

DATE: October 7, 2003

---

In Re:

-----

SSN: -----

Applicant for Security Clearance

---

ISCR Case No. 02-03749

**DECISION OF ADMINISTRATIVE JUDGE**

**RICHARD A. CEFOLA**

**APPEARANCES**

**FOR GOVERNMENT**

Jennifer I. Campbell, Esquire, Department Counsel

**FOR APPLICANT**

Thomas M. Abbott, Esquire, Applicant's Counsel

**SYNOPSIS**

The Applicant, admittedly, has three alcohol related arrests: one in 1988, one in 1990, and the last one more than four years ago in 1999. Although he has never been diagnosed to have a problem with alcohol, the Applicant has chosen to abstain from its consumption, and attends Alcoholics Anonymous (AA) on a regular basis. Mitigation is shown. Clearance is granted.

**STATEMENT OF THE CASE**

On December 23, 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, issued a Statement of Reasons (SOR) to the Applicant, which detailed the 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.

Applicant filed an Answer to the SOR on February 11, 2003.

The case was received by the undersigned on July 11, 2003. A notice of hearing was issued on that same date, and the case was heard on July 30, 2003. The Government submitted nine exhibits. Testimony was taken from the Applicant, who also offered eleven exhibits on his own behalf. The transcript was received on August 8, 2003. The issue raised here is whether the Applicant's past alcohol consumption militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of all of the allegations.]

**FINDINGS OF FACT**

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The Applicant is 43 years of age, has a Bachelor of Science degree, and is employed by a defense contractor that seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and

upon due consideration of the same, I make the following additional findings of fact.

### Guideline G - Alcohol Consumption

1.a.~1.d. During the 1980's, the Applicant consumed alcohol "at least once a month on weekends" (Transcript (TR) at page 18 lines 5~24). In September of 1988, the Applicant was arrested and subsequently pled guilty to reckless driving (TR at page 18 line 25 to page 19 line 23). He had consumed "four or five beers" prior to this arrest (*id*). In March of 1990, the Applicant was arrested for, and subsequently pled guilty to, Driving Under the Influence (DUI) (Government Exhibits (GXs) 6 and 7). He had consumed "some beers" prior to this arrest (TR at page 20 line 20 to page 23 line 20).

During the 1990's, the Applicant's drinking pattern remained much the same, beer on some weekends. In May of 1999, the Applicant was arrested for DUI (GXs 4 and 5). Although the arrest "was later thrown out" on a legal technicality, he had consumed "six or seven beers" prior to this last arrest (TR at page 23 line 21 to page 26 line 13). From May of 1999 to April of 2003, the Applicant's drinking pattern changed to where he would only drink on special occasions "two or three" times a year (TR at page 26 line 22 to page 28 line 4). Although he has never been diagnosed to have a problem with alcohol, since April of this year the Applicant has chosen to abstain from its

consumption, and now attends Alcoholics Anonymous (AA) on a regular basis (TR at page 28 line 14 to page 30 at line 13, at page 33 line 16 to page 35 line 1, and at page 35 lines 16~24).

### Mitigation

The Applicant offers the sworn declarations of eight individuals: supervisors, colleagues, and friends (Applicant's Exhibits (AppXs) A~H). All are most laudatory in their comments regarding the Applicant; and many, to include his AA sponsor, aver that he has ceased the consumption of alcohol (*id*).

## **POLICIES**

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors and conditions that could raise or mitigate a security concern, which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither 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 clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

### Alcohol Consumption

#### Condition that could raise a security concern:

1. Alcohol-related incidents away from work, such as driving while under the influence . . .;

#### Conditions that could mitigate security concerns:

2. The problem occurred a number of years ago and there is no indication of a recent problem;
3. Positive changes in behavior supportive of sobriety;

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in Enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.

- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, 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 make out a case under Guideline G (Alcohol Consumption) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

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 be repeated, and that the Applicant presently qualifies for a security clearance.

The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in his private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

### **CONCLUSIONS**

The Applicant has three alcohol related arrests, the last one occurring more than four years ago in May of 1999. This is "a number of years ago"; and as such, the second mitigating condition under Alcohol Consumption is clearly applicable. There have also been "[p]ositive changes in [the Applicant's] behavior supportive of sobriety." He has ceased the consumption of alcohol, and attends AA on a regular basis. The third mitigating condition is therefore also applicable in this case. As mitigation has been shown, Guideline G is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his Alcohol Consumption. The Applicant has thus met the mitigating conditions of Guidelines G, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline G.

### **FORMAL FINDINGS**

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.
- d. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

### **DECISION**

In light of 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 the Applicant.

Richard A. Cefola

Administrative Judge