

DATE: September 9, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05251

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant was convicted in 1992, 1993, and 1996 for Driving Under the Influence (DUI) of alcohol. The latest incident occurred more than eight years ago and there is no evidence of a recent problem with alcohol. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from the alcohol arrests. Clearance is granted.

STATEMENT OF THE CASE

On February 11, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. On arch 14, 2003, the Applicant answered the SOR and asked for a hearing. On April 23, 2003, a Notice of Hearing was issued setting a hearing in this matter for May 20, 2003. However, on May 8, 2003--for good cause given--the hearing was cancelled. On April 21, 2003, the Applicant elected to have his case decided on the written record in lieu of a hearing.

On July 21, 2003, the Applicant received a complete copy of the file of relevant material (FORM) dated July 7, 2003, and was given the opportunity to file objections and submit material in extenuation, mitigation, or refutation. The Applicant's response to the FORM was due on August 20, 2003. No response has been received. I was assigned the case on September 3, 2003. The Department Counsel presented eight exhibits (Items).

FINDINGS OF FACT

The SOR alleges excessive alcohol consumption (Guideline G). The Applicant admits: he consumed alcohol, at time to excess; he was arrested in 1992, October 1993, and April 1996 for Driving Under the Influence (DUI); and he drinks three or four beers three times a month. Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional

findings of fact.

The Applicant is 40-years-old, has worked for a defense contractor since June 2000, and is seeking a security clearance. The Applicant began drinking at age 19. From November 1982 until August 1993, the Applicant was in the Navy and during that time his drinking got "out of hand." (Item 7, p. 3) In 1992, the Applicant was stopped for a traffic violation and arrested for DUI. He consumed alcohol to excess, while partying with friends, and was on his way home when stopped. He paid a fine of \$1,100.00 and his driver's license was suspended. In October 1993, he consumed alcohol to excess, while partying with friends. He was stopped for a defective taillight and charged with DUI. He pleaded guilty to DUI, paid a \$325.00 fine, was sentenced to 60 days in jail (59 days suspended), and had his driver's license suspended. (Item 8) In April 1996, he consumed alcohol to excess, while partying with friends, and was stopped by the police while driving. He was arrested for DUI, pleaded guilty, paid a fine and his driver's license was suspended.

In August 2000, the Applicant completed a Security Clearance Application, SF 86. On the form he listed his 1996 DUI arrest, which was his most recent arrest, but failed to list his 1992 and 1993 DUI arrests. He is unsure why the arrests were not listed on the form. He states he "did not purposely or deliberately omit the other two DUI arrests from my security questionnaire." (Item 7, p. 4)

He currently drinks socially with friends. He drinks three or four beers at a time, three times a month. He has never sought treatment or alcohol counseling and does not believe he has a problem with alcohol.

POLICIES

The Adjudicative Guidelines in the Directive are not a set of inflexible rules of procedure. Instead they are to be applied by Administrative Judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. In making overall common sense determinations, Administrative Judges must consider, assess, and analyze the evidence of record, both favorable and unfavorable, not only with respect to the relevant Adjudicative Guidelines, but in the context of factors set forth in section E 2.2.1. of the Directive. The government has the burden of proving any controverted fact(s) alleged in the SOR, and the facts must have a nexus to an Applicant's lack of security worthiness.

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

Considering the evidence as a whole, this Administrative Judge finds the following adjudicative guidelines to be most pertinent to this case:

Alcohol Consumption (Guideline G) The Concern: 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.

Conditions that could raise a security concern and may be disqualifying include:

1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use. (E2.A7.1.2.1.)

Conditions that could mitigate security concerns include:

2. The problem occurred a number of years ago and there is no indication of a recent problem. (E2.A7.1.3.2.)

BURDEN OF PROOF

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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.* 484 U.S. 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." Executive Order 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.

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*, at 531. All that is required is proof of facts and circumstances which 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. Where the facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, then the applicant has the ultimate burden of establishing his security suitability with substantial evidence in explanation, mitigation, extenuation, or refutation, sufficient to demonstrate that despite the existence of guideline conduct, it is clearly consistent with the national interest to grant or continue his security clearance.

Security clearances are granted only when "it is clearly consistent with the national interest to do so." *See* Executive Orders 10865 § 2 and 12968 § 3.1(b). "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 "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." *See Egan*, at 531. Doubts are to be resolved against the applicant.

CONCLUSIONS

The Government has satisfied its initial burden of proof under Alcohol Consumption (Guideline G). The Applicant was involved in three incidents of intoxication--all of which resulted in arrests, which are alcohol related incidents away from work. The Applicant was found guilty of DUI offenses occurring in 1992, October 1993, and April 1996.

Disqualifying condition 1 ⁽²⁾ applies.

The most recent of these incidents occurred more than eight years ago and there is no evidence of a recent problem. The Applicant continues to drink socially three or four beers, three times a month. I do not find the Applicant's periodic drinking, without proof of intoxication or abuse of alcohol, to constitute a recent problem. Mitigating factor 2 ⁽³⁾ applies. The eight-year passage of time is sufficient to overcome the Government's case against him. I find for the Applicant as to SOR subparagraphs 1.a., 1.b., 1.c., 1.d., and 1.e.

The record is silent as to the Applicant's current lifestyle, behavior, friends or associates, duty performance, rehabilitation over the past eight years, steady employment, community involvement, or any demonstration of good judgment and reliability. Therefore, the other mitigating factors do apply. However, there is no evidence of a current problem with excessive alcohol consumption.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

FORMAL FINDINGS

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

Paragraph 1 Alcohol Consumption (Guideline G):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

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 the Applicant. Clearance granted.

Claude R. Heiny

Administrative Judge

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. DC 1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use. (E2.A7.1.2.1.)
3. MC 2. The problem occurred a number of years ago and there is no indication of a recent problem. (E2.A7.1.3.2.)