

DATE: June 30, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-03186

DECISION OF ADMINISTRATIVE JUDGE

BARRY M. SAX

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge , Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

This 34-year-old engineer has a history of alcohol abuse and alcohol related arrests in 1994, 1997, 1998, and 2000. Since 2000, he has gradually stopped consuming alcohol. His work supervisor during the last three years has a high opinion of Applicant's character, work ethic, and integrity. The totality of the record indicates rehabilitation and trustworthiness, and minimal risk that Applicant may fail to protect classified information. Mitigation has been adequately established. Clearance is granted.

STATEMENT OF THE CASE

On July 21, 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 August 2, 2004, Applicant responded to the allegations set forth in the SOR, and elected to have a decision made by a DOHA Administrative Judge on the written record, i.e., without a hearing. Department Counsel issued a File of Relevant Material (FORM) on March 3, 2005. The Form instructed Applicant that any response to the FORM had to be submitted within 30 days of its receipt by Applicant. Any response was due by April 14, 2005 and Applicant did submit additional material within the 30 days. The matter was assigned to me for resolution on March 22, 2005.

FINDINGS OF FACT

Applicant is a 34-year-old engineer (Response to FORM). The July 21, 2004 SOR contains seven allegations under Guideline G (Alcohol Consumption). In his August 2, 2004 response to the SOR, Applicant *admits* all seven allegations, SOR 1.a. - 1.f. In his response to the FORM, Applicant adds additional information. The admitted allegations are accepted and incorporated herein as Findings of Fact.

After considering the totality of the evidence derived from the FORM and its attachments, including Applicant's responses to the SOR and FORM, I make the following additional FINDINGS OF FACT as to the status, past and present, of each SOR allegation:

Guideline G (Alcohol Consumption)

1.a. - Applicant consumed alcohol, at times to excess and to the point of intoxication, from 1993 to at least July 12, 2003;

1.b. - Applicant was arrested on November 20, 1993 and charged with (1) Operating while Intoxicated and (2) having a Blood Alcohol Content above the legal limit of .10%. The court found him guilty of Count 1 and fined him approximately \$150.00. His driving privileges were suspended for six months, and he was ordered to have an alcohol evaluation. Count 2 was dismissed (Items 7 and 8);

1.c. - Applicant had an alcohol evaluation, in which it was recommended that he receive alcohol counseling. He attended weekly group alcohol counseling from May 1994 to October 1994;

1.d. - Applicant was arrested on January 19, 1997 and charged with Obstructing an Officer. He pleaded guilty and was fined approximately \$271.00. He had consumed alcohol prior to the arrest (Items 4 and 9);

1.e. - Applicant was arrested on March 28, 1998 and charged with Public Intoxication. He pleaded guilty and was fined approximately \$90.00 (Item 10).

1.f. - Applicant was arrested on March 18, 2000 and charged with (1) "Driving Under the Influence of Alcohol" and (2) "Hit and Run," He pleaded guilty to Count 1 and was sentenced to ten days in jail. He was placed on Probation for one year and was fined approximately \$1,101.99. Count 2 was dismissed (Item 11).

1.g. - Applicant received outpatient alcohol group counseling treatment from June 3, 2000 to August 8, 2000. He was advised to abstain from consuming alcohol during his counseling period.

Applicant has had four alcohol-related arrests, in 1994, 1997, 1998, and 2000. In a 1999 sworn statement given to an agent of the Defense Security Service (DSS), Applicant stated that he

had: "no drinking/driving incidents since [his 1994 arrest]" (Item 5). Notwithstanding this 1999 claim, he was arrested again the following year, in March 2000, for Driving Under the Influence of Alcohol. This last arrest occurred after Applicant had submitted an application in November 1998 to obtain a DoD security clearance (Response to FORM, attachment 1).

As of his July 12, 2002-sworn statement (Item 6), he did not have a drink of choice, but liked variety. "I usually go out one night a week to a club and have approximately three to six drinks. I also drink at home three nights a week and have two to five drinks. I consume alcohol in the evenings" (*Id.*). He has had no problems with the law since the 2000 arrest and has now "shunned drinking" (Response to FORM, at page 5/5).

The Director of Programs at Applicant's employing company says: "[He] has been a reliable and honest employee at all times during his three-year tenure . . . His work ethic is beyond reproach, and his scientific and professional integrity are at the highest levels. As [Applicant's] supervisor, I unreservedly recommend him for this level of clearance" (Response to FORM, Item 9). Applicant has received a letter of recognition from work in 2002 and an award in 2003 (Response to FORM, Items 7 and 8).

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.

Because each security case presents its own facts and circumstances, it should not be assumed that the factors cited above exhaust the realm of human experience or that the factors apply equally in every case. Moreover, although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable financial judgment and conduct. Because this matter is being decided without a hearing, credibility determinations and findings of fact are necessarily based entirely on the contents of the FORM and applicant's response thereto.

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. In reaching the fair and impartial overall common sense determination based on the "whole person" concept required by the Directive, the Administrative Judge is not permitted to speculate, but can only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. In addition, as the trier of fact, the Administrative Judge must make

critical judgments as to the credibility of witnesses, here based solely on the written record.

In the defense industry, the security of classified information is entrusted to civilian workers who must be counted on to safeguard classified information and material twenty-four hours a day.

The Government is therefore appropriately concerned where available information indicates that an applicant for a security clearance, in his or her private life or connected to work, may be involved in conduct that demonstrates poor judgment, untrustworthiness, or unreliability. These concerns include consideration of the potential, as well as the actual, risk that an applicant may deliberately or inadvertently fail to properly safeguard classified information.

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.

A person seeking access to classified information enters into a fiduciary relationship with the

Government based upon trust and confidence. As required by DoD Directive 5220.6, as amended,

at E2.2.2., "any doubt as to whether access to classified information is clearly consistent with the interests of national security will be resolved in favor of the nation's security."

CONCLUSIONS

Since this matter is being decided without a hearing, my evaluation is necessarily limited to the contents of the various documents that are found in the case file, the latest of which is Applicant's response to the FORM.

Applicant is a 34-year-old engineer, born in 1970. The Government's concerns about Applicant's alcohol use and abuse, and his series of four alcohol-related arrests, in 1993, 1997, 1998, and 2000. He apparently slowed his consumption of alcohol after his 2000 arrest and treatment, and then stopped completely after about July 2003, some two years ago. The file does not contain any indication of arrests or other alcohol-related problems since 2000.

The central issue is whether Applicant has demonstrated he can be relied upon not to fall back into the old habits that are the basis for the SOR allegations. Four alcohol-related arrests in seven years (1993-2000) are certainly of security concern. I have carefully considered Applicant's submissions. He states that "[r]ecently I completely abstained from alcohol for an extended period of time while reflecting upon how I felt" (Response to FORM, page 3/5).

Under *Guideline G* (Alcohol), Disqualifying Conditions (DC) 1 (alcohol-related incidents away from work) and 4 (habitual or binge consumption of alcohol to the point of impaired judgment) are applicable. Mitigating Conditions (MC) 2 (the problem occurred a number of years ago and there is no indication of a recent problem) and 3 (positive changes in behavior supportive of sobriety) are applicable.

In making a risk analysis and seeking to determine likely future behavior, I give some weight to Applicant's claim of rehabilitation, but most compelling is the letter of recommendation from his supervisor, who is aware of the Government's concerns. Over the past three years, the person has formed a "high opinion of [Applicant's] character, work ethic, and integrity" (Response to FORM at Item 9). This information, and the passage of five years without any repetition of legal problems,

makes a strong case that Applicant has matured and is unlikely to repeat his past misbehavior.

Based on all of the available evidence, I conclude that Applicant has overcome the negative impact of the Government's evidence and can safely be relied upon to protect the nation's secrets.

FORMAL FINDINGS

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

Guideline G (Alcohol) For the Applicant

Subparagraph 1.a. For the Applicant

Subparagraph 1.b. For the Applicant

Subparagraph 1.c. For the Applicant

Subparagraph 1.d. For the Applicant

Subparagraph 1.e. For the Applicant

Subparagraph 1.f. For the Applicant

Subparagraph 1.g. For the 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 or continue a security clearance for Applicant.

BARRY M. SAX

ADMINISTRATIVE JUDGE