

DATE: December 29, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-13633

DECISION OF ADMINISTRATIVE JUDGE

MARTIN H. MOGUL

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esq., Department Counsel

FOR APPLICANT

Brian J. Hopkins, Esq.

SYNOPSIS

Applicant's alcohol abuse resulted in an alcohol-related incident in 1996. The alcohol abuse counseling that he received was not successful, because of three relapses and poor attendance while attending the program. Despite the fact that he was diagnosed as alcohol dependent and advised to abstain from consuming alcohol, he continues to consume alcohol on a regular basis. Evidence of Applicant's alcohol rehabilitation is not sufficient to mitigate his alcohol related history. Clearance is denied.

STATEMENT OF THE CASE

On June 4, 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 filed a signed and sworn, notarized response, dated July 8, 2003, to the allegations set forth in the SOR. He requested a clearance decision based on a hearing record before a DOHA Administrative Judge.

On August 8, 2003, 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 September 17, 2003, and the hearing was held on October 8, 2003.

At the hearing, Department Counsel offered five documentary exhibits (Exhibits 1 - 5) and no witnesses were called. Applicant, through his counsel, offered six documentary exhibits (Exhibits A - F) and offered his own testimony and that of his supervisor. The transcript (TR) was received on October 20, 2003.

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 six allegations, 1.a. through 1.f., under Guideline G (Alcohol Consumption). Applicant admits allegations: 1.a, 1.b, 1.c, and 1.f, . He denies allegations: 1.d. and 1.e. 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 41 years old, and he is unmarried with no children. He is employed by a defense contractor, and he seeks to retain a DoD security clearance in connection with his employment in the defense sector. Applicant served 20 years in the Coast Guard and received an honorable discharge.

Paragraph 1 (Guideline G - Alcohol consumption).

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

Applicant has consumed alcohol since he was approximately 15 or 16 years of age. Applicant's drinking resulted in an arrest for Driving Under the Influence (DUI) in 1996.

As a result of the arrest, Applicant was ordered to be treated in an alcohol treatment program. Applicant entered a substance abuse center where he underwent an alcohol abuse program from 1996 to 1997 (Exhibits 5), and the DUI charge was dismissed with prejudice. The substance abuse program required complete abstention from consumption of alcohol. Because of three relapses when he consumed alcohol, Applicant had to re-enroll in the program on three separate occasions. (Tr at 93, 94). He also had many unexplained and unexcused absences from the program (Exhibit 5).

Applicant was diagnosed by a counseling psychologist as being alcohol dependent. The aftercare recommendations included abstaining from alcohol consumption and participating in a self directed support group such as AA. The prognosis of refraining from alcohol was poor (Exhibit 5).

A witness, who has known Applicant and been his supervisor for approximately one year, testified on behalf of Applicant. He testified that Applicant has been a good and trusted employee, and he has never been aware of any alcohol related problem of Applicant (Tr at 36-41). He also introduced positive letters of appreciation and commendation on his behalf that he received during his service in the Coast Guard. (Exhibit F).

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:

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). 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 resulted in a DUI in 1996. This arrest required him to receive alcohol abuse counseling, which has not been successful. Applicant had to re-enroll in the program on three separate occasions because of three relapses. His attendance at the program was poor.

Applicant conceded that he was counseled to abstain from alcohol completely after he was diagnosed as being alcohol dependent, but he testified that he continues to consume alcohol, "Because I don't think I'm an alcoholic. I don't believe in their diagnosis." (Tr at 99, 100).

As to the amount of alcohol he now consumes, Applicant testified that he does not consume more than three or four beers at any one time. However, he did concede, that in April 2002 he consumed five drinks in a four hour period, which he believes was drinking to the point of intoxication (TR at 95, 96) (Exhibit 4). He also testified that he only drinks on Saturday and /or Sunday, but in a statement that he made to the Defense Security Service and signed under oath in 2001, Applicant stated that he drinks beer, ". . . maybe three or four times a week." (Exhibit 2).

The Government established by substantial evidence that Applicant was involved in an alcohol-related incident away from work, driving under the influence, which is Disqualifying Condition (DC) 1, and that he has 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 five beers at a time. After being examined by a staff member of a recognized alcohol treatment program, Applicant was evaluated as alcohol dependent, which is DC 4. 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.

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 expressed in Paragraph 1 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.

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