

DATE: April 9, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-17309

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of alcohol-related incidents over a 25-year period and continues to consume alcohol at abusive levels. Applicant's concealment of most of his alcohol-related arrests in his 2001 security clearance application (SF-86) raises additional security concerns about Applicant's judgment and reliability. So, despite a meritorious employment record and avoidance of any additional alcohol-related incidents or judgment lapses, Applicant fails to mitigate the government's security concerns. Clearance is denied.

STATEMENT OF THE CASE

On July 22, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on August 19, 2003, and elected to have his case decided on the basis of the written record. Applicant was furnished the File of Relevant Material (FORM) on December 1, 2003 and received it on December 24, 2003. Applicant filed a timely response to the FORM on January 18, 2004. The case was assigned to me February 2, 2004.

SUMMARY OF PLEADINGS

Under Guideline G, Applicant is alleged to have (a) been involved in seven alcohol-related incidents between 1978 and 1995, only two of which resulted in a conviction for the offense charged, (b) consumed alcohol, beginning at age 17, and continuing over the next 15 to 20 years in increasing amounts, often to the point of intoxication, and (c) continues to drink.

Under Guideline E, Applicant is alleged to have falsified his security clearance application (SF-86) of September 2001 by omitting all but one (his 1984 DuI offense) of his alcohol-related offenses, despite his listing several of these offenses in a 1991 SF-86.

For his response to the SOR, Applicant admitted all of his alcohol-related offenses, but denied falsifying his SF-86. Applicant claimed to believe he attached a separate list of his alcohol-related offenses to his September 2001 SF-86.

FINDINGS OF FACT

Applicant is a 33-year old aircraft dispatcher for a defense contractor who seeks to retain the security clearance he has held since 1991. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Beginning in 1977, Applicant began consuming beer on the weekends. He was 17 at the time and typically would consume 2 to 3 beers on weekend nights (*see ex. 6*). He gradually increased his alcohol consumption over the ensuing four years until he reached majority. Between 1981 and 1987, he increased both the frequency and amount of alcohol he consumed: consuming a 12-pack on the weekends during his days off. At the height of his drinking frequency (in 1989), he would typically consume 3 to 4 beers on 2 to 3 occasions after work during a typical week. He drank to relieve the stress he was under, which he attributes to his spouse, an alcoholic he couldn't control.

After reducing his alcohol consumption for several years in the late 80s, Applicant returned to excessive consumption during the period spanning 1986 and 1990. He attributes his increased drinking to his spouse's medical problems. Never feeling he was addicted to alcohol, he seldom drank more than 4 beers at a time, mostly in social situations with co-workers after work, during this five-year stretch.

Applicant's alcohol-related problems with law enforcement trace to the 1970s and 80s when he was arrested several times for alcohol-related incidents. His first such arrest occurred in 1978 when he was charged with DuI. He later pleaded guilty to a reduced reckless driving charge and was fined and taxed court costs. Applicant's admitted drinking prior to his arrest qualifies this offense as an alcohol-related incident, irrespective of the state's withdrawal of the more serious DuI charge. In May 1984, Applicant was arrested again for an alcohol-related offense: violation of the state's open container law, to which he pleaded guilty and was fined \$35.00 plus court costs. Applicant was arrested for a third alcohol-related offense in July 1984 and charged with DuI. He pleaded guilty to the charge and was fined \$250.00 by the court and ordered to attend 16 hours of alcohol counseling.

In approximately November 1985, Applicant was cited for speeding, for which he was fined and paid a \$300.00 fine. Following a brief respite from abusive drinking, Applicant returned to abusive drinking (between 1986 and 1990) and was arrested again for DuI in 1986. This charge was dismissed, in spite of Applicant's acknowledged excessive drinking preceding his arrest. As such, the offense merits being characterized as an alcohol-related incident.

Applicant was arrested twice more for alcohol-related offenses in 1993 and 1995. In 1993, he was arrested for public intoxication: He had been drinking at a local tavern (consuming about 6 beers) and had left the tavern to go next door to buy cigarettes, when he was stopped and arrested for public intoxication (*see ex. 5*). He was arrested again for public intoxication in October 1995 following his attendance at a private party, during which he consumed 3 to 4 drinks. After deciding against driving home in his state, he started back to the apartment when he was discovered by police asleep in his truck and arrested. While no charges were filed in connection with his 1993 and 1995 incidents, both reflect alcohol-related incidents.

Based on the interrogatory answers he returned in April 2003, Applicant continues to drink 2 to 3 days a week on average, consuming 3 to 6 beers at a time. He acknowledges drinking to intoxication from once a week to once every two weeks. Without any indicated break in this drinking pattern, inferences warrant he has consumed alcohol at this frequency level since 1990. When he is intoxicated he becomes drowsy and talkative. His claimed changes in his drinking pattern are not reflected in any of his signed, sworn statements or interrogatory responses and cannot be credited without more documentation and corroboration.

Asked to complete an SF-86 in September 2001, Applicant listed only his 1984 DuI arrest/conviction when responding

to question 24. He says he believes he attached a separate list of his remaining alcohol-related arrests but provides no proof beyond his assurances. In a previously executed SF-86 in January 1991, he listed several of his alcohol-related arrests. Whether he omitted any at that time is not clear from the record. When interviewed later (in July 1991) he supplied the details of his other alcohol-related incident that occurred before July 1991. Whether Applicant provided this information voluntarily or due to prompting from the interviewing DSS agent is not clear. As a result, no likely inclinations can be formed from the circumstances of his previous disclosures as to whether he was disposed to being truthful about his alcohol-arrests when completing his September 2001 SF-86.

The SF-86 Applicant executed in September 2001 provides two places in which he can note other incidents that cannot be included in the space provided: both in the answer section of question 24 itself and in the general remarks portion of question 43. Applicant made no note of other incidents when responding to question 24 and answered in the negative when responding to question 43 (*see ex. 4*). These answers are probative in assessing what Applicant's intentions were when he omitted his other alcohol-related incidents and suggest he did not want to disclose any more than he had to. Without more to gauge the credibility of Applicant's written claims of good intentions about disclosing all of his alcohol-related incidents in his 2001 SF-86, no favorable inferences warrant about his omissions being mistake-driven. Rather, his omissions must be characterized as knowing and wilful absent more persuasive proofs his omissions were the result of mistaken failure to include

his other incidents in an attachment to the SF-86.

When interviewed by a DSS agent in March 2002 (over six months after he executed his SF-86), Applicant fully disclosed his previous alcohol-related incidents. While he claims his disclosures were voluntary, his signed, sworn statement is less than clear about the circumstances of his disclosure and preclude any favorable finding on this correction claim of Applicant.

Applicant is highly regarded by his co-workers as a very responsible, hard working and trustworthy flight dispatcher. As a member of his local union, he is credited with being very instrumental in achieving his union's first dispatchers' contract with the association of firms they work for. He is praised for his efforts as his local's subsequently elected section chairman.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

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.

Disqualifying Conditions:

DC 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.

DC 5 Habitual or binge consumption of alcohol to the point of impaired judgment.

Mitigating Conditions: None.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Disqualifying Conditions:

DC 2 The deliberate omission, concealment, falsification or misrepresentation 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: None.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a

security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his

or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant has a praiseworthy work record, but also a record of security significant alcohol-related incidents and evidenced continued drinking at abusive levels, in addition to omissions about the extent of his alcohol-related incidents in his most recent SF-86. Both his history of alcohol abuse and SF-86 omissions raise government concerns about his judgment, reliability and trustworthiness.

Alcohol issues

Applicant's seven characterized alcohol-related incidents over 28 years reflect alcohol abuse by Applicant (to include recurrent excessive over the included 1977 to 1995 time frame). Besides acknowledged earlier periods of abusive drinking, Applicant continues to drink at varying abusive levels, to include drinking to intoxication on a weekly to bi-weekly basis. Never diagnosed as an abusive drinker or alcohol dependent, Applicant, nonetheless, has and continues to

drink excessively while in social situations.

Following his last alcohol-related incident (*viz.*, his October 1995 public intoxication incident), Applicant has avoided any recurrent incidents, both within and without his workplace. On the strength of the evidence presented, two disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption may be applied: DC 1 (alcohol-related incidents away from work) and DC 5 (habitual or binge drinking).

To his credit, Applicant has avoided any recurrent alcohol-related incidents for almost nine years now. Still, he has been less than successful in weaning himself away from abusive drinking. Even though his personal references express confidence in his technical competence and judgment, they fail to dispel doubts raised about his judgment lapses associated with his continued alcohol abuse. His meritorious work record cannot be considered in isolation of the concerns raised about his continued abuse of alcohol.

By his actions to date, Applicant provides some evidence of learning from his judgment lapses associated with his alcohol-related incidents by avoiding any further such incidents since 1995. This is not enough, however, to enable him to take advantage of any of the mitigating conditions (MC) of the Adjudication Guidelines for alcohol consumption to mitigate security concerns associated with his prior alcohol-related incidents and evidence of continued abusive drinking.

All in all, Applicant's mitigation efforts to date, while encouraging, are insufficient to absolve him of security concerns associated with his past and current alcohol abuses.

Considering the record as a whole, Applicant fails to make the convincing showing that he has both the maturity and resource support at his disposal to avert any recurrent problems with judgment lapses in the future. Unfavorable conclusions warrant with respect to the alcohol-related allegations covered by subparagraphs 1.a through 1.c of Guideline G.

Falsification issues

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the timing and circumstances of Applicant's reporting his alcohol-related arrests in his 2001 SF-86. So much trust is imposed on persons cleared to see classified information that the tolerance threshold for accommodating judgment and trust slips is necessarily a low one.

By omitting all but a 1984 alcohol-related arrest when listing his past alcohol-related arrests in his 2001 SF-86, Applicant concealed materially important background information needed for the government to properly process and evaluate his security updates. He makes no claim of misunderstanding the question, but rather attributes any omission to a mixup in the attached supplemental list he claims to believe he attached to the SF-86. By this claim alone, Applicant has been unsuccessful in establishing the level of credibility necessary to disprove any deliberate intent associated with the omissions.

But Applicant makes clear that he approached questions 27 and 28 of his respective SF-86s with the intent to withhold information about past marijuana use as he could reasonably escape with. His omissions were knowing, deliberate, and material to a determination about his clearance suitability. They invite application of Disqualifying Conditions (DC) for personal conduct of the Adjudicative Guidelines: DC 2 (falsification of a security questionnaire) and DC 3 (providing false information to an investigator).

Mitigation is difficult to credit Applicant with, since he failed to take any positive steps to correct his SF-86 omissions before being scheduled for a DSS interview in March 2002. His disclosures in the DSS interview were not only the result of confrontation but they were neither isolated nor timely. Not only has our Appeal Board found the use of Mitigating Condition (MC) 2 of the Adjudicative Guidelines for personal conduct (isolated, corrected falsification) to be unavailable to applicants seeking mitigation by treating the omission as isolated, but it has denied applicants availability of MC 3 (prompt, good faith disclosure) as well in circumstances (as here) where the applicant has failed to take advantage of an earlier DSS interview opportunity to make unprompted disclosures. *Compare* ISCR Case No. 97-0289 (January 1998) with DISCR Case No. 93-1390 (January 1995). Applicant in the present case is on record with not only

falsifying his SF-86 but failing to correct his omissions in a timely and good-faith manner (free of confrontation).

There can be no doubt but that Applicant has performed well for his defense contractor. But in the face of his SF-86 omissions, his favorable character evidence alone is not enough to mitigate security concerns extant with the Government over his failure to be truthful in his SF-86 submissions. Considering all of the evidence produced in this record and the available guidelines in the Directive (inclusive of the E.2.2 factors), unfavorable conclusions warrant with respect to sub-paragraph 2.a of Guideline E.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE G (ALCOHOL): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Sub-para. 2.a: 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 or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley

Administrative Judge