

DATE: February 6, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-13574

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esquire, Department Counsel

FOR APPLICANT

James R. Klimaski, Esquire

SYNOPSIS

While Applicant's alcohol-related arrests in 1994 and 2000 raised security concerns, they do not show a pattern. Applicant attended a court-ordered substance abuse program after each arrest and made positive changes in his behavior. He is not alcohol dependent. He no longer drinks and drives and drinks only in moderation. References from his supervisors, co-workers, and a friend establish he is highly thought of as responsible and dependable with an outstanding work record. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on April 9, 2003. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. ⁽¹⁾ The SOR alleges specific concerns over Alcohol Consumption (Guideline G). Applicant responded to the SOR in an Answer notarized on ay 9, 2003, where he admitted all the allegations and requested a decision without a formal hearing.

Subsequently, on July 31, 2003, Applicant retained counsel who entered his appearance and requested a hearing. On September 2, 2003, Department Counsel indicated the case was ready to proceed; and the case was assigned to me. After a mutually convenient date for hearing was agreed to, a Notice of Hearing issued on September 26, 2003, set the matter for October 14, 2003. At the hearing the Government introduced four exhibits which were admitted into evidence. (Exhibits 1-4) Applicant's counsel offered eight exhibits (Exhibits A-H) which were admitted into evidence. Applicant testified and called three witnesses. The transcript (TR) was received on October 22, 2003.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant is 50 years old and has been an employee of Defense Contractor #1 in State #1 since September 1991 to present. He received a Secret clearance in December 1991. In August 2000 he applied for a security clearance by completing a Security Clearance Application (Standard Form 86) (SF 86). (Exhibit 1; TR 28-30) Applicant received a degree from a community college in May 1981. Applicant married in 1975 and was divorced in 1993. He has three children: twins born in 1975 and a daughter born in 1976. (Exhibit 1; TR 28)

Alcohol Consumption

Applicant was arrested in September 1994 for Driving While Intoxicated (DWI), combined alcohol/drugs (misdemeanor). He refused to take a Blood Alcohol Test (BAC). In November 1994 he was found guilty of the amended charge of BAC and was sentenced to 15 days confinement (suspended) and two years probation. The special conditions included no drinking and driving, \$73 in court costs, and attending a substance abuse traffic offender's program which he completed in December 1994. He was assessed as not presenting or reporting the symptoms of alcohol dependence as the offense appeared to be situational. His probation ended in November 1996. (SOR 1.b.) (Answer; Exhibits 1, 3; Exhibit B; TR 43)

In August 2000, Applicant was arrested for Driving While Intoxicated (DWI), following a vehicle too closely, and failing to drive in a single lane. He had a BAC of .105. In January 2001 he pleaded guilty to DWI and was sentenced to a \$500 fine, ordered to pay court costs and to attend a substance abuse program. (SOR 1.a.) (Answer; Exhibits 1, 2; TR 31-35; TR 44-48, 55-56; 59-60)

Applicant completed the substance abuse traffic offenders weekend intervention program in October 2000. While the program administrator described Applicant as cooperative during the program, he was concerned that Applicant continued to minimize the effects of alcohol use on major life areas and was unwilling to accept responsibility for his DWI arrest. He concluded that Applicant "verbalizes a commitment to confront the drinking and driving behavior." The program administrator gave him a "guarded" prognosis, but on the other hand concluded that Applicant did not meet "the DSM IV criteria for alcohol dependence." (SOR 1.c.) (Answer; Exhibits 2, 4; Exhibit A; TR 35-40; TR 48-53)

Since the last incident Applicant was not been arrested again. He no longer drinks and drives. He is a moderate drinker. (Exhibits G, H; TR 40-43; TR 53-54, 57-58)

References and Evaluations

A co-worker who has known Applicant since October 2000 testified that Applicant is extremely reliable. He works with Applicant frequently. (TR 61-66)

A co-worker who has know Applicant since 1994 and sees him daily has no concern over Applicant's honesty and reliability. He has a high opinion of Applicant and finds him dependable and very trustworthy. (TR 67-69)

A personal friend testified on Applicant's behalf that he always found him reliable. He has observed Applicant recently drink one or two glasses of wine, but has not seen him inebriated. (TR 71-74)

A manager who is Applicant's second-level supervisor and has supervised him for 12 years stated that Applicant was a "key member" of the team and a major contributor. He never saw any signs that Applicant was abusing alcohol. He is almost never absent, rarely takes leave. He believed the DWI convictions were isolated incidents that were situation driven and not part of a pattern. He has never observed Applicant abuse alcohol at office parties. (Exhibit C; TR 39)

Applicant's supervisor stated that she has not seen any pattern of behavior that implies alcohol abuse as he is rarely absent. Further, Appellant's work performance has always been outstanding. He is a key member of a team. (Exhibit D; TR 39)

The division director who has oversight for the contract where Applicant has worked since 1996 stated Applicant is considered an expert and is held in high regard by all of his employers. He assessed Applicant as a very dependable and hard working employee. He can remember no incidence of any alcohol-related issue in the workplace in the sixteen years that he has known Applicant. He views Applicant as a "hard working reliable contractor who is doing a great job."

(Exhibit E; TR39)

A co-worker who has known Applicant for 12 years attested that Applicant is trustworthy, hard working, and devoted to his family. He has only seen Applicant conduct himself in a responsible manner at social events. He believes the two alcohol-related incidents are isolated. (TR 39; Exhibit F)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline G --Alcohol Consumption

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;
- (5) Habitual or binge consumption of alcohol to the point of impaired judgment;

Conditions that could mitigate security concerns include:

- (1) The alcohol related 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;

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Alcohol Consumption

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 and (5) habitual or binge consumption of alcohol to the point of impaired judgment. Applicant has mitigated these security concerns over his two alcohol-related arrests in 1994, and August 2000 as they do not indicate a pattern as several years separate them. To his credit, after each arrest, Applicant attended the court ordered program and made positive changes in behavior. After the program he attended in 2000, the program administrator only gave him a "guarded" prognosis, but concluded that Applicant did not meet "the DSM IV criteria for alcohol dependence." While

this prognosis raises concern as Applicant continues to drink moderately, he has made a decision never to drink and drive. Further in his favor, Applicant has never demonstrated any alcohol-impaired behavior at work and has positive references on his high work performance. Applicant thus established that he has met conditions that mitigate security concerns by showing positive changes in behavior supportive of sobriety. Finally, the problem occurred over three years ago in August 2000; and there is no indication of any further problems. He has several favorable assessments from his long-term employer as well as favorable assessments from his co-workers and from a friend.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a. through 1.c. under SOR Paragraph 1.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline G: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: 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.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.