

DATE: November 24, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-28028

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

David I West, Esq.

SYNOPSIS

Applicant's alcohol abuse has resulted in at least seven alcohol-related incidents, the last taking place in 1999. Applicant abstained from consuming alcohol for a number of years after alcohol treatment. In 1999 he began drinking alcohol again, and he could offer no explanation for this conduct. He has been diagnosed as alcohol dependent. Evidence of Applicant's alcohol rehabilitation is not sufficient to mitigate his alcohol related history over a 15 year period. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On April 30, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) 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 Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant responded to the SOR in writing , and it was received on May 6, 2003. Applicant requested a clearance decision based on a hearing record.

On May 6, 2003, this case was assigned to another Administrative Judge, but on May 26, 2003, because of region rotation, the case was reassigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on July 25, 2003, and the hearing was held on August 12, 2003.

At the hearing, Department Counsel offered thirteen documentary exhibits (Exhibits 1 - 13) and no witnesses were called. Applicant, through his counsel, offered five documentary exhibits (Exhibits A-E) and offered his own testimony and that of his wife. The transcript (TR) was received on August 21, 2003.

FINDINGS OF FACT

The Government opposes Applicant's request for a security clearance, based upon the allegations set forth in the SOR. In his response to the SOR, Applicant admits allegations: 1.a, 1.b, 1.c, 1.e, 1.f, 1.g, 1.h, 1.I, 1.j, and 1.k.. He denies allegations: 1.d, 1.l, and 2.a. The admitted allegations are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the admitted documents and the live testimony, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 37 years old, married, and he and his wife have two children. He is employed by a defense contractor as a maintenance carpenter, and he seeks to retain a DoD security clearance in connection with his employment in the defense sector.

Paragraph 1 (Guideline G - Alcohol consumption).

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses alcohol to excess.

Applicant has consumed alcohol since approximately 1982. He stopped drinking alcohol in 1995, but then he resumed his drinking in 1999. He identified that his father and sister are both alcoholics. Applicant's drinking has resulted in four alcohol related incidents where he was arrested for Driving Under the Influence (DUI). They occurred in 1987, 1988, 1993, and 1995.

The first two DUI arrests in 1987 and 1988 resulted in fines. As a result of the third arrest in 1993, Applicant paid a fine for reckless driving and was ordered to be assessed by an alcohol treatment program. He was diagnosed by a counselor as being an alcohol abuser (Exhibit 8). In 1995, Applicant was arrested a fourth time for DUI and Reckless Driving. The charges were dismissed with prejudice after Applicant paid a fine and participated in a treatment program for alcohol dependency. Applicant was assessed as being alcohol dependent, and he entered a substance abuse center where he underwent an alcohol abuse program from 1996 to 1998 (Exhibits 5, 8).

Applicant was also involved in three additional incidents, where the use of alcohol was part of the problem. Those occurred in 1984, 1988, and 1999. In 1984, Applicant was arrested for trespassing, disorderly conduct-drunk, and possession of methamphetamine. He was ordered to participate in an alcohol and drug counseling program. In 1988, while serving in the United States Army, Applicant after consuming alcohol, was involved in a physical altercation with his roommate He was charged by the military police with Drunk and Disorderly Conduct and Assault, and he was reduced in rank (Tr at 86, 87, 96-98).

In 1999, Applicant was involved in an altercation with his wife in which the police were summoned by Applicant's wife. The police report, made at the scene by the investigating officer, states that Applicant's wife called for help, because she had found her husband consuming alcohol and did not want him to drive his vehicle. In his attempt to get into his vehicle, Applicant pushed his wife out of the way. He was arrested but ultimately not prosecuted (Exhibit 3). Applicant and his wife testified about this event. The only significant point of dispute is whether Applicant actually pushed his wife. However, the evidence is clear that after abstaining since 1995, Applicant began consuming alcohol again on the day of this incident, and the drinking was the initial cause of the altercation. Applicant could give no explanation as to why after abstaining for several years, he began consuming alcohol again (Tr at 92, 93).

Paragraph 2 (Guideline J - Criminal conduct)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in criminal acts. Applicant's conduct that occurred in 1984, 1993, 1995, and 1999 and which has been alleged in the SOR as 1.b., 1.f., 1.h., and 1.l. respectively, is included in this paragraph as criminal conduct.

Mitigation

Applicant introduced nine positive letters of reference on his behalf (Exhibit E). Several of these commended Applicant for the fine work he has done coaching youth sports. This is an activity in which Applicant has been involved without compensation 10 to 20 hours a week, for a number of years. Applicant also introduced positive awards that he received during his service in the United States Army (Exhibit C).

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline G (Alcohol consumption)

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.).
4. Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; (E2.A7.1.2.4.).
5. Habitual of binge consumption of alcohol to the point of impaired judgment; (E2.A7.1.2.5.).

Condition 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.)

Guideline J (Criminal conduct)

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:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged. (E2.A10.1.2.1.)
2. A single serious crime or multiple lesser offenses. (E2.A10.1.2.2)

Conditions that could mitigate security concerns include:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct

- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- I. The likelihood of continuation or recurrence.

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge 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 which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case, the Government has met its initial burden of proving by substantial evidence that Applicant has used alcohol to excess (Guideline G) and that he engaged in several criminal acts (Guideline J). Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him.

Paragraph 1 (Guideline G - Alcohol Consumption). Applicant's alcohol consumption has resulted in seven alcohol related incidents from 1984 to 1999. It is reasonable to conclude Applicant was drinking heavily and these incidents are indicative of his high level of alcohol consumption. It is not likely that these were the only incidents of excessive drinking. He abstained from consuming alcohol from 1995 until 1999, then inexplicably he began imbibing again in 1999.

As to the amount of alcohol he now consumes, Applicant testified that he does not consume more than one or two beers at any one time. However, in the statement that he made to the Defense Security Service and signed under oath in 2002, Applicant stated, "Then sometime in 1999, I started to consume alcohol again on a weekly to twice monthly basis. I might consume three to four beers on occasion." (Exhibit 2).

The Government established by substantial evidence that Applicant was involved in alcohol-related incidents away from work, such as driving under the influence, which is Disqualifying Condition (DC) 1, and that he engaged in habitual or binge consumption of alcohol to the point of impaired judgment which is DC 5. Applicant continues to consume alcohol on a regular basis, as many as three or four beers at a time. After being examined by an alcohol counseling center, Applicant was diagnosed first as an alcohol abuser in 1993 and then as alcohol dependent in 1996, which is DC 3. Applicant has a demonstrated history of drinking to excess, and he presents no credible evidence to support a conclusion he has reformed his habit. No Mitigating Condition (MC) applies. Paragraph 1 is concluded against Applicant.

Guideline J (Criminal conduct) The Government established by substantial evidence that Applicant was arrested for, or convicted of, drunk-driving and other alcohol related criminal offenses. These incidents have resulted in criminal conduct from 1984 until 1999. DC 1 and 2 apply in this case. Applicant has not mitigated this allegation. Paragraph 2 is found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against Applicant as to the conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: 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.

Paragraph 2: 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.

Martin H. Mogul

Administrative Judge