

DATE: January 4, 2006

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 01-23362

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Candace Le'i, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 59-year-old inspector for a defense contractor had a history of alcohol abuse and alcohol-related arrests and convictions from 1970 to 2001. He continues to consume alcohol. Rehabilitation has not been established. Mitigation and extenuation has not been shown. Clearance is denied.

STATEMENT OF THE CASE

On June 10, 2004, 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, as amended, issued a Statement of Reasons (SOR) to the Applicant. The SOR detailed reasons

why DOHA could not make the preliminary affirmative finding required under the Directive that it

is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The SOR recommended referral to an Administrative Judge to conduct proceedings and

determine whether a clearance should be granted, denied or revoked.

On July 16, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge after a hearing. The case was assigned to me on August 12, 2004. A Notice of Hearing was issued on August 29, 2005, [\(1\)](#) and the matter was heard on September 13, 2005. At the hearing, the Government submitted eight exhibits (Government's Exhibits (GX) 1 - 8). Applicant testified and offered two exhibits (Applicant's Exhibits (AX) A - B). Two post hearing exhibits were timely received (AX C and AX D). All exhibits were admitted without objection. The transcript was received at DOHA on September 29, 2005.

FINDINGS OF FACT

Applicant is a 59-year-old employee of a defense contractor. The SOR contains seven allegations, 1.a. - 1.g., under Guideline J (Criminal Conduct) and three allegations, 2.a - 2.c., under Guideline G (Alcohol). He admitted allegations 1.a., 1.b., 1.c., 1.d., 1.e, and denied allegation 1.f. He responded to allegation 1.f., arguing for the granting of a waiver under 10 U.S.C. 986, but not specifically admitting or denying the allegation. This is deemed equivalent to a denial. Under Guideline G (Alcohol), he does not specifically admit or deny the allegations, but argues he does not currently have any alcohol-related problems. This is likewise deemed a denial. All admitted allegations are accepted and made Findings of Fact.

After considering the totality of the evidence of record, I make the following FINDINGS OF FACT as to each SOR allegation:

As alleged in the SOR, under:

Guideline J (Criminal Conduct)

1.a. - Applicant was arrested on February 25, 2001, in State A, and charged with Counts I -Driving Under the Influence (DUI) and II - Blood Alcohol Level of .08% or higher. Applicant pleaded guilty to Count 1 and Count II was dismissed. He was sentenced to 36 months of unsupervised probation; to pay fines of \$1,259.00; to make restitution of \$110.00 to the victim; to attend multiple offense alcohol program; to spend three days in jail; and to surrender his driver's license for three months;

1.b. - Applicant was arrested on March 15, 1981, in State A, and charged with (1) Driving Under the Influence and (2) No Driver's License. He was sentenced to three years probation, three days in jail, surrender his driver's license, and pay costs of about \$499.00;

1.c. - Applicant was arrested on or about February 29, 1979, in State A, and charged with Driving Under the Influence. He was ordered to pay fines of about \$380.00;

1.d. - Applicant was arrested on or about February 22, 1976, in State A, and charged with Drunk Driving. He was ordered to pay fines of about \$315.00;

1.e. - Applicant was arrested on or about December 25, 1971, in State A, and charged with Drunk Driving. He was sentenced to 30 days in the county jail; based on his violation of the 1970 probation cited in 1.f.

1.f. - Applicant was arrested on or about August 16, 1970, in State A, and charged with Count (I) Possession of Dangerous Drugs; and (II) Driving Under the Influence of Dangerous Drugs.

He was under the influence of both alcohol and drugs. He was found guilty on Count (I) and sentenced to three years in jail, suspended, and three years probation.

1.g. - Under 10 U.S.C. 986, as amended, a person convicted and sentenced to more than one year's incarceration is *automatically* disqualified from holding a security clearance only if he or she actually served more than one year. Under the facts alleged in 1.e., 10 U.S.C. 986, as amended, is not applicable since the evidence indicates Applicant did not spend more than one year in jail. This allegation is therefore found in favor of Applicant.

Guideline G (Alcohol)

2.a. - Applicant consumed alcohol, at times to excess and to the point of intoxication, from about 1970 to at least October 2003, which was about 23 months prior to the hearing in this matter,

and about two year after his last arrest;

2.b. - On those occasions cited in paragraph 1, above, Applicant's alcohol abuse directly led to his arrests;

2.c. - Applicant continued to consume alcohol from 1970 to the recent past, despite his series of alcohol-related arrests.

Applicant has received highly positive letters of support from two work supervisors (AX A, AX B, AX C and AX D). Each supervisor submitted two letters, with the second letter stating that they had been told by Applicant about his drinking-related problems, but that they had never observed him drinking or having a problem with alcohol.

POLICIES

Each adjudicative decision must also include an assessment of nine generic factors relevant in all cases: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowing participation; (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 pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (Directive, E.2.2.1., on page 16 of Enclosure 2). I have considered all nine factors, individually and collectively, in reaching my overall conclusion.

The eligibility criteria established by Executive Order 10865 and DoD Directive 5220.6 identify personal characteristics and conduct that are reasonably related to the ultimate question of

whether it is "clearly consistent with the national interest" for an individual to hold a security clearance. An applicant's admission of the information in specific allegations relieves the Government of having to prove those allegations. If specific allegations and/or information are denied or otherwise controverted by the applicant, the Government has the initial burden of proving those controverted facts alleged in the Statement of Reasons. If the Government meets its burden (either by the Applicant's admissions or by other evidence) and proves conduct that creates security concerns under the Directive, the burden of persuasion then shifts to the Applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence

of conduct that falls within specific criteria in the Directive, it is nevertheless consistent with the interests of national security to grant or continue a security clearance for the Applicant.

CONCLUSIONS

Applicant is a 59-year-old inspector for a defense contractor. His criminal conduct and alcohol abuse, as cited in the SOR, establishes a history and pattern of poor judgment, unreliability, and untrustworthiness. As discussed below, Applicant's evidence fails to mitigate and/or extenuate the Governments evidence under both Guidelines.

Criminal Conduct - A history or pattern of criminal activity creates doubts about a person's judgment, reliability, and trustworthiness. ***Disqualifying Conditions*** - Conditions that could raise a security concern and may be disqualifying include (1) any criminal conduct, regardless of whether the person was formally charged; and (2) a single serious crime or multiple lesser offenses. At the same time, the evidence does not support the applicability of any of the parallel mitigating conditions (MC). In context, the criminal conduct remains "recent" (MC 1), was not an isolated incident (MC 2), and there is as yet no "clear evidence of successful rehabilitation (MC 5)

Applicant is 59, having been born in 1946. He began drinking at an early age, and was first arrested in 1970, at age 24, on an alcohol-related arrest. He was similarly arrested in 1971, 1976, 1979, 1981, and 2001. On the last charge he was sentenced to 36 months of probation.

On the basis of this record, Applicant has had an alcohol problem, and related arrests, for some 30 years. The last arrest was in February 2001 (GX 2, sworn statement of October 20, 2003).

At the time of the arrest, Applicant was recovering from a hip replacement operation and was taking pain medications.

He realized that consuming alcohol on top of the pain medication ("one pill and probably four or five beers") was a "bad idea" (Tr at 38). He continues to drink and no longer attends "AA" meetings, as he did after his 2001 arrest (*Id.*). He was eventually sentenced to additional probation (Tr at 44). He has been arrested twice while working for his present employer, in 1981 and 2001 (Tr at 49). He currently consumes vodka, two or three times a week, an hour or so before he goes to bed (Tr at 50).

In his statement of October 2003 (GX 2), Applicant stated that:

I do not have any problem with the excessive use of alcohol, and I just used poor judgment in driving after drinking. I have not had any type of additional arrests since that time. I have stopped drinking and driving and I have never had what is commonly called an alcoholic problem. I have never had to seek treatment for the use of alcohol and no one has ever suggested I seek treatment, other than through the court, as described above. I do not drink in the morning to steady my nerves, and alcohol has never caused any financial or work performance problems.

In his hearing testimony (Tr at 28-), Applicant discussed the circumstances of his alcohol-related arrests). Applicant relates many of his early problem to a "bad time in my life" that occurred beginning in his early 20s (Tr at 33). He doesn't deny that he made many mistakes in judgment during that period, including driving after consuming alcohol (Tr at 35). He claims a change in outlook and behavior after he began to work for his present employer in 1980 (Tr at 36)

He does not believe he has a problem with alcohol and presented letters from his manager and supervisor, both of whom state that Applicant is an excellent employee (Tr at 54 and AX A - AX D). I have given considerable weight to these letters, but conclude they do not outweigh the cumulative effect of his history of misuse.

(Alcohol) - Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of the unauthorized disclosure of classified information due to carelessness.

Applicant's history of alcohol abuse and problems, as related above under Criminal Conduct, also overlaps with the Government's concerns under the Directive's Alcohol guidelines, e.g., his alcohol-related arrests. It is also a serious disqualifying condition that Applicant continued to drink to excess for so long, even after beginning his present employment and after being arrested and convicted on numerous occasions over some 30 years (DC 1 and DC 4). The alcohol-related incidents do indicate a pattern of problems that must still be considered to be recent (MC 2) and, clearly, there is, as yet, no evidence of positive changes in behavior substantial enough to be considered supportive of sobriety (MC 3).

Overall, the record compels the conclusion that Applicant has not yet established that he has moved beyond denial and that he currently possesses the will and ability to carry through with his efforts to finally put his alcohol use and problem safely behind him.

FORMAL FINDINGS

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

Guideline J (Criminal Conduct) Against the Applicant

Subparagraph 1.a. Against the Applicant

Subparagraph 1.b. Against the Applicant

Subparagraph 1.c. Against the Applicant

Subparagraph 1.d. Against the Applicant

Subparagraph 1.e. Against the Applicant

Subparagraph 1.f. For the Applicant

Guideline G (Alcohol) Against the Applicant

Subparagraph 2.a. Against the Applicant

Subparagraph 2.b. Against the Applicant

Subparagraph 2.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.

BARRY M. SAX

ADMINISTRATIVE JUDGE

1. The delay was caused by the necessity of waiting for a clarification of DoD policy pertaining to the application of 10 U.S.C. 986. Action occurred promptly upon my receiving authorization to proceed.