

DATE: October 8, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-05567

DECISION OF ADMINISTRATIVE JUDGE

CLAUDE R. HEINY

APPEARANCES

FOR GOVERNMENT

Jonathan A. Beyer, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Between 1970 and January 1999, the Applicant was convicted 12 times for Driving While Intoxicated (DWI) and four times for public intoxication. The record evidence is insufficient to mitigate or extenuate the negative security implications stemming from excessive alcohol consumption. Clearance is denied.

STATEMENT OF THE CASE

On November 26, 2002, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant stating DOHA could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(U\)](#) On February 4, 2003, the Applicant answered the SOR and requested a hearing. The case was assigned to me on March 28, 2003. A Notice of Hearing was issued on April 23, 2003, scheduling the hearing, which was held on May 15, 2003. The Government's case consisted of 19 exhibits (Gov Ex). The Applicant relied on his own testimony. The transcript (Tr.) of the hearing was received on May 23, 2003.

FINDINGS OF FACT

The SOR alleges alcohol consumption, Guideline G, and criminal conduct, Guideline J. The Applicant admits to his arrests and treatment. 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 58-years-old, has worked for a defense contractor since January 1978, and is seeking to maintain a security clearance. He received his first clearance 37 years ago. (Tr. 24) His clearance was revoked in 1981 or 1982 and thereafter reinstated. (Tr. 62)

The Applicant first began using alcohol in high school in 1961 or 1962. At that time he consumed beer on weekends but did not drink excessively. In 1964, while in the U.S. Navy, the Applicant went before a captain's mast for possession of alcohol by a minor. In 1971, his drinking ended his first marriage. (Gov Ex 14) From 1966 to 1971, the Applicant was drinking six beers daily and would consume a case of beer on weekends. (Gov Ex 18) In 1971, his drinking and beer consumption escalated. From 1971 through 1983--a 12 year period--the Applicant drank 18 to 24 beers a day.

In 1970 the Applicant was arrested, charged, and found guilty of being drunk in a public place, fined \$100 and given six month probation. (Gov Ex 12) In September 1971, he was arrested, charged, and found guilty of driving while intoxicated (DWI), and fined \$150, given one year probation, and sentenced to 60 days in jail. (Gov Ex 4) In November 1971, he was arrested, charged, and found guilty of DWI, and sentenced to six month's probation. In April 1973, he was arrested, charged, and found guilty of DWI, sentenced to 12 month's summary probation, and fined \$150. (Gov Ex 10) In July 1975, he was arrested, charged, and found guilty of DWI, and fined \$100. In December 1975, he was arrested, charged, and found guilty of DWI, and fined \$110. (Gov Ex 9) In 1977, he was arrested, charged, and found guilty of DWI, and fined \$190. (Gov Ex 11) In 1978, he was arrested, charged, and found guilty of public intoxication. (Gov Ex 6)

In April 1979, the Applicant was charged with and found guilty of public intoxication, and fined five dollars. (Gov Ex 7) In July 1979, he was charge with public intoxication. (Gov Ex 8) In October 1979, he was arrested, charged, and found guilty of DWI, sentenced to two years probation, 60 days in jail, fined \$300, and required to complete an alcohol treatment program. (Gov Ex 5)

In 1980, he was arrested, charged, and found guilty of DWI, fined \$250, sentenced to 90 days in jail, and required to attend an alcohol treatment program. In February 1980, he admitted he was an alcoholic and was unable to control his drinking. (Gov Ex 13) The Applicant received court ordered treatment at an alcohol recovery center. The Applicant stated he usually drank alone and had been able to maintain his sobriety since his October 1975 arrests until late January 1980, when he believed he could have one beer. However, this drinking led to his 1980 DWI arrest.

During treatment, the Applicant began to attend Alcoholics Anonymous (AA) meetings. Following his 1980 arrest and treatment, the Applicant was able to maintain his sobriety for two years before again starting to drink. In a 1982 sworn statement (Gov Ex 19), the Applicant said, "I believe I've learned my lesson not to drive while under the influence of alcohol." (Gov Ex 19, p2) In the same statement, he said he did not believe he was an alcoholic.

In February 1983, the Applicant was arrested, charged, and found guilty of DWI after being involved in a motor vehicle accident. He was fined \$500, his driver's license was revoked for two years, and was sentenced to six days in jail. In the spring of 1983, he--then age 37--sought help for his alcohol problem and was admitted to a hospital care unit. At the time of admission, he was drinking a case of beer daily and admitted that from age 21 to age 37, he daily drank a case of beer. His discharge diagnosis was alcohol addiction and mild alcohol hepatitis. In 1988, he was arrested, charged, and found guilty of DWI, his driver's license was revoked for two years, he was fined \$750, and sentenced to 130 days in jail, which was suspended for one year. During his heavy periods of drinking he spent \$100 to \$200 per week on beer. (Gov Ex 18)

In 1983, he was able to maintain his sobriety with the help of AA for approximately 4 ½ years from his 1983 arrest until September 1987. The Applicant stopped going to AA because of the depressing stories he heard at the meetings. In 1988, he--then age 43--was admitted to a hospital inpatient care unit for 10 to 12 days, was diagnosed as alcohol addiction (Gov Ex 15) and alcohol dependence relapse. (Gov Ex 16) The psychiatric history lists "Alcohol abuse, chronic." (Gov Ex 14) At the time of admission, he indicated he was drinking nine to 12 beers daily. During treatment, the Applicant indicated he had experienced loss of memory "a lot" after he had been drinking. (Gov Ex 16)

In a 1990 sworn statement (Gov Ex 18), the Applicant stated he did not intend to drink alcohol in the future. He said he had no future intention to use any form of alcoholic beverages. At that time he was attending two to three AA meetings each week, and had done so since September 1988.

In 1996, he was arrested, charged, and found guilty of DWI, sentenced to serve five years probation, fined \$2,914, and required to attend and complete a three-month alcohol education and counseling course. In 1999, the Applicant was arrested, charged, and found guilty of DWI after being involved in a motor vehicle accident, fined \$1200, his driver's

license was suspended for one year, and he served 100 days in jail with work release.

In a September 2001 sworn statement (Gov Ex 2), the Applicant says, "I do not foresee any more problems with my alcohol and I will use good judgment when I drink." The Applicant indicated once a week he drinks six to eight beers, but indicates sometimes it is not that much and this is not a weekly occurrence. (Tr. 59) He intends to continue drinking at the same level. During the year and one half prior the hearing the Applicant had been intoxicated approximately six times. (Tr. 67) He last drank to the point of intoxication approximately a month prior to the hearing. (Tr. 66) He is not currently attending AA meetings.

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.)
5. Habitual or binge consumption of alcohol to the point of impaired judgment. (E2.A7.1.2.5.)

Conditions that could mitigate security concerns include:

None Apply.

Criminal Conduct, Guideline J. The Concern: A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

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

- a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged;
- b. A single serious crime or multiple lesser offenses;

Conditions that could mitigate security concerns include:

None Apply

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.* 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*, 484 U.S. 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*, 484 U.S. 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. Between 1971 and 1999, on 12 occasions the Applicant was arrested and found guilty of DWI and four times arrested and found guilty of public intoxication. Disqualifying Conditions (DC) 1 [\(2\)](#) and 5 [\(3\)](#) apply. In 1983, he received medical treatment and his discharge diagnosis was alcohol addiction and mild alcohol hepatitis. In 1988, he was admitted to a hospital inpatient care unit for 10 to 12 days, was diagnosed as alcohol addiction and alcohol dependence relapse. However, the record fails to show the diagnosis was made by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program. In 1982, the Applicant acknowledged he was an alcoholic, but the record does not establish a diagnosis of alcoholism by a credentialed medical professional such that DC 6 [\(4\)](#) would apply.

The Applicant's excessive alcohol consumption resulted in 16 arrests for intoxication. This indicates the conduct was serious, forms a pattern, and is recent with his most recent arrest having occurred approximately four years prior the hearing. The Applicant has not stopped drinking, but still drinks six to nine beers on occasion weekly. During the last year and a half he has been intoxicated approximately six times, with the most recent occurrence being a month before the hearing. There is no showing he has made any effort to reform his behavior, change his friends, or lifestyle since January 1999. The Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him.

Although the Applicant currently states he does not foresee any more problems with alcohol and will use good judgment when he drinks, his statement must be balanced against his prior failed predications. In 1982 he stated he had learned his lesson not to drive while under the influence of alcohol. However, this statement was followed by four more DWI convictions. In 1990 the Applicant said he did not intend to drink alcohol in the future and this statement was followed by two DWI convictions and his current statement that he is drinking and intends to continue drinking at his current level which includes six to eight beers on occasion and his six intoxications in the previous 18 months.

Because the Applicant meets the disqualifying conditions and none of the mitigating conditions, his alcohol consumption is resolved against him. I find against the Applicant as to SOR subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., 1.l., 1.m., 1.n., 1.o. and 1.p.

In 1983 and 1988, the Applicant was evaluated for alcohol treatment. I will not find against the Applicant because he underwent treatment. I find for the Applicant as to SOR subparagraph 1.q., 1.r., 1.s., and 1.t.

The Government has satisfied its initial burden of proof under Guideline J, Criminal Conduct. Under Guideline J, the security eligibility of an applicant is placed into question when a history or pattern of criminal activity, which creates doubt about the applicant's judgment, reliability, and trustworthiness, is shown. Between 1970 and 1999, the Applicant was arrested 16 times for DWI and public intoxication. Because of his convictions, DC a⁽⁵⁾ and b⁽⁶⁾ apply.

None of the Mitigating Conditions apply. MC a⁽⁷⁾ does not apply because he was arrested in January 1999, which is recent criminal behavior. MC b⁽⁸⁾ does not apply because there were 16 alcohol related arrests and therefore, his criminal behavior was not an isolated incident. MC c⁽⁹⁾ and d⁽¹⁰⁾ do not apply because the Applicant's conduct was not the result of pressure, coercion, or an involuntary act. There was no acquittal, so MC e⁽¹¹⁾ is inapplicable. MC f does not apply because the record does not establish clear evidence of successful rehabilitation. I find against the Applicant as to SOR subparagraph 2.a.

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: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: Against the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h.: Against the Applicant

Subparagraph 1.i.: Against the Applicant

Subparagraph 1.j.: Against the Applicant

Subparagraph 1.k.: Against the Applicant

Subparagraph 1.l.: Against the Applicant

Subparagraph 1.m.: Against the Applicant

Subparagraph 1.n.: Against the Applicant

Subparagraph 1.o.: Against the Applicant

Subparagraph 1.p.: Against the Applicant

Subparagraph 1.q.: For the Applicant

Subparagraph 1.r : For the Applicant

Subparagraph 1.s.: For the Applicant

Subparagraph 1.t.: For the Applicant

Paragraph 2 Criminal Conduct, Guideline J: AGAINST THE APPLICANT

Subparagraph 2.a.: Against the Applicant

DECISION

In light of all 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. Clearance is denied.

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. DC 5. Habitual or binge consumption of alcohol to the point of impaired judgment. (E2.A7.1.2.5.)
4. DC 6. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program. (E2.A7.1.2.6.)
5. DC a. Allegations or admission of criminal conduct, regardless of whether the person was formally charged.
6. DC b. A single serious crime or multiple lesser offenses.
7. MC a. The criminal behavior was not recent.
8. MC b. The crime was an isolated incident.
9. MC c. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life.
10. Mc d. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur.
11. e. Acquittal