

DATE: July 9, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-23922

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's alcohol abuse has resulted in at least three alcohol-related arrests, the last taking place in November 1999 or 2000. The Applicant has not abstained from drinking and has one failed treatment. He has been diagnosed as alcohol dependent. There is a history of three arrests for criminal conduct since 1995. Finally, the Applicant falsified a questionnaire with regards to his criminal history. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On December 18, 2002, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a 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 a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on January 15, 2003, and requested that the case be decided without a hearing. The Government submitted its File of Relevant Material (FORM) to the Applicant on February 26, 2003. The Applicant was given 30 days from receipt of the FORM to submit any documents in rebuttal, extenuation or mitigation. The Applicant received the FORM on March 10, 2003, and submitted an undated additional statement, received by DOHA on April 17, 2003 (Applicant's Exhibit A). The case was received by the undersigned on April 16, 2003.

FINDINGS OF FACT

The Applicant is 39 and single. He is employed by a defense contractor as a Network Administrator, and he seeks to retain a DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth

in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline G - Alcohol consumption). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses intoxicants to excess.

The Applicant has abused alcohol for over 20 years. The Applicant's drinking has resulted in three alcohol related arrests for Driving Under the Influence (DUI). One in 1980, another in 1998 and the last in November 1999 or 2000.

The first arrest occurred in approximately December 1980, when the Applicant was a juvenile. He admitted this arrest in his 1989 Personnel Security Questionnaire. (Item 5 at Question 21.)

The SOR alleges in subparagraph 1.g. that the Applicant was again arrested for Driving Under the Influence in 1988. This appears to be a typographical error. In his Interrogatories (Item 9 at question 5), he states, "June, 1998 - DUI - Fine and weekend intervention program." In addition, the adjudged punishment, including the weekend intervention program, is the same as that for the January 1999 arrest for DUI (SOR 1.c., 1.d. and 1.e.). In accordance with paragraph E3.1.17 of the Additional Procedural Guidance of the Directive, I am amending subparagraph 1.g. of the SOR to read 1998, vice 1988. In his sworn statement of April 19, 2000, the Applicant states, "I have been abusing alcohol since I was 18 years old. And I got a DUI in Jan 98. I have been in AA since the DUI and have not had a drink since." (Item 7 at 1.) I further find that the January 1998, June 1998 and January 1999 incidents referred to by the Applicant and the Government are the same event or course of events.

Regarding the second arrest, the Applicant denied that he twice failed to participate in the alcohol intervention programs, as alleged in SOR 1.e. Rather, he states, "The intervention program nurse twice sent me home after I had reported because my blood pressure was too high. They did not notify the courts of this as they had said they would so a bench warrant was issued but never enforced." (Applicant's Answer.)

The Applicant was assessed in the weekend intervention program in October 1999. He was given an assessment of "Alcohol Dependence-Severe Condition." (Item 11 at 8.)

The Applicant's Interrogatories (Item 9 at 7) also show that there was a third DUI in approximately November 1999 (SOR 1.f.). The Applicant admits this arrest, but states in his Answer that it occurred in November 2000. As a result of this last conviction he was fined and served ten days in an adult detention center.

The Applicant states in his Answer that it was in April 2001, not April 2000 as alleged in SOR 1.b., that he attended a 30 day alcohol treatment program. The Applicant further states in his Answer that he, "did not complete it [the program] because I felt I didn't belong there." Once again, the facts concerning the dates of this treatment came from the Applicant's Interrogatories, which he filled out.

The Applicant admits that he continues to drink 3 or 4 beers a week, usually on the weekends.

Paragraph 2 (Guideline J - Criminal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in criminal acts.

The Applicant's three admitted arrests for DUI will be evaluated under this paragraph as well.

The Applicant admits that he was arrested in 1995 for passing a bad check for approximately \$170. He plead guilty and, having already paid the bounced check, had his fine waived. (Item 6 at 2 and Item 13.)

The Applicant denied SOR 2.c., which alleges that he received Non-Judicial Punishment in 1984 for seven specifications of failing to report to his place of duty. The military records in the file, Item 14 at 3, are virtually illegible, making it impossible to determine the facts of this subparagraph. This allegation will be found for the Applicant.

The Applicant did admit receiving Non-Judicial Punishment in 1983 for failing to report to his place of duty. (SOR 2.d.)

Paragraph 3 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he intentionally falsified material aspects of his personal background during the clearance screening process.

On August 17, 1999, the Applicant completed an official DoD questionnaire in which he stated that he had been arrested once for an alcohol-related offense, in January 1999. (Item 3, question 24.) This was a false answer. In fact, the Applicant had been arrested in 1980 while a juvenile, as set forth under Paragraph 1, above. Another arrest occurred in either November 1999 or November 2000. In either case, the last event had not yet happened when the Applicant submitted the questionnaire.

In the same questionnaire, the Applicant was asked, "In the last 7 years has your use of alcoholic beverages (such as liquor, beer, wine) resulted in any alcohol-related treatment or counseling (such as for alcohol abuse or alcoholism)?" (Item 3, question 30.) The Applicant answered no because, at the time of the questionnaire, he had been ordered to attend the weekend intervention program set forth in SOR 1.d. and 1.g., but had not yet done so. While it might have been better if the Applicant had been totally forthcoming with the Government, his answer was technically correct. This allegation is found for the Applicant.

The Applicant was also asked in the same questionnaire whether there were any other arrests or charges in the last seven years that he had not otherwise discussed on the form. (Item 3, question 26.) The Applicant said, "No." This was a false answer, since the Applicant had been charged with Passing a Bad Check in 1995. (Item 13.) In his statement of April 19, 2000, the Applicant states, "I forgot to list the bad check charge on the security report. I had listed them on a security report in 1997 but the investigation was cancelled when my company lost the contract they were bidding. I was not trying to keep this information from anyone or hide anything." (Item 7 at 2.) Regarding the same offense, the Applicant said in November 1996, "I did not list this arrest [SOR 2.b.] on my security paperwork because I was ashamed it happened and did not want anyone to know about it. No one I work with knows about the arrest. My parents do not know about this and I definitely do not want them to find out. My father takes great pride in hard work and responsibility, and he has never had a past due debt. Only my wife and in-laws know about the arrest." (Item 6 at 2.)

The Applicant is the primary provider of the facts in this case. He has given several statements, filled out several questionnaires, a set of Interrogatories and an Answer. All are contradictory in terms of the Applicant's drinking and criminal histories. These inconsistent responses seriously affect my view of the Applicant's credibility.

Mitigation.

Regarding his drinking past, the Applicant says:

In 1998, after a 15 year marriage, I went through a long and painful divorce. I was very depressed for a long time. Now I am in a great relationship with a wonderful woman. We rent a house together and I feel much better about myself and everything in general.

I don't drink anything stronger than beer and only once a week at the most. I do not drink to the point of intoxication. I had some rough times but I now believe I have my life back in order. (Item 9 at 7.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline G (Alcohol consumption)

Conditions that could raise a security concern:

- (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;
- (4) evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

Conditions that could mitigate security concerns:

- (3) positive changes in behavior supportive of sobriety;

Guideline J (Criminal conduct)

Conditions that could raise a security concern:

- (1) Allegations or admission of criminal conduct, regardless of whether the person was formally charged;
- (2) A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

Guideline E (Personal conduct)

Conditions that could raise a security concern:

- (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, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

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 factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- 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 guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

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 a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse, criminal conduct and falsification that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue 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 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

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 used alcohol to excess (Guideline G); that he engaged in several criminal acts (Guideline J); and that he has intentionally made false material statements to DoD, in violation of a felony criminal statute (Guidelines E and J).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part. Under Paragraph 2 (Guideline J), as set forth above, subparagraph 2.c. is found for the Applicant as the evidence presented was no sufficient to prove the allegation. Subparagraph 2.d. is found for the Applicant because the offense charged was strictly military in nature, it occurred 20 years ago, and has no current security significance. Regarding Paragraph 3 (Guideline E), Subparagraph 3.b. is found for the Applicant as I have determined that the Applicant's answer was true at the time of the questionnaire, and therefore there was no falsification.

Applicant's alcohol use has, by his admission, been considerably reduced in the past two years. The Applicant argues that his last two alcohol-related incidents were due, in part, to his marital difficulties. However, there is a lack of evidence in the file to support his argument. Given that his last DUI was either in 1999 or 2000, I cannot find that the Applicant has met his burden in showing that he has mitigated his long-term alcohol problem. Paragraph 1 and all its subparagraphs are found against the Applicant.

Applicant has been arrested three times in the last eight years. There is some evidence in the file, primarily from the Applicant, that he has reformed and that his criminal conduct is in the past. However, with the lack of outside evidence to support the Applicant's unsupported statements, I cannot find that he has mitigated this allegation. Subparagraphs 2.a. and 2.b., along with Paragraph 2, are found against the Applicant.

The Government relies heavily upon the integrity and honesty of clearance holders, and it is a negative factor for

security clearance purposes where an Applicant has deliberately provided false information about material aspects of his or her personal background. With regards to Subparagraphs 3.a. and 3.c., there is no argument that the Applicant left out arrests that should have been admitted. There is also evidence, particularly with regard to the arrest in 3.c., that the Applicant had motive to withhold the information. There is evidence that the Government had notice of these arrests in prior questionnaires and statements. However, the Personnel Security Questionnaire is the essential element in determining security worthiness. Each one should be viewed in isolation. Looked at in that perspective, the Applicant was not truthful. In these cases, once the Government shows that the answers are false, the Applicant has to provide compelling evidence that there was no intent to deceive. Looking at the evidence as a whole, in my opinion, he has not met that burden. Guidelines E and J are found against the Applicant.

The Applicant's efforts at reform are noted. Under the particular circumstances of this case, this evidence does not overcome the adverse information that has been presented by the Government.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraphs 1, 2, and 3 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.

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.: Against the Applicant.

Subparagraph 1.g.: Against the Applicant.

Subparagraph 1.h.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Subparagraph 2.b.: Against the Applicant.

Subparagraph 2.c.: For the Applicant.

Subparagraph 2.d.: For the Applicant.

Paragraph 3: Against the Applicant.

Subparagraph 3.a.: Against the Applicant.

Subparagraph 3.b.: For the Applicant.

Subparagraph 3.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 the Applicant.

Wilford H. Ross

Administrative Judge