

DATE: April 10, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-03962

DECISION OF ADMINISTRATIVE JUDGE

JAMES A. YOUNG

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant, a 57-year-old employee of a defense contractor, referred himself to an alcohol rehabilitation program in 1994. He left the program after a few months and has resumed drinking alcoholic beverages-wine once or twice a week. Any security concerns have been sufficiently mitigated by the passage of nine years without indication of a recent problem and positive changes in behavior supportive of sobriety. Security clearance is granted.

STATEMENT OF THE CASE

Applicant, an employee of a defense contractor, applied for a security clearance. The Defense Office of Hearings and Appeals (DOHA), the federal agency tasked with determining an applicant's eligibility for access to classified information, declined to grant Applicant a clearance. In accordance with the applicable Executive Order ⁽¹⁾ and Department of Defense Directive, ⁽²⁾ DOHA issued a Statement of Reasons (SOR) on 6 January 2003 detailing why a clearance was not granted and recommending Applicant's case be referred to an administrative judge to determine whether the clearance should be denied/revoked. In the SOR, DOHA alleged Applicant failed to meet the excessive alcohol consumption (Guideline G) personnel security guideline.

Applicant answered the SOR in writing on 27 January 2003. The case was assigned to me on 19 February 2003. On 19 March 2003, I convened a hearing to consider whether it is clearly consistent with the national interest to grant Applicant's security clearance. The Government's case consisted of five exhibits. Applicant testified on his own behalf and submitted four exhibits at the hearing in addition to the two exhibits attached to his answer. A transcript (Tr.) of the proceeding was received on 26 March 2003.

FINDINGS OF FACT

Applicant, a 57-year-old employee of a defense contractor, served 22 years on active duty with the U.S. Air Force. Ex. 1 at 1, 5. During his career, he served in both Vietnam and in the Persian Gulf during Operation Desert Storm. After his

retirement from the Air Force in 1991, he

worked as a project manager at an Air Force base and then the facility director for the defense contractor responsible for operating an air base in Turkey. He later worked for the Social Security Administration, the Department of Housing and Urban Development, and the Atlantic Intracoastal Waterway. Tr. 19; Answer. He has been employed with this defense contractor since December 1996.

Applicant sought professional counseling for his marital problems in October 1993. In March 1994, Applicant decided he needed to stop using alcohol to save his marriage. His counselor referred him for evaluation to a certified chemical dependence counselor III (CCDC) on the counseling service's staff. Ex. 5 at 14.

Applicant has a history of abusing alcohol. Applicant told the CCDC that his use of alcohol increased from occasional social use in 1987 to consumption of 6 ounces of alcohol each day in 1994. Ex. 3 at 2. During the three months prior to seeking help for his drinking, Applicant drank an average of three to four ounces of diluted Vodka plus some beer each day. He drank the Vodka on his drive home from work, did not drink in front of his wife, nor let her know how much he was drinking. Ex. 5 at 15. He drank alone and hid the amount of alcohol he consumed from everyone else. *Id.* at 16. "He was bothered by the fact that around 4:00 in the afternoon he becomes so preoccupied with drinking that he can't think of anything else until he gets off work." *Id.* After many failed attempts to stop drinking on his own, he realized he needed help. Ex. 3 at 2.

The CCDC diagnosed Applicant as having alcohol dependence and uncomplicated bereavement. Ex. 4. He recommended a program consisting of abstinence from all alcohol, chemical dependency education, attendance at a primary treatment program, and involvement with Alcoholics Anonymous (AA). Ex. 5 at 17. During the program, Applicant attended AA meetings a minimum of three times a week. Ex. 5 at 22. By 1 June 1994, Applicant had stopped attending his group counseling sessions and AA meetings. When he left the program, Applicant denies he was using alcohol or had any desire to do so. Ex. 3 at 2.

Applicant divorced his wife in 1994 and moved out of state in 1995. Ex. 1. He remarried in 2001 and has resumed drinking alcoholic beverages. Ex. C. He drinks one to two glasses of wine a week. Ex. 4 at 3, 4.

After receiving the SOR, Applicant sought another evaluation of his condition by a licensed social worker in Pennsylvania with a master in social work. Ex. F at 5-6. That practitioner performed a three-hour assessment of Applicant and rendered an evaluation of alcohol abuse in full sustained remission for nine years. *Id.* at 4.

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 that 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. Or. 12968, *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.

An evaluation of whether the applicant meets the security guidelines includes consideration 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 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. Directive ¶ E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2. *See* Exec. Or. 12968 § 3.1(b).

Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. All that is required is proof of facts and circumstances that indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. ISCR Case No. 00-0277, 2001 DOHA LEXIS 335 at **6-8 (App. Bd. May 9, 2001). Once the Government has established a prima facie case by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. ISCR Case No. 01-20700 at 3 (App. Bd. Dec 19, 2002);

see Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security." Directive ¶ E2.2.2. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531. *See* Exec. Or. 12968 § 3.1(b).

CONCLUSIONS

In the SOR, DOHA alleged under Guideline G that Applicant was diagnosed as alcohol dependent, yet continues to drink one to two glasses of wine a week.

Under Guideline G, 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. Directive ¶ E2.A7.1.1. The evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program raises a security concern and may be disqualifying in this case. Directive ¶ E2.A7.2.4.

The following mitigating conditions may be applicable to Applicant's case:

- (1) The alcohol problem occurred a number of years ago and there is no indication of a recent problem. *See* Directive ¶ E2.A7.3.2.
- (2) Positive changes in behavior supportive of sobriety.

The "diagnosis" of alcohol dependence was provided by an Ohio Certified Chemical Dependency Counselor III. Applicant, supported by the Pennsylvania licensed social worker, contends the CCDC was unlicensed. They suggest the CCDC was unqualified to make the diagnosis he did and that the diagnosis was incorrect. Tr. 49; Ex. F at 2, 3. The Pennsylvania licensed social worker diagnosed Applicant with alcohol abuse, rather than alcohol dependence. Ex. F at 3.

Under Guideline G criteria, the listed persons authorized to render an opinion of alcohol abuse or alcohol dependence are licensed clinical social workers who are staff members of a recognized alcohol treatment program and credentialed medical professionals (e.g. physician, clinical psychologist, or psychiatrist). Directive ¶¶ E2.A7.1.2.4, E2.A7.1.2.3. Under Ohio law, a certified chemical dependency counselor III must have a bachelor's degree in behavioral science; not less than 4000 hours of compensated work experience, no less than 800 work hours of which are in chemical dependency counseling, in chemical dependency services and substance abuse services, or the practice of psychology; and a minimum of 270 hours of approved training in chemical dependency. Ohio Rev. Code Ann. § 4758.41. CCDCs are authorized to diagnose chemical dependency conditions under supervision. Ohio Rev. Code Ann. § 4758.56.

The Government did not establish Applicant's diagnosis as alcohol dependent was rendered by a licensed clinical social worker or a medical professional. Although it seems highly unlikely the drafters of the Directive meant to discount the opinion of a professional with a CCDC's qualifications, this issue need not detain us. Whether we accept the CCDC's diagnosis of alcohol dependence or the licensed social worker's evaluation of alcohol abuse, the results would be the same.

Applicant takes great pains to distinguish alcohol abuse from alcohol dependence. He argues the distinction is important because alcohol dependency is "a disease, and requires a detoxification period and appropriate medical intervention."

Tr. 22; see Ex. 5 at 2; but see American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders-DSM-IV-TR* 221 (APA 2000) (stating perhaps 20% or more of individuals with alcohol dependence achieve long-term sobriety without active treatment).

Applicant's efforts to distinguish alcohol abuse from alcohol dependence seems to be a response to the undeclared premise in the SOR-one who is alcohol dependent cannot resume drinking without returning to full-blown dependency, and therefore, is not eligible for a security clearance. Apparently, Applicant is concerned that continuing to consume alcohol will bar an alcohol dependent applicant from obtaining a security clearance, but not one who abuses alcohol. Such is not the case. There is no requirement that an alcohol dependent applicant completely abstain from consuming alcoholic beverages. See ISCR Case No. 96-0869, 1997 DOHA LEXIS 665 *10 (App. Bd. Sep. 11, 1997). The issue is whether an applicant's consumption of alcohol, both past and present, is such that he should not have access to classified information.

Although Applicant has a history of excessive drinking, he clearly has taken control of his life. He only drinks one to two glasses of wine a week. Drinking has not caused him any problems in the past nine years. He has a stable home life and has made substantial advancement within his profession. Applicant has sufficiently mitigated any security concern raised by his drinking and demonstrated that it is in the national interest to grant him a clearance.

FORMAL FINDINGS

Conclusions as to each of the allegations in the SOR as required by Executive Order No. 10865 § 3, ¶ 7 and the Directive ¶ E3.1.25, are as follows:

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

DECISION

In light of all 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 Applicant.

James A. Young

Administrative Judge

1. Exec. Or. 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), as amended and modified.
2. Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified.