

DATE: January 8, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-17909

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was convicted of driving an automobile while under the influence of alcohol on four occasions between April 1990 and May 2001. He attended alcohol abuse programs following the first three, failed to attend a court-directed program after the last arrest, and has now volunteered to participate in a university-sponsored research project designed to see if the addition of medication will aid in preventing a relapse to drinking. He has never attended Alcoholics Anonymous meetings, although he does believe he was an alcoholic in the past. Applicant has failed to mitigate the security concerns that arise from his alcohol consumption. Clearance is denied.

STATEMENT OF THE CASE

On July 24, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline G, alcohol consumption. Applicant submitted an answer to the SOR that was notarized on August 29, 2003, requested a hearing, and admitted all the SOR allegations.

The case was assigned to me on October 31, 2003. A notice of hearing was issued on November 6, 2003, scheduling the hearing for November 25, 2003. The hearing was conducted as scheduled. The government submitted seven documentary exhibits that were marked as Government Exhibits (GE) 1-7 and admitted into the record without an objection. The Applicant testified, called one character witness, and submitted three documentary exhibits that were marked as Applicant's Exhibits (AE) 1-3 and admitted into the record without an objection. The transcript was received December 8, 2003.

FINDINGS OF FACT

Applicant's admissions to the SOR allegations are incorporated herein. In addition, after a thorough review of the

pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 42 years old and has been employed as an electronics technician by defense contractors since February 1991. He served on active duty with the United States Navy as a cryptologic technician from April 1981 to November 1990, attaining the rank of petty officer first class. He received an honorable discharge. Applicant was married in December 1995 and divorced in January 2000. He acknowledges that alcohol did play a part in the break up of his marriage in that he drank excessively because of the other issues in the marriage that caused discord.

Applicant was charged with Driving Under the Influence (DUI), Cutting Corner to Avoid Red Light, and Running Red Light on April 21, 1990. He was convicted of DUI and adjudication was withheld on the remaining offenses. He was sentenced to probation for six months and fined a total of \$546.50. The Navy required him to attend a Level I alcohol treatment program as a result of this conviction.

Applicant was again charged with DUI on June 28, 1993. He was administered a breathalyser and his blood alcohol concentration registered in excess of 0.10. He was convicted of this offense and sentenced to a fine of an unknown amount and had his driving privileges suspended for six months.⁽²⁾ Applicant was again required to attend an alcohol abuse program as a result of this conviction.

Applicant was charged with DUI 2nd Offense on February 1, 1995. He was found guilty of this offense following a jury trial and sentenced to "1 YR & \$2000 SUS UPON 48 HRS SATISFIED & \$1000."⁽³⁾ No definitive finding can be made as to the sentence that imposed. Applicant was again required to attend an alcohol abuse program as a result of this conviction.

Applicant was charged with Operating Under the Influence (OUI) in January 2001. He refused to submit to a breath test at the time of his arrest resulting in the automatic suspension of his driving privileges for ninety days. He pled guilty to the OUI in August 2001 and was sentenced to four days jail, fined \$600.00, and lost his driving privileges for an additional six months. He was required to attend an alcohol awareness program to have his driving privileges reinstated, but has never done so.

Applicant provided a statement to a special agent from the Defense Security Service on April 22, 2002 in which he claimed he only consumed alcoholic beverages at his residence or in his hotel room while on travel. He also asserted in that statement that he drank two to three times weekly, usually not after 6:00PM, and consumed two to six light beers when drinking. He testified he has not consumed alcohol since June 2003, and believes he was an alcoholic in the past. He has never attended Alcoholics Anonymous (AA) meetings.

Applicant volunteered to participate in a university-sponsored research study project on September 9, 2003. The purpose of the study is to determine if the addition of an additional medication to a typically prescribed medication for alcohol abuse will aid in the prevention of a relapse to drinking in the early weeks after stopping drinking. As part of the project, Applicant visits a mental health professional once a week to discuss how he is doing.

The testimony provided by Applicant's character witness and the letters of recommendation Applicant submitted attest to the fact that he is well regarded in the workplace, although he has been counseled and reprimanded on occasion because of his alcohol-related arrests. He has held a security clearance for many years without any complaints being made concerning his handling of classified material or action taken to revoke or downgrade a clearance before the action herein.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be

measured against this policy guidance. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, with its respective DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽⁴⁾ The government has the burden of proving controverted facts.⁽⁵⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁶⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁷⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁸⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽¹⁰⁾

No one has a right to a security clearance⁽¹¹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹²⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹³⁾

CONCLUSIONS

Under Guideline G, alcohol consumption is a security concern because 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. Those who abuse alcohol are more likely than others to engage in high risk, thoughtless, and sometimes violent behavior. Recurrent use of alcohol to the point of intoxication may affect an individual's ability to exercise the care, judgment, and discretion necessary to protect classified information.

Applicant was convicted of four alcohol-related driving offenses between April 1990 and August 2001. On each of those occasions he was court-ordered to attend some type of alcohol abuse program. He attended three of the programs, but failed to attend the one that was ordered as a condition of having his driving privileges reinstated in 2001. He considers himself to have been an alcoholic in the past, but he has never sought out the assistance of AA or a similar program. Only recently has he volunteered to participate in an experimental program to test the effects of the administration of medications as an aid to drinking cessation. Although he claims to have not consumed alcohol since June 2003, there cannot be any reliable prediction made that he will not resume drinking in the future.

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*; and DC 5: *Habitual or binge consumption of alcohol to the point of impaired judgment* apply in this case. I have considered all the Mitigating Conditions under Guideline G and find that none apply in this case. Guideline G is decided against Applicant.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find that Applicant has failed to overcome the case against him and satisfy his ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance.

FORMAL FINDINGS

SOR ¶ 1-Guideline G: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: 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 Applicant.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. The date of Applicant's second DUI arrest is obtained from GE 5 and the sentence from GE 1 and GE 2. Although Applicant provided different dates in both documents for his second arrest, that were also different from the date listed in GE 5, he does acknowledge the second arrest.
3. The SOR alleges and Department Counsel contended at the hearing that this quotation taken from GE 5 indicated that Applicant had been sentenced to one year confinement (suspended). Applicant contended in GE 2 and at the hearing that he was sentenced to one year suspension of his driving privileges.
4. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
5. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
6. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
7. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
8. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
9. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
10. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
11. *Egan*, 484 U.S. at 528, 531.
12. *Id* at 531.
13. *Egan*, Executive Order 10865, and the Directive.