

DATE: May 31, 2005

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-13092

DECISION OF ADMINISTRATIVE JUDGE

JOHN GRATTAN METZ, JR.

APPEARANCES

FOR GOVERNMENT

Stephanie C. Hess, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's alcohol abuse--punctuated by three alcohol-related incidents between April 1984 and November 1998--was mitigated by the passage of over six years without recurrence of alcohol-related incidents as well as positive lifestyle changes supportive of sobriety. Clearance granted.

STATEMENT OF THE CASE

Applicant challenges the 22 December 2003 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of alcohol consumption and personal conduct. [\(1\)](#) Applicant answered the SOR on 20 January 2004 and 25 March 2004, and requested a hearing. DOHA assigned the case to me 23 November 2004 and I convened a hearing on 1 December 2004. DOHA received the transcript 13 December 2004.

FINDINGS OF FACT

Applicant admitted the Guideline G (Alcohol) allegations of SOR paragraph 1, but denied falsifying his clearance application. Accordingly, I incorporate Applicant's admissions as findings of fact. Applicant--a 40-year-old distributed systems analyst for a defense contractor--seeks access to classified information. He has not previously applied for a clearance.

When Applicant applied for his clearance in May 2003 (G.E. 1), he disclosed DUIs in 1994 and 1998. He did not disclose a 1984 DUI. He attributes this omission to a convergence of three factors. In May 2001 he had moved to a new job location in another state and was living in a hotel room without access to records. The 1984 DUI had not shown up on his record after the 1994 DUI and it had occurred to him that the record had been expunged. Finally, he mistakenly understood the alcohol offense question to call for arrests within the last seven years, as many of the questions do.

Applicant's history of alcohol abuse has been punctuated by three DUIs: April 1984, April 1994, and November 1998

(B.A.C. .128%). His sentence for the 1998 offense included a 15 April 1999 substance abuse evaluation (G.E. 6) that concluded "I do not see [Applicant] as being in severe danger of an alcohol abuse problem, but that he would benefit from at least ten to twelve Alcoholics Anonymous meetings in a three month period. I believe this would give him a good education and a point of reference if needed in the future around alcohol abuse." Applicant attended AA once a week for four weeks (G.E. 2).

The 1998 DUI served as a wake-up call for Applicant. He cut back his drinking to 3-4 times per year, never more than four beers and never to the point of intoxication. He never drinks and drives now. His friend of 16 years testified she observed Applicant's drinking habits decrease after the 1998 DUI (Tr. 27-33). She considers him extremely honest and trustworthy and cannot think of any reason he should not have a clearance.

In May 2003, Applicant responded to a request for alcohol evaluation by obtaining an opinion from his regular physician who observed: "It is my impression that this patient uses very minimal amounts of alcohol every few months and does not pose a security risk (G.E. 3).

Although not required by government regulations, Applicant has pledged to abstain from alcohol consumption while he has a clearance (A.E. A). He has a long record of exemplary performance at work (A.E. B).

POLICIES

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline are Guideline G (Alcohol Consumption) and Guideline E (Personal Conduct).

Burden of Proof

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government. ⁽²⁾

CONCLUSIONS

The government established a Guideline G case. However, the alcohol abuse is mitigated. Applicant had three alcohol-related arrests over a fourteen-year period over six years ago. He was appropriately disciplined and completed the counseling requirements of his respective offenses. Although he continued to drink, he reduced his consumption dramatically after his November 1998 offense and has had no further incidents. He has not drunk to intoxication since the November 1998 offense and has pledged to abstain from alcohol while cleared. ⁽³⁾ He has never been formally diagnosed as alcohol dependent or an alcohol abuser. Indeed, two evaluations since the 1998 arrest have concluded that he is not an alcohol abuser. He recognizes the importance of a sober lifestyle for both his job and clearance. I conclude that he is unlikely to return to abusive levels of drinking. Accordingly, I resolve Guideline G for Applicant.

The government established a Guideline E case, but Applicant mitigated the security concerns by demonstrating that he lacked the intent to mislead the government, as well as disclosing his two most recent alcohol offenses. I conclude Guideline E for Applicant.

FORMAL FINDINGS

Paragraph 1. Guideline G: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Paragraph 2. Guideline E: FOR THE APPLICANT

Subparagraph a: 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 or continue a security clearance for Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended (Directive).
2. *See, Department of the Navy v. Egan*, 484 U.S. 518 (1988).
3. Although abstinence is not generally required except in cases where an Applicant's alcohol abuse has resulted in a formal diagnosis of alcohol abuse or alcohol dependence.