

DATE: April 9, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-31685

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's lengthy history of excessive alcohol consumption, the diagnosis from a credentialed medical professional of alcohol dependence in April 2000 followed by continued use of alcohol, has not been mitigated. Though Applicant's misuse of prescribed medication is mitigated by his treatment in April 2000, Applicant's long history of marijuana abuse, particularly between 1997 and April 2000 has not been mitigated. Applicant's evidence in mitigation also fails to overcome his deliberate omission of material information from his security clearance application (SCA) in February 2001. Though Applicant's financial problems were caused by a medical condition difficult to treat, the lack of documentation to support his claims of making regular repayments to at least one of his creditors defeats his claim he is resolving his tax and other delinquent debt troubles. Clearance is denied.

STATEMENT OF CASE

On August 24, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 clearance should be denied or revoked.

Applicant furnished his answer to the SOR on September 22, 2003. Applicant elected to have his case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on December 1, 2003. Applicant received the FORM on December 3, 2003. His response to the FORM was received on January 22, 2004. The case was assigned to me on February 2, 2004.

FINDINGS OF FACT

The SOR alleges alcohol involvement (Guideline G), drug involvement (Guideline H), personal conduct (Guideline E),

and financial considerations (Guideline F). Applicant admitted all the factual allegations except for subparagraph 1.f. and 2.f. Applicant's denial he was drinking on a daily basis by age of 25 is refuted by his sworn statement. (Item 6) His denial he tried cocaine is refuted by the medical records. (Item 9) Applicant's other admissions shall be incorporated in the following factual findings:

Applicant is 41 years old and employed as a computer engineer for a defense contractor. He seeks a secret clearance.

Alcohol Involvement. Applicant began drinking alcohol in the fourth grade. Applicant started drinking beer on the weekends when he was 15. Applicant also had his first back surgery at the same age. By the age 18, Applicant was drinking beer on a regular basis. Applicant was drinking about a case of beer a week when he turned 19 years old. In August 1982, Applicant was cited for transporting an open container; he paid a fine. Applicant had his second back operation in 1985 when he was approximately 28 years old. In approximately November 1986, Applicant pled guilty to driving under the influence (DUI) and received a deferred sentence and a \$1565.00 fine.

Between April 11 and April 17, 2000, Applicant participated in inpatient treatment and counseling after being diagnosed by a licensed clinical psychologist with alcohol dependence and opioid dependence (prescription medication). Although he completed the detoxification portion of treatment, he was discharged against medical advice with a guarded prognosis. Applicant had two followup aftercare counseling sessions and told his counselor he was participating in two Alcoholics Anonymous (AA) meetings a week. Applicant's claim he attended AA for a year is not substantiated. Applicant continues to drink but does not drink and drive.

Drug Involvement. Applicant started using marijuana at age 16, and by age 20 he was using the drug on a regular basis. Between 1997 and April 2000, Applicant used marijuana regularly and sometimes twice a day. For several years prior to his admission to the treatment center in April 2000, Applicant was ingesting up to ten to twelve pain pills a day. Those pain pills were lortab, lorcet, morphine and tylox. Applicant also experimented with quaaludes, cocaine and psilocybin.

Personal Conduct. Applicant admittedly falsified his SCA on February 6, 2001 when he answered "no" to question 27 asking whether he had ever used drugs since the age of 16 or in the last seven years. Applicant's deliberate falsification of the SCA is partially mitigated by information he provided in a subsequent section of the form regarding his prescribed medication misuse. In the general remarks section (question 43) Applicant explained he experienced degrees of back pain since he was 15 years old. He noted back surgery in 1998 that caused increased pain prompting him to overuse lortab and lorcet medication until he voluntarily sought treatment in April 2000. However, he provided no information about his long history of marijuana use.

Applicant has not filed his state income taxes for 1999, 2000, and 2001. (3.b.)

Financial Considerations. Applicant acknowledges he owes the medical debt (4.a.) but has been devoting his attention to rectifying his federal and state taxes. Applicant admitted owing the federal and state government personal income taxes for the years 1999, 2000, 2001. (4.b., 4.c., 4.d., 4.e.) He was informed by the Internal Revenue Service (IRS) that the federal tax lien could be appealed in his offer to compromise the overall federal tax debt. While he claimed he started making payments on his state taxes (4.f., 4.g.), he presented no proof. Applicant provided proof he paid a tax firm \$13,000.00 in March 2002 to resolve his tax problems for 1999, 2000, and 2001. However, he provided no additional documentation.

Character Evidence. Applicant's direct supervisor since April 2001, wrote a character letter considering Applicant a friend in addition to being a motivating leader to his colleagues. In a character letter, the vice president of operations commented favorably on Applicant's positive performance since he was hired in January 2001. The vice president believed Applicant's back pain was no longer a serious factor. Also according to the vice president, Applicant's federal and state tax problems, were being handled by a tax firm. Finally, the vice president is convinced Applicant is capable of safeguarding classified information in a responsible manner.

POLICIES

Enclosure 2 of the Directive sets forth policy disqualifying conditions (DC) and mitigating conditions (MC) that must be given binding consideration in making security clearance decisions. These conditions must be considered in every case

according to the pertinent guideline; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

Alcohol Consumption

Disqualifying Conditions (DC):

1. Alcohol-related incidents away from work, such as driving while under the influence.
3. Diagnosis by a credentialed medical professional of alcohol abuse or alcohol dependence;
5. Habitual or binge consumption of alcohol to the point of impaired judgment;
6. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Mitigating Conditions (MC):

1. The alcohol incidents do not indicate a pattern;
2. The problem occurred a number of years ago and there is no indication of a recent problem;
3. Positive changes in behavior supportive of sobriety.
4. Following a diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient treatment or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous (AA) or similar organizations, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical profession, or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Drug Involvement

Disqualifying conditions (DC):

1. Any drug use;
3. Diagnosis of a credentialed medical professional of drug abuse or drug dependence;
5. Failure to successfully complete a drug treatment program prescribed by a credentialed medical professional.

Mitigating Conditions (MC):

1. The drug involvement was not recent;
3. A demonstrated intent not to abuse drugs in the future;
4. Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable diagnosis by a credentialed medical professional.

Financial Considerations

Disqualifying Conditions (DC):

1. A history of not meeting financial obligations;
2. Deceptive or illegal financial practices.

Mitigating Conditions (MC):

1. The behavior was not recent;
2. It was an isolated incident;
3. The conditions that resulted in the behavior were largely beyond the person's control;
4. The person has received or is receiving counseling for the problem and there are clear indications the problem is being resolved or is under control;
6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Personal Conduct

Disqualifying Conditions (DC):

2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Mitigating Conditions (MC)

1. The information was not substantiated or not pertinent to a determination of judgment, trustworthiness, or reliability;
2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily;
3. The individual made prompt, good-faith efforts to correct the falsification before being confronted by the facts.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at pages 16 and 17 of Enclosure 2 of the Directive) include: (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 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 recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information 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.

The Government must establish a *prima facie* case under alcohol consumption (Guideline G), drug involvement (Guideline H), financial considerations (Guideline F) and personal conduct (Guideline E) that establishes doubt about a person's judgment, reliability, and trustworthiness. Then, the burden shifts to applicant to refute, explain, mitigate, or extenuate the facts. An applicant has the ultimate burden of persuasion to demonstrate he qualifies for a security clearance.

CONCLUSIONS

Alcohol Consumption. Excessive alcohol consumption often leads to the exercise of poor judgment and/or security violations. Applicant's alcohol consumption began when he was in the fourth grade. Using alcohol at age 8 or even age 15 would not have long term implications had the incidence of alcohol use not increased with Applicant's age. At age 18 Applicant was consuming alcohol on a regular basis and by age 25, Applicant was drinking daily. Applicant's excessive alcohol consumption is exemplified by transporting an open container of alcohol in his car in 1982, and pleading guilty to DUI in November 1986 requiring the payment of more than \$1,500.00 in fines.

Applicant exercised good judgment by enrolling in inpatient treatment in April 2000 to resolve his alcohol and drug problems. Applicant was diagnosed as alcohol and opioid dependent by a credentialed medical professional. However, Applicant exercised poor judgment by leaving the program against his counselor's advice, leading to discharge with a guarded prognosis because of Applicant's long history of alcohol and drug abuse. Even though Applicant contends his only reason for leaving was to obtain more specific treatment for his back, Applicant should have sought the advice of the treatment center to fashion some sort of treatment plan that would have allowed him to get the necessary back treatment while completing his inpatient therapy and rehabilitation.

There are four mitigating conditions under the alcohol consumption guideline. The absence of alcohol-related incidents since 1986 establishes little mitigation when compared to Applicant's 16 year history of excessive alcohol consumption that began when Applicant was about 25 years old. As a general rule, the longer the period of alcohol or drug abuse, the longer the period of rehabilitation should be in order to confidently conclude Applicant has made positive changes supportive of sobriety.

MC 4 advises that a diagnosis of alcohol dependence could be mitigated by successful completion of inpatient and outpatient aftercare requirements, participation in AA or a similar organization, abstinence from alcohol use for 12 months and a favorable prognosis by a credentialed medical professional or a licensed clinical social worker who is part of a staff of a recognized treatment program. MC 4 does not apply here as Applicant did not successfully complete the inpatient or outpatient portion of treatment. While Applicant claimed he participated in AA, there is no evidence he maintained attendance for any significant length of time, or that he completed any other conditions of aftercare. Finally, Applicant has not abstained from alcohol use for a 12 month period. In sum, Applicant has not met his ultimate burden of persuasion under the alcohol consumption guideline.

Drug Involvement. Drug abuse may impair social or occupational functioning, increasing the risk of security violations. Similar to Applicant's excessive alcohol consumption history, Applicant has a long history of illegal drug use and abuse of prescribed drugs beginning at age 16. During the course of his drug history, Applicant also experimented with several dangerous drugs, including quaaludes, cocaine, and psilocybin. Applicant's contact with the three drugs just mentioned is no longer of security significance as Applicant experimented with these drugs. Though Applicant may have discontinued marijuana use for an unknown period before 1997, he resumed regular marijuana use in 1997, sometimes using the drug twice a day.

Applicant's history of drug abuse is compounded by his abuse of prescribed pain medication from September 1998 (after his back surgery) until his voluntary enrollment in treatment in April 2000. In view of the Applicant's diagnosis of opioid dependence by a credentialed medical professional (DC 3), the burden shifts to Applicant to mitigate the diagnosis with evidence indicating the illegal drug use or misuse of prescribed pain medication will not recur. Applicant's abuse of prescribed medication lasted less than three years. He realized he was dependent and enrolled himself in drug treatment. The absence of evidence of misuse of prescribed medication for almost four years, and Applicant's disclosure of his misuse of prescribed medication on his SCA furnishes sufficient grounds to conclude Applicant will not resort to this kind of abuse in the future. However, Applicant's history of marijuana use over the years and his failure to disclose his

marijuana use on his SCA raises continuing doubt about Applicant's commitment not use marijuana in the future.

Personal Conduct. Demonstrating a lack of candor during the security investigation raises a security concern as to whether Applicant has the judgment necessary to comply with security regulations at all times. Applicant was 39 years old when he filled out the SCA in February 2001. He deliberately answered "no" to question 27 requiring information about the illegal drug use or prescription drugs. (DC 2) Applicant knew his "no" answer to question 27 was incorrect because of his illegal drug use and illegal use of prescription drugs. While Applicant supplied information about his misuse of pain medication in his response to question 43 (general remarks) of the SCA, Applicant never mentioned his marijuana history. Not wanting to disclose the names of those individuals he used marijuana with or where he used the drug does not make the falsification less serious or entitle Applicant to special treatment for not exposing other individuals. Rather, Applicant's claim increases his vulnerability to exploitation and pressure.

Applicant's history of not filing state income tax returns for 1999, 2000, and 2001 also represents a violation of the duty of all taxpayers to file returns and pay taxes on time in a good-faith manner. Applicant's inability to provide current information regarding the steps he has taken to satisfy the state and federal agencies does not meet his ultimate burden of persuasion under the general factors of the whole person concept.

Financial Considerations. A history of not meeting financial obligations (DC 1) places an individual at risk of having to engage in illegal acts to generate funds. Applicant was discharged in bankruptcy in November 1992 during a time when he was changing career paths and experiencing an extreme amount of back pain. The record reflects Applicant did not encounter any additional financial problems until he failed to pay state income taxes for 1996. (4.f.) Beginning in January 1999, Applicant incurred eight medical bills for hospital treatment totaling more than \$5,000.00. (4.a.) Along with this medical debt, Applicant still owes the federal government for delinquent taxes and a federal tax lien for the years 1999, 2000, and 2001. (4.b., 4.c., 4.d., and 4.e.) He also owes income taxes to the state tax agency for 1996, 1999, 2000, and 2001. (4.f., 4.g.) The only evidence presented to support his claim of resolving the federal tax debt is dated arch 2002 when he signed a power of attorney and then paid the tax service \$1,300.00. There is no independent source in the record to support his claim of having made monthly payments on his state taxes.

Though the financial guideline provides five mitigating conditions, MC 1 must be removed from consideration because no action was taken to resolve the state or federal tax problems until two years ago. MC 2 is unavailable because Applicant's tax problems were not isolated but span a six year period between 1996 and 2002.

MC 3 has the potential of mitigating and/or extenuating financial problems when an event(s) occurs in an applicant's life he did not anticipate or could not forecast. Applicant's financial problems leading to his bankruptcy discharge in November 1992 were primarily caused by his back problem rendering him unable to make a living. Having to reeducate himself for a new profession clearly delayed his opportunities to reenter his new career and stay on top of his bills. In 1998, Applicant incurred even more misfortune when a third back surgery made his back condition worse instead of better. In sum, Applicant is entitled to extenuation under MC 3 due the persistent back pain and concomitant alcohol and drug dependence problems. After therapy in April 2000 however, Applicant's back problem improved to a point where he was able to cope without having to rely on prescription drugs. Yet, there is no documented evidence of trying to resolve his taxes or other debts until March 2002 when he paid a tax firm \$1,300.00 to initiate an offer of compromise with the IRS. That evidence, without more, is insufficient to persuasively show Applicant is dedicating a good-faith effort to resolve his tax problems (MC 6), especially when Applicant could have supplied proof in support of his claim of making monthly payments on his state taxes. Applicant has failed to meet his burden of persuasion under any of the mitigating conditions of the financial guideline.

In reaching my findings against Applicant under the alcohol, drug, personal conduct and financial guidelines, I have carefully considered Applicant's favorable reputation in the work place, but find it insufficient to satisfactorily rebut the adverse evidence under the alcohol, drug, personal conduct and financial guidelines. I reach the same adverse findings after weighing this case under the general factors of the whole person concept.

FORMAL FINDINGS

Formal Findings required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are:

Paragraph 1 (alcohol consumption, Guideline G): AGAINST APPLICANT.

- a. Against Applicant.
- b. Against Applicant.
- c. Against Applicant.
- d. Against Applicant.
- e. Against Applicant.
- f. Against Applicant.
- g. Against Applicant.
- h. Against Applicant.
- i. Against Applicant.

Paragraph 2 (drug involvement, Guideline H): AGAINST APPLICANT.

- a. Against Applicant.
- b. Against Applicant.
- c. Against Applicant.
- d. For Applicant.
- e. For Applicant.
- f. For Applicant.
- g. For Applicant.
- h. Against Applicant.

Paragraph 3 (personal conduct, Guideline E): AGAINST APPLICANT.

- a. Against Applicant.
- b. Against Applicant.

Paragraph 4 (financial considerations, Guideline F): AGAINST APPLICANT.

- a. Against Applicant.
- b. Against Applicant.
- c. Against Applicant.
- d. Against Applicant.
- e. Against Applicant.
- f. Against Applicant.

g. Against Applicant.

h. Against 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 Applicant a security clearance.

Paul J. Mason

Administrative Judge