

DATE: February 7, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31073

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has had a history of consuming alcohol to excess, which resulted in four alcohol related arrests and convictions for driving after consuming alcohol. The last incident was in 2000, and since that time he no longer consumes alcohol to excess, nor has he driven a vehicle after the consumption of even one drink. Evidence of Applicant's alcohol rehabilitation is sufficient to mitigate his alcohol related history. Clearance is granted.

STATEMENT OF THE CASE

On September 2, 2004, 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 filed a signed and sworn, notarized response, dated September 15, 2004, to the allegations set forth in the SOR. He requested a clearance decision based on a hearing record before a DOHA Administrative Judge.

On November 1, 2004, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on December 9, 2004, and the hearing was conducted on January 12, 2005.

At the hearing, Department Counsel offered eight documentary exhibits (Exhibits 1 - 8) and no witnesses were called. Applicant, through his counsel, offered six documentary exhibits (Exhibits A - F) and his own testimony and three additional witnesses. The transcript (TR) was received on January 27, 2005.

FINDINGS OF FACT

The Government opposes Applicant's request for a security clearance, based upon the allegations set forth in the SOR. In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline G of the Directive because of Applicant's excessive alcohol consumption. The SOR contains five allegations, 1.a. through 1.e., under Guideline G (Alcohol Consumption). Applicant admits all of the allegations. 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 following findings of fact:

Applicant is 49 years old. He is married and has two children. He is employed as a Field Service Representative by a defense contractor, and he seeks to retain a DoD security clearance in connection with his employment in the defense sector.

(Guideline G - Alcohol consumption).

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

Applicant first consumed alcohol regularly when he was 16 or 17 years of age. While he continued drinking, his excessive drinking occurred from 1996 to 2000, when he was involved with the American Legion. His consumption has decreased significantly since his arrest in 2000 (Tr at 42- 43, 47-48).

Applicant's drinking has resulted in at least four alcohol related incidents where he was arrested. They occurred in 1975, 1976, 1997, and 2000.

In January 1975, Applicant received a Non-Judicial Punishment for Operating a Passenger Vehicle While Drunk. He was ordered to forfeit \$180 a month for two months (RSOR, Exhibits 1, 3 and 7). In 1976, he charged with Drunk Driving on a Highway, and he was ultimately found guilty of Reckless Driving. He was sentenced to one year probation and fined \$250 (RSOR, Exhibits 1, 3 and 4).

For third and fourth incidents, Applicant was arrested and charged with Driving Under the Influence of Alcohol (DUI). In 1997, Applicant was found guilty of the DUI charges. He was sentenced to serve 48 hours in jail, three years probation, fined \$1, 296, his driver's license was restricted for 18 months, and he was ordered to attend a DUI First Offender program (RSOR, Exhibits 1, 3 and 4).

For the fourth alcohol related arrest, which occurred in 2000, Applicant pled guilty to DUI. He was sentenced to serve 48 hours in jail, five years probation, fined \$1,716, his driver's license was revoked for six months, and he was ordered to attend weekly DUI classes for 18 months (RSOR, Exhibits 1, 3 and 5).

Applicant testified that, during the period he was consuming alcohol regularly, he drove many times after he had consumed alcohol. He continues to consume alcohol although far less frequently, and in far less quantity, since his 2000 arrest. Since that last arrest in 2000, he stated that has never driven a vehicle after consuming even one drink and that he never will in the future (Tr at 44-46).

Applicant has never received alcohol counseling or been evaluated as alcoholic or alcohol dependent. Finally, he has never been advised to abstain completely from alcohol consumption (Tr at 48-49).

Mitigation

Applicant submitted a number of documents that were extremely favorable to him. These included his performance appraisals for most of the years that he was in the United States Air Force, 1973 to 1993, which gave Applicant Outstanding evaluations (Exhibit A). Exhibit B consisted of three Meritorious Service edals that Applicant received during his time in the service. Finally, he submitted seven letters of appreciation and recommendation from individuals,

including three Air Force Lieutenant Colonels, who spoke in extremely positive terms about Applicant's exceptional work ability and efforts on behalf of the United States military (Exhibits D and E).

Three witnesses testified on behalf of Applicant. Two were civilians, who had long military careers, and knew and worked with Applicant for many years. The third witness was an active duty Lieutenant Colonel with the Air Force. They all expressed strong support for Applicant as a man of high character. None of them ever witnessed any signs of Applicant having alcohol problems.

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.

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). Applicant, on the other hand, has 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). While Applicant has had a long history of consuming alcohol, at times to excess, he was credible when he testified that he no longer consumed alcohol to excess, and since 2000, he has never driven a vehicle after consuming even one alcoholic drink, nor will he do that in the future. I have also considered Applicant's long distinguished career in the United States Air Force and the excellent recommendations that he received from a highly distinguished group of individuals.

The Government established that Applicant has engaged in habitual or binge consumption of alcohol to the point of impaired judgment which is which is Disqualifying Condition (DC) (E2.A7.1.2.5.).

Mitigating Condition (MC) (E2.A7.1.3.2.) is applicable because the problem occurred a number of years ago, in 2000, and there is no indication of a recent problem. Also, MC (E2.A7.1.3.3.) applies because of the positive changes in Applicant's behavior supportive of sobriety. Overall, the mitigating conditions outweigh the disqualifying conditions, and Guideline G is concluded for Applicant.

On balance, it is concluded that the Applicant has overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding for Applicant as expressed in Paragraph 1 of the Government's SOR.

FORMAL FINDINGS

Guideline G: FOR APPLICANT

Subparagraph 1.a.: For Applicant.

Subparagraph 1.b.: For Applicant.

Subparagraph 1.c.: For Applicant.

Subparagraph 1.d.: For Applicant.

Subparagraph 1.e.: For 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.

Martin H. Mogul

Administrative Judge