

DATE: December 29, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-04343

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In 1997, the Applicant was sentenced to a 24~60 month term of incarceration following his conviction for "Driving . . . While Under the Influence of Intoxicating Liquor (F[elony])" (DUI). His passenger, his fiancée, was killed as a result of his felony DUI. The provisions of 10 U.S.C. 986 apply. The Applicant now attends Alcoholics Anonymous (AA) on a regular basis, has not consumed alcohol for about a year, and intends no future consumption. The Applicant's Alcohol Consumption concerns have been mitigated. However, the Applicant admittedly still owes in excess of \$32,000 in past due indebtedness, and has done little to address these debts. His Financial Considerations are therefore not mitigated. Clearance is denied.

STATEMENT OF THE CASE

On March 3, 2003, 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 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 March 24, 2003.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on October 6, 2003. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on November 7, 2003, and Applicant's reply was received soon thereafter. The case was received by the undersigned for resolution on December 11, 2003. The issues raised here are whether the Applicant's criminal conduct, past alcohol abuse, and continuing financial considerations militate 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 File of Relevant Material and Applicant's Response. The Applicant is 42 years of age, and is employed by a defense contractor who 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 J - Criminal Conduct

1.a. and 1.b. In April the Applicant was arrested for a felony DWI (Government Exhibit (GX) 5 at pages 1~2, and GX 6). The Applicant and his fiancée were at a casino, where they were provided "with beer over the course of the evening" (GX 5 at page 2). The Applicant describes the circumstances preceding his arrest:

I consumed eight to twelve beers. I was intoxicated when we decided to leave at midnight. I was driving a new car . . . my fiancée wanted to go fast [and] I also wanted to test the vehicle. There were not many cars on the interstate, so I took off. I was doing 140 mph when . . . I lost control of the car. In the resulting crash, my fiancée, who was not wearing her shoulder belt was killed (GX 5 at page 1).

The Applicant pled guilty as charged, and was sentenced to be incarcerated a minimum of 24 months to a maximum of 60 months (GX 9). He served "about 13 months" in a "Conservation Camp," and the balance of . . . [his] minimum sentence of two years under house arrest" (GX 5 at page 2). The facts admitted above bring this case within the purview of 10 U.S.C. 986, which disqualifies the Applicant from having a security clearance granted or continued by the Department of Defense. In a meritorious case, the Secretary of Defense may authorize an exception to this prohibition. In requesting that a determination be made in his case without a hearing, the Applicant has requested the consideration of a waiver (*see* GX 3 at page 1).

Guideline G - Alcohol Consumption

2.a.~2.d. The years prior to his arrest, the Applicant "drank fairly heavily. . . . [He] went out with the guys on Friday and Saturday nights and consumed about one beer per hour, consuming about six or seven beers over the course of the evening" (GX 5 at page 2). During his incarceration, the Applicant attended a four week alcohol rehabilitation program (*id*). While under house arrest, the Applicant also attended weekly counseling sessions at AA (*ibid*). Since his release from house arrest in 2001, the Applicant attends AA on a regular basis, and has not consumed alcohol since about December of 2002 (GX 3 at pages 1 and 3).

Guideline F - Financial Considerations

3.a.~3.k. As the Applicant avers credibly, there are past due debts and/or liens to nine separate creditors alleged in the SOR. The first two are to two separate banks totaling \$175. He disputes these alleged debts as he has "no idea" as to what they pertain to (GX 5 at page 4). The next two alleged debts are, in fact, the same debt to a third bank for about \$10,359 (GX 5 at page 4, and GX 12 at page 5). He has done nothing to address this past due debt (GX 5 at page 4). The fifth alleged debt is to yet another bank in the amount of about \$817 (GX 12 at page 5). He has done nothing to address this past due debt (GX 5 at page 4). The sixth alleged debt is also to a bank in the amount of about \$18,744 (GX 12 at page 6). He has done nothing to address this past due debt (GX 5 at page 4). The seventh alleged debt is to a utility company for \$124 (GX 12 at page 6). He intended "to pay this debt in full in Jun 02," but has offered nothing to show he has carried through with his intention (GX 5 at page 4). The eight alleged debt is for a credit card in the amount of about \$2,448 (GX 12 at page 6). He has done nothing to address this past due debt (GX 5 at page 4). The ninth alleged debt is, in fact, a state tax lien for \$2,234 (GX 12 at page 7). It has been paid; and as such, the Applicant has been released from this lien (GX 3 at pages 12~13). The final alleged debt is a county tax lien in the amount of about \$148 (GX 12 at page 7). The Applicant has done nothing to address this lien (GX 5 at page 4). In December of 2001, the Applicant had a positive monthly cash flow of about \$1,571 (GX 5 at page 6).

Mitigation

The Applicant's AA sponsor speaks laudably of the Applicant's alcohol recovery efforts (GX 3 at pages 3~5).

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:

Criminal Conduct

Condition that could raise a security concern:

3. Conviction in a Federal or State court . . . of a crime and sentence to imprisonment for a term exceeding one year;

Condition that could mitigate security concerns:

7. Potentially disqualifying conditions c. and d., above, may not be mitigated unless, where meritorious circumstances exist, the Secretary of Defense . . . has granted a waiver.

Alcohol Consumption

Condition that could raise a security concern:

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

Condition that could mitigate security concerns:

3. Positive changes in behavior supportive of sobriety;

Financial Considerations

Condition that could raise a security concern:

1. A history of not meeting financial obligations;

Conditions that could mitigate security concerns:

None

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 that are speculative or conjectural in nature.

The Government must make out a case under Guideline J (Criminal Conduct), Guideline G (Alcohol Consumption), and Guideline F (Financial Considerations); 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, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

The Applicant was convicted of felonious conduct that occurred nearly eight years ago. He was sentenced to from 24~60 months of incarceration, of which he spent 13 months in a Conservation Camp and another 11 months under house arrest. The third disqualifying condition is therefore applicable; and as such, under the provisions of 10 U.S.C. 986, Guideline J is found against the Applicant.

As to the Applicant's past alcohol abuse, the Applicant drank abusively prior to his arrest in 1996. Alcohol was clearly a contributing factor to the accident that took the life of his fiancée. The first disqualifying condition is therefore applicable. Since his incarceration, the Applicant has turned his life around vis-a-vis alcohol. He no longer consumes the intoxicant, and he attends AA on a regular basis. These are clearly "[p]ositive changes in behavior supportive of sobriety" under the third mitigating condition. Therefore, I find Guideline G for the Applicant.

Finally, as to the Applicant's Financial Considerations, he has done little to address his remaining \$32,000 in past due indebtedness. This is so, despite a positive monthly cash flow in excess of \$1,500. Disqualifying condition 1 is thus clearly applicable, as the Applicant has "[a] history of not meeting financial obligations." As there is no mitigation here, Guideline F is also found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his Criminal Conduct and Financial Considerations. The Applicant has thus not met the mitigating conditions of Guidelines F and J, and of Section F.3. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guidelines F and J.

FORMAL FINDINGS

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

Paragraph 1: AGAINST THE APPLICANT

a. Against the Applicant.

b. Against the Applicant.

Paragraph 2: FOR THE APPLICANT

a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

e. For the Applicant.

Paragraph 3: AGAINST THE APPLICANT

a. For the Applicant.

b. For the Applicant.

c. Against the Applicant.

d. Against the Applicant.

e. Against the Applicant.

f. Against the Applicant.

g. Against the Applicant.

h. Against the Applicant.

i. For the Applicant.

j. Against the Applicant.

k. Against 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 not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge