

DATE: April 2, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 01-25721

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Marc E. Curry, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, aged 29, admits to alcohol consumption over a period of 12 years and drinking as recently as November 2002. Applicant also admits to pleading guilty to one charge of driving while intoxicated in 1997 and to being subsequently placed on probation for two years, ordered to attend an alcohol awareness program and directed to perform twenty hours of community service. Nothing in the record indicates a diagnosis of alcohol abuse and dependence. Applicant provides evidence of mitigating or exculpatory conduct. Clearance is granted.

STATEMENT OF THE CASE

On October 23, 2002, pursuant to Executive Order No. 10,865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant that specified reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In the SOR the Government alleged that Applicant was disqualified from obtaining a security clearance because of alcohol consumption (Guideline G). By memorandum dated November 5, 2002, Applicant responded to the SOR and requested that his case be determined on the record in lieu of a hearing. The Government submitted its File of Relevant Information (FORM) on December 17, 2002. By letter dated December 17, 2002, a copy of the FORM was forwarded to Applicant, with instructions to submit additional information and/or any objections within 30 days of receipt. Applicant filed a response dated January 10, 2003, in which he indicated no objection and supplied further information about his behavior and motivation. On January 27, 2003, the case was assigned to me for a decision.

FINDINGS OF FACT

Applicant is a 29-year old telecommunications specialist employed by a Government contractor. On May 16, 2001, Applicant signed and certified a Security Clearance Application, Standard Form 86 (SF 86) on which, in response to a question asking if he had ever been charged with or convicted of any offenses related to alcohol or drugs, Applicant listed a charge of driving under the influence of alcohol on December 28, 1997. He further stated that the charge had been reduced. In response to another question on the SF 86, Applicant stated that in the last 7 years his use of alcoholic beverages had not resulted in any alcohol-related treatment for alcohol abuse or alcoholism. In response to another question on the SF-86, Applicant stated that the Government had investigated his background and had granted him a Secret clearance in August 1993.

The Government issued a Statement of Reasons (SOR), dated October 23, 2002, predicated on paragraph 1, Criterion G (alcohol consumption). In the SOR, the Government stated that it was unable to find it consistent with the national interest to grant Applicant access to classified information because of Applicant's alcohol consumption, which it specified in subparagraphs 1.a. through 1.d., incorporated herein by reference.

In his written answer to the SOR, Applicant admitted each of the factual allegations and offered several comments in mitigation. Applicant admitted the allegation in the SOR that he began drinking in 1990 and that he drank approximately six beers per night on weekends between 1990 and 1993. Applicant explained this behavior by pointing out that in the small Midwestern town where he lived during his high school years, it was common practice for teenagers to consume alcohol occasionally on weekends. He also stated that he did not drink every weekend during his high school years. Applicant also admitted the allegation in the SOR that in 1993 he drank alcohol daily and sometimes consumed up to 10 drinks of alcohol in an evening. Applicant explained this behavior by stating that he was serving in the U.S. military in Germany from 1993 to 1995 and "daily alcohol consumption was a frequent occurrence." He stated further that when he returned to the United States after his military tour of duty, he drank alcohol occasionally on social occasions. In response to the allegation in the SOR that his abuse of alcohol led to his arrest in December 1997 for driving while intoxicated, Applicant stated: "I admit. I made a mistake. I have not, and will not repeat the offense." In response to the allegation in the SOR that, despite his arrest over five years ago, he continues to drink, at times, to intoxication, Applicant stated: "I admit. I am now 28 years old. I am married and have a young daughter. I have embarked on what I hope to make a successful career. I do not intend to jeopardize my family or career by repeating foolish mistakes. I limit my alcohol consumption to very occasional circumstances (approximately three times each year) where a designated driver has been clearly chosen."

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give the person access to such information." *Id.* at 527. The President has restricted eligibility for access to classified information to "United States citizens . . . whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Exec. Order No. 12,968, *Access to Classified Information*, § 3.1(b) (Aug. 4, 1995). Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive. *See* Directive, Enclosure 2.

An evaluation of whether the applicant meets the security guidelines includes consideration of the whole person criterion, comprised of the following factors: (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 the participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation or duress; and (9) the likelihood of continuation or reoccurrence. Directive, E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Order No. 10,865 § 2. *See* Exec. Order No. 12,968 § 3.1(b).

Adjudicative Guideline G, Alcohol Consumption, is most pertinent to this case. The relevant provisions of Guideline G

which apply to this case are:

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.

The following conditions could raise a security concern in this matter and could be disqualifying:

E2.A7.1.2.1: Alcohol-related incidents away from work, such as driving under the influence . . . , and

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

Guideline G identifies conditions that could mitigate security concerns deriving from excessive alcohol consumption. Mitigating conditions relevant in the instant case are:

E2.A7.1.3.1. The alcohol-related incidents do not indicate a pattern.

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.

Under the Directive, a decision to grant or to continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall commonsense determination required, the administrative judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record. *See* Directive, 5. RESPONSIBILITIES and 6. PROCEDURES.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact alleged in the SOR. The standard of proof is less than a preponderance of the evidence. If the Government meets its burden and establishes conduct cognizable as a security concern 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 criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Directive, Enclosure 2, Section E2.2.2.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government or admitted by the Applicant raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he is nevertheless security worthy. In *Department of the Navy v. Egan*, *supra*, at 531, the Supreme Court concludes that "[t]he clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Accordingly, I interpret the Court's guidance to mean that doubts against an Applicant's security worthiness are to be resolved against the Applicant.

CONCLUSIONS

A security concern is raised by Applicant's admissions that he has consumed alcohol in excess and, on occasion, to the point of intoxication and by his alcohol-related incident in December 1997. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, and failure to control impulses, thereby increasing the risk of unauthorized disclosure of classified information due to carelessness. On the other hand, nothing in the record indicates that Applicant has ever been diagnosed as an alcoholic, an alcohol abuser, or as alcohol dependent by any credentialed medical professional or licensed clinical social worker within the meaning of Disqualifying Conditions E2.A7.1.2.3 or

E2. A7.1.2.4 of Guideline G. Applicant's excessive use of alcohol as a young person could be a cause of concern if it is repeated in his adult years and results in alcohol-related incidents while at work or off duty.

Applicant has a history of youthful over-indulgence and irresponsibility while single and in military service. He presents statements that, with marriage, fatherhood, and a serious commitment to his career and the support of his family, he has made significant alterations in his outlook and behavior supportive of sobriety. This falls within Mitigating Condition E2.A7.1.3.3, identified *supra*. While Applicant admits to still drinking on occasion, he has had only one alcohol-related incident in his life, and that occurred more than five years ago. This falls within the scope of Mitigating Condition E2.A7.1.3.2, also identified *supra*. Applicant's statements and behavior demonstrate a commitment to reliable conduct, to the use of good judgment, and particularly to responsible and lawful drinking.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section E2.2 and Adjudicative Guideline G. The Directive requires that the whole person concept as specified in Enclosure 2 be considered, in addition to Guideline G, as appropriate, in making this decision. In applying these criteria from the Directive, I conclude that the nature and seriousness of Applicant's former drinking patterns and his one alcohol-related incident weigh against him, although his age and immaturity during which this behavior occurred are viewed in mitigation. Applicant's former pattern of apparent overindulgence and irresponsibility has not occurred within the past five years and took place under personal circumstances unrepresentative of his current situation. On the basis of the evidence before me, I conclude that there is a high probability that he will not abuse alcohol in the future. Therefore, Paragraph 1 of the SOR is concluded favorably for the Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 of the Directive are hereby rendered as follows:

Paragraph 1, Alcohol Consumption (Guideline G): FOR APPLICANT

Subparagraph 1. a: For Applicant

Subparagraph 1. b: For Applicant

Subparagraph 1. c: For Applicant

Subparagraph 1. d: For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for the Applicant. Clearance is granted.

Joan Caton Anthony

Administrative Judge