

DATE: September 15, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-07404

DECISION OF ADMINISTRATIVE JUDGE

JOAN CATON ANTHONY

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In 1994, Applicant, who was 23 years old, was arrested and pled guilty to driving under the influence of alcohol. His driver's license was revoked for one year, he received a 60-day suspended sentence, and he paid a fine. Applicant has had no further alcohol-related incidents since 1994. He admits to drinking 1 to 10 beers twice a month and he states that, since his 1994 arrest, he has never driven after drinking. Nothing in the record indicates a diagnosis of alcohol abuse or dependence. Applicant's behavior provides evidence of mitigating conduct. Clearance is granted.

STATEMENT OF THE CASE

On February 28, 2003, pursuant to Executive Order No. 10,865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant that specified reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. DOHA recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

In the SOR the Government alleged that Applicant was disqualified from obtaining a security clearance because of alcohol consumption (Guideline G). By memorandum dated April 1, 2003, Applicant responded to the SOR and requested that his case be determined on the record in lieu of a hearing. The Government submitted its File of Relevant Information (FORM) on July 2, 2003. The FORM contained 8 documents, identified as Items 1 through 8. By letter dated July 16, 2003, a copy of the FORM was forwarded to Applicant, with instructions to submit additional information and/or any objections within 30 days of receipt. Applicant filed a response dated August 15, 2003 in which he disagreed with the Government's conclusions regarding his current use of alcohol and supplied further information

about his behavior and motivation. On September 3, 2003, the case was assigned to me for a decision.

FINDINGS OF FACT

The Government issued a Statement of Reasons (SOR), dated February 28, 2003, predicated on paragraph 1, Guideline G, Alcohol Consumption. (Item 1) In the SOR, the Government stated that it was unable to find it consistent with the national interest to grant Applicant access to classified information because of Applicant's alcohol consumption, which it specified in subparagraphs 1.a. through 1.d., incorporated herein by reference

In his answer to the SOR, Applicant admitted the factual allegations involving Guideline G, Alcohol Consumption, as set out in the SOR in subparagraph 1.a. He denied the factual allegations involving Guideline G, Alcohol Consumption, as set out in subparagraphs 1.b., 1.c., and 1.d. (Item 3) Applicant's admissions are incorporated as findings of fact. (Item 3)

After a complete and thorough review of the evidence in the written record, and upon due consideration of the same, I make the following additional findings of fact:

Applicant is a 32-year-old analyst employed by a Government contractor. On December 20, 2001, Applicant signed and certified a Security Clearance Application, Standard Form 86 (SF 86) (Item 4). Question 24 of the SF-86 asked if the Applicant had ever been charged with or convicted of any offenses related to alcohol or drugs. In response to the question, Applicant listed a charge of driving under the influence of alcohol in 1994. He further stated that conviction of the charge had resulted in the revocation of his driver's license for one year. (*See also* Items 6, 7, and 8) In response to Question 30 on the SF 86, Applicant stated that in the last 7 years his use of alcoholic beverages had not resulted in any alcohol-related treatment for alcohol abuse or alcoholism.

On January 29, 2003, Applicant provided a signed sworn statement in answer to interrogatories posed to him by DOHA. (Item 5) In the signed, sworn statement, Applicant averred that he currently drinks alcohol in the form of beer twice a month. When Applicant consumes beer, his intake can be anywhere from one beer to ten beers. Applicant estimates that he drinks beer to intoxication "once a month, sometimes every other month." Applicant defined intoxication to mean "the legal blood alcohol content for your state that defines you as legally impaired." He observed further that if a State defines impairment as a blood alcohol reading of .08, then it was possible, depending upon an individual's body weight and size, for a person to be impaired or intoxicated after drinking one to two beers. Applicant further attested that he becomes mellow and relaxed when he drinks alcohol, and he stated that he intended to continue to drink alcoholic beverages. Applicant further averred that his current drinking does not indicate a pattern of excessive use of alcohol.

In his response to the FORM, Applicant stated that while his response to the interrogatories was that he drank 1-10 beers twice a month, a more accurate description would be that he drank one beer two times per month. He acknowledged that on New Year's Eve, 2002, he may have consumed 10 beers over a considerable period of time. He also stated that on other New Years Eves, he has "stayed at home or gone to a party and didn't have anything to drink at all." Applicant observed that he did not think his drinking habits demonstrated excessive drinking or a pattern of alcohol abuse, and he stated that his use of alcohol did not pose a threat to national security. Applicant stated that he spent most of his free time with his fiancée and they were in the process of buying a home. Applicant further declared that he had no intention to drink alcohol in excess, that alcohol is a "small part" of his life, and that he had matured in the nine years since his arrest and conviction of driving under the influence. He offered the following explanation:

I do admit that I was convicted of DUI in June 1994 and in my defense that was over 9 years ago. I made a huge mistake that changed my life. Up until that point I did drink and drive occasionally and I am glad I was caught. It cost me a lot of money and the humiliation of losing my license for 1 year taught me a valuable lesson. I was young and immature and it opened my eyes to the dangers of consuming alcohol. As part of my penalty I had to attend [State Alcohol Safety Action Program] classes and attend 12 Alcoholics Anonymous meetings. During this time that I was in this course I wasn't allowed to drink anything and had to take a Breathalyzer test every time we had a class. I also had to submit to random drug testing. I haven't driven after drinking since this conviction and it helped me realize that when you indulge in the consumption of alcohol you need to be responsible for your actions and never consume to the point that you are not in control.

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 the 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. Order No. 12,968, *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. *See* Directive, Enclosure 2.

An evaluation of whether the applicant meets the security guidelines includes consideration of the whole person criterion, comprised 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 the 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 reoccurrence. Directive, E2.2.1. Security clearances are granted only when "it is clearly consistent with the national interest to do so." Exec. Order No. 10,865 § 2. *See* Exec. Order No. 12,968 § 3.1(b).

Adjudicative Guideline G, Alcohol Consumption, is most pertinent to this case. The relevant provisions of Guideline G which apply to this case are:

E2.A7.1.1 *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.

The following conditions could raise a security concern in this matter and could be disqualifying:

E2.A7.1.2.1. Alcohol-related incidents away from work, such as driving under the influence . . . , and

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

Guideline G identifies conditions that could mitigate security concerns deriving from excessive alcohol consumption. Mitigating conditions relevant in the instant case are:

E2.A7.1.3.1. The alcohol-related incidents do not indicate a pattern.

E2.A7.1.3.2. The problem occurred a number of years is no indication of a recent problem.

E2.A7.1.3.3. Positive changes in behavior supportive of sobriety.

Under the Directive, a decision to grant or to continue an applicant's clearance may be made only upon an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall commonsense determination required, the administrative judge can only draw those inferences and conclusions which have a reasonable and logical basis in the evidence of record.

Burden of Proof

Initially, the Government has the burden of proving any controverted fact alleged in the SOR. The standard of proof is less than a preponderance of the evidence. If the Government meets its burden and establishes conduct cognizable as a

security concern under the Directive, the burden of persuasion then shifts to the applicant to present evidence in refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of criterion conduct, it is clearly consistent with the national interest to grant or continue his security clearance. Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security. *See* Directive, Enclosure 2, Section E2.2.2.

A person who seeks access to classified information enters a fiduciary relationship with the Government predicated upon trust and confidence. Where the facts proven by the Government or admitted by the Applicant raise doubts about Applicant's judgment, reliability, or trustworthiness, Applicant has a heavy burden of persuasion to demonstrate that he is nevertheless security worthy. In *Department of the Navy v. Egan*, *supra*, at 531, the Supreme Court concludes that "[t]he clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." Accordingly, I interpret the Court's guidance to mean that doubts against an Applicant's security worthiness are to be resolved against the Applicant.

CONCLUSIONS

The Directive does not prohibit drinking alcohol per se. Rather, the concern expressed in the Directive is with excessive consumption of alcohol. A security concern is raised by Applicant's admission that he was arrested for driving under the influence of alcohol in 1994. Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, and failure to control impulses, thereby increasing the risk of unauthorized disclosure of classified information due to carelessness. On the other hand, nothing in the record indicates that Applicant has ever been diagnosed as an alcoholic, an alcohol abuser, or as alcohol dependent by any credentialed medical professional or licensed clinical social worker within the meaning of Disqualifying Conditions E2.A7.1.2.3 or E2. A7.1.2.4 of Guideline G. Applicant's excessive use of alcohol as a young person resulted in his one and only arrest for driving under the influence. Excessive use of alcohol could be a cause of concern if it is repeated in Applicant's adult years and results in alcohol-related incidents while at work or off duty.

Applicant presents statements that he has made significant alterations in his outlook and behavior supportive of sobriety. This falls within Mitigating Condition E2.A7.1.3.3, identified *supra*. While Applicant admits to still drinking on occasion, he has had only one alcohol-related incident in his life, and that occurred more than nine years ago. This falls within the scope of Mitigating Conditions E2.A7.1.3.1 and E2.A7.1.3.2, also identified *supra*. Applicant's statements and behavior demonstrate a commitment to reliable conduct, to the use of good judgment, and particularly to responsible and lawful drinking.

In reaching my decision, I have considered the evidence as a whole, including each of the factors enumerated in Section E2.2 and Adjudicative Guideline G. The Directive requires that the whole person concept as specified in Enclosure 2 be considered, in addition to Guideline G, as appropriate, in making this decision. In applying these criteria from the Directive, I conclude that the nature and seriousness of Applicant's former drinking patterns and his one alcohol-related incident weigh against him, although his age and immaturity during which this behavior occurred are viewed in mitigation. Applicant's former pattern of apparent overindulgence and irresponsibility has not occurred within the past nine years and took place under personal circumstances unrepresentative of his current situation. On the basis of the evidence before me, I conclude that there is a high probability that he will not abuse alcohol in the future. Therefore, Paragraph 1 of the SOR is concluded favorably for the Applicant.

FORMAL FINDINGS

Formal Findings as required by Section E3.1.25 of Enclosure 3 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

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for the Applicant. Clearance is granted.

Joan Caton Anthony