is significantly disrupted when he is drinking, patient doesn't work etc."
2. The records also indicate Applicant became alcohol dependent at age 25. (circa 1974)
3. The counselor claims the decision not to proceed to the next level was decided by treatment personnel. However, Item 6 indicates Applicant made the decision not to go to the next phase of sobriety.
4. A licensed professional counselor.