

DATE: July 22, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-02966

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

George Rogers, Personal Representative

SYNOPSIS

Between 1978 and 1995, Applicant consumed 12 to 15 beers daily. During the period, he occasionally drove his car after consuming 12 to 15 beers, although he was only arrested and convicted of three driving while under the influence of alcohol (DWI) offenses. In 1996, Applicant was diagnosed as alcohol dependent. Following a nine month period in 1996 when Applicant used no alcohol, Applicant resumed drinking because he became bored, and all his friends were drinking. Applicant continues to drink even though he claims at reduced levels. While there have been no alcohol-related incidents since 1995, Applicant has produced insufficient evidence to conclude there will be no alcohol problems in the future. Clearance is denied.

STATEMENT OF CASE

On October 21, 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. The SOR is attached. Applicant filed his Answer to the SOR on November 18, 2002.

The case was received by me on January 21, 2003. A notice of hearing was issued on April 10, and the case was heard on May 6, 2003. The Government and Applicant submitted documentary evidence. The Government called no witnesses. Testimony was taken from Applicant and two witnesses. The transcript was received on May 14, 2003.

FINDINGS OF FACT

The SOR alleges alcohol involvement. Applicant denied subparagraphs 1.b., 1.e., and 1.f. In response to 1.b., Applicant denied he routinely drove an auto while under the influence of alcohol. The behavior occurred only occasionally and no longer takes place. Applicant denied he was ordered to attend treatment as set forth in 1.e. Applicant claimed his

treatment was voluntary in early 1996 and not mandatory as alleged under 1.f. Applicant's admissions to the remaining allegations shall be incorporated into the factual findings. Applicant is 52-years-old and has been employed by his current employer as a painter since June 1998. He seeks a secret level clearance.

Applicant began drinking alcohol in 1969 (Tr. 86). While Applicant characterized his early drinking as "I didn't drink that much then (Tr. 86)," nine years later in the 1978 time frame, Applicant was drinking 12 to 15 beers a day after work. After his first DWI conviction in 1978, Applicant did not use alcohol for the duration of the alcohol education program,⁽¹⁾ but gradually began drinking again until he reached the 12 to 15 beer frequency.

About six months after the first DWI, Applicant consumed 12 to 15 beers after work one day in 1979, and was arrested for his second DWI. Applicant remained sober during the second alcohol education program as he had during the first program. About a month following the end of the program, Applicant was again consuming 12 to 15 beers a day after work and driving home.⁽²⁾

When Applicant went to work for his brother-in-law (personal representative) in 1994 (Tr. 37),⁽³⁾ he was drinking too much according to his wife. Then, in August 1995, Applicant was arrested by the military police for DWI after consuming 12 to 15 beers. Applicant pled guilty to DWI; he was fined and ordered to attend treatment. Applicant's brother-in-law, who became personally aware Applicant was drinking too much through observation at family events, but who did not know about the court-ordered treatment (Tr. 50), brought the family together to persuade Applicant find treatment.

Applicant enrolled in inpatient treatment on January 17, 1996, and was discharged on February 14, 1996. Applicant attended all groups, classes, and modalities; at discharge, his final diagnosis was alcohol dependency. He was given a fair prognosis. (GE 6)⁽⁴⁾

Applicant participated in Alcoholics Anonymous (AA) three times a week for four or five months after he was discharged from the treatment facility in February 1996. He learned very little in AA because he did not know anyone. His wife attended some AA sessions for encouragement purposes. He could not remember any of the 12 steps and only had a sponsor for approximately a month.

Applicant was sober for about nine months (Tr. 92) following his detoxification treatment. He began drinking again because:

I was bored and all my friends were drinking. I didn't want to lose them as friends, and decided to start drinking again to hang out with them. I sometimes feel I lack willpower regarding my drinking and want to be with my friends, even if they drink. I don't think I could just sit in a bar with my friends and not drink. (GE 2)

From November 1996 until 2001, Applicant consumed about seven to eight beers about three to four nights a week. When he did not go to the bar, he drank about 2 beers a night at home. His weekend consumption varied. Since 2001, or in the last year and a half, Applicant claims he has been able to control his drinking impulses because he is worried about his house, his job, and his security clearance (Tr. 89, 100) He currently drinks about two beers a night at home (Tr. 88), and drinks in a bar setting about once or twice a month. (Tr. 89) Based on the testimony of both Applicant, GE 2 (sworn statement), and Applicant's friend, alcohol is still a big part of Applicant's life style. The only event that appears to keep Applicant from drinking at increased levels similar to February 1990 is his apprehension of what will happen as a result of the security clearance investigation. Applicant considered himself an alcoholic until he completed detoxification in February 1996. (Tr. 108)

Applicant's brother-in-law is familiar with about 20 years of Applicant's alcohol history. After observing fluctuations in Applicant's consumption patterns, the brother-in-law considers Applicant has reduced his drinking in the last three years because Applicant seems to be more responsible and is interested in events that normal people are interested in. (Tr. 42) His brother-in-law has always found Applicant to be reliable. (Tr. 49)

The personnel manager of Applicant's current employer (who also authored a character reference) indicated Applicant has had no attendance problem in the last four years. The only information the manager knew about Applicant's drinking

was communicated to him the morning of the hearing. In his character statement, the manager commented favorably on Applicant's ability to complete assignments on time. (AE A)

Applicant's close friend for the past 15 years, testified he met Applicant in a bar frequented by veterans. They last socialized at a lodge about two weeks ago where about six beers were consumed. The friend has no specific knowledge of Applicant being intoxicated while driving an automobile. While he had numerous contact with Applicant in the 1990s, the friend has not seen Applicant much since 2000 because Applicant does not frequent a specific bar as much.

Approximately 29 character references, including current supervisors, former supervisors, current coworkers, former coworkers, and friends, described Applicant as an honest, professional person who is a very good painter. A magistrate from the one of the regional districts, who has considerable experience in making character judgments and in assessing integrity, believes Applicant is a good person. None of the references provides probative insight into Appellant's alcohol use.

Applicant received an award for bravery demonstrated in the Viet Nam war. He also received an Honorable Discharge from the military

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

Disqualifying Conditions:

1. Alcohol-related incidents away from work;
3. Diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence;
5. Habitual or binge consumption of alcohol to the point of impaired judgment.

Mitigating Conditions:

1. The alcohol-related incidents do not indicate a pattern;
3. Positive changes in behavior supportive of sobriety;
4. Following a diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participated frequently in meetings of AA or 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 a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

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 pages 16 and 17 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; (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, and 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 inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish all the factual allegations under alcohol consumption (Guideline G) 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

Excessive alcohol consumption can quickly lead to the exercise of poor judgment that causes careless or reckless behavior eventuating in security violations. Appellant's three alcohol-related driving incidents away from work in 1978, 1979, and 1995, fall within disqualifying condition (DC) 1. In each alcohol-related incident, Applicant had consumed an excessive amount of alcohol and then exercised poor judgment by operating an auto in a reckless manner.

GE 6 contains medical records from Applicant's inpatient treatment in January 1996 reflecting a diagnosis of alcohol dependence by a credentialed medical professional. The diagnosis from a medical professional falls within DC 3 of the alcohol consumption guideline.

Except for short periods of abstinence when Applicant was repeating his required enrollment in alcohol education programs, his consumption of 12 to 15 beers a day between Applicant's first DWI in 1978 and his third DWI in 1995 represents habitual consumption on a regular basis within the purview of DC 5 of the alcohol consumption guideline. Consuming over six beers three to four nights a week, between November 1996 and 2001 constitutes additional evidence of habitual consumption of alcohol. While Applicant claims he decreased his drinking even more since 2001, there is no independent support for this claim.

The alcohol consumption guideline lists four mitigating conditions (MC) that may reduce or eliminate the security concerns of an individual's excessive alcohol consumption. MC 1 warrants some application as Applicant's most recent alcohol-related offense occurred eight years ago. However, an eight year absence of alcohol-related offenses is insufficient to overcome Appellant's excessive alcohol consumption over many years.

MC 2 of the alcohol consumption guideline applies when the problem occurred a number of years ago and there is no indication of a recent problem. Even though Applicant's last alcohol-related incident was in 1995, and Applicant states he has reduced his consumption both at bars and at home, the record does not back his assertions, and does not reassure me Applicant's alcohol problem has been effectively eliminated or controlled.

An individual's excessive alcohol consumption may be overcome by positive changes in behavior supportive of sobriety. (MC 3) Except for Applicant's testimony, there is practically no evidence indicating structural changes in Applicant's behavior to support sobriety. The only evidence indicating change is Applicant does more drinking at home and less at bar settings.

Because Applicant has been diagnosed as suffering from alcohol dependence in February 1996, the Directive requires under MC 4 completion of inpatient or outpatient rehabilitation along with aftercare requirements, frequent participation in AA or similar organization, abstention from alcohol for a period of at least 12 months, and a favorable prognosis by a

credentialed medical professional. Applicant is commended for completing the 1996 treatment program just mentioned. However, Applicant's three or four month participation in AA in 1996 carries very little weight as Applicant has not returned to AA (or similar organization) since 1996. Also, missing from the record is a favorable diagnosis from a credentialed medical professional. Finally, while Applicant experienced nine months of abstinence in 1996, he has continued to use alcohol on a regular basis since then. In sum, Applicant has not met any of the mitigating conditions under the alcohol consumption guideline.

However, the failure to establish the mitigating conditions under alcohol consumption does not always mean the Applicant has failed to make his case as the general factors of the whole person concept may intervene to deliver a positive outcome for Applicant. Applicant has consumed alcohol since 1969. From 1979 to 1995, there is uncontroverted evidence Applicant consumed alcohol at excessive levels and was involved in three alcohol related incidents. While Applicant claims he has reduced his drinking since 1996, the only evidence to support his claim is he drinks more at home and less at other locations. Applicant's positive character evidence demonstrates Applicant is good at his job and is well-respected. But the character evidence and testimonial evidence of his attendance record does not enhance my understanding of Applicant's alcohol consumption history and the lack of motivation to strive toward some level of abstinence. Lacking from the record is any kind of evidence that enables me to confidently conclude Applicant has a network of support around him to help him avoid habitual abuse of alcohol or alcohol-related events in the future.

FORMAL FINDINGS

Formal findings required by Section 3, Paragraph 7 of the Directive are:

Paragraph 1(alcohol consumption): Against the Applicant.

1.a. Against the Applicant.

1.b. Against the Applicant.

1.c. Against the Applicant.

1.d. Against the Applicant.

1.e. Against the Applicant.

1.f. For the Applicant.

1.g. 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. According to GE 6, Applicant had never gone without alcohol for more than 2 or 3 weeks.
2. Applicant knew 12 to 15 beers put his blood alcohol level at about .20, but he still felt fine to drive and not intoxicated. (GE 2)
3. The security form indicates Applicant began working for his brother-in-law in May 1995.
4. Even though his brother-in-law denies he fired Applicant following treatment (Tr. 46), I am unable to ignore Applicant's statement he was fired by his brother-in-law following his treatment in 1996. (GE 2) Applicant admitted the

statement was correct. (Tr. 94)