

DATE: April 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-18437

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Melvin A. Howry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant has two alcohol related incidents, arrests for Driving Under the Influence (DUI) in November of 1998 and again in August of 2001. As the last alcohol related incident occurred more than two years ago, and there is no other evidence of alcohol abuse, mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On June 10, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 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 the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

Applicant filed an Answer to the SOR on July 14, 2003.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on November 19, 2003. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on November 26, 2003, and submitted nothing further in reply. This case was originally assigned to another judge, but it was reassigned and received by the undersigned for resolution on April 26, 2004. The issues raised here are whether the Applicant's alleged criminal conduct and related alcohol consumption militates against the granting of a security clearance. [The Applicant admits the underlying factual bases for the alleged Criminal Conduct, subparagraphs 1.a.~1.c., but denied excessive Alcohol Consumption, subparagraph 2.a.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, and the File of Relevant Material. The

Applicant is 32 years of age, and is employed by a defense contractor that seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline J - Criminal Conduct

1.c. In January of 1995, the Applicant was detained for non-alcohol related offenses (Government Exhibit (GX) 5). No case was filed against the Applicant (*id*).

Guideline G - Alcohol Consumption & Guideline J - Criminal Conduct

1.a. and 1.b., and 2.a. and 2.b. In November of 1998, the Applicant was arrested and subsequently plead guilty to DUI (GX 4). As part of his sentence, the Applicant was required to attend a First Conviction Program, which he completed (*id*, and GX 3). In August of 2001, the Applicant was arrested and subsequently plead no contest to DUI (GX 7). As part of his sentence, the Applicant was required to attend a "MADD [Mothers Against Drunk Driving] impact panel," which he also completed (*id*, and GX 7). The record is void of any evidence of alcohol abuse other than these two alcohol related incidents.

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors and conditions that could raise or mitigate a security concern. Furthermore, as set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in Enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, 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.

The Government must make out a case under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in his private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

Considering first the Applicant's alleged Alcohol Consumption, he had two alcohol related incidents, one in November of 1998 and the other in August of 2001. The first disqualifying condition under Alcohol this therefore applicable as these where an "[a]n alcohol-related incident away from work, such as driving while under the influence" However, this is countered by the second mitigating condition in that the "problem occurred a number of years ago [two plus] and there is no indication of a recent problem." There is absolutely no other allegations of alcohol abuse shown by the Government. As mitigation is shown, Guideline G is found for the Applicant.

Considering next the Applicant's Criminal Conduct, his two convictions bring the second disqualifying condition to the forefront, as there is a "single serious crime or multiple lesser offenses." This is countered, however, by the first mitigating condition as the "criminal behavior was not recent;" i.e., more than two years ago. There is no other evidence of Criminal Conduct shown by the Government. Mitigation is shown; and as such, Guideline J is also found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his Alcohol Consumption. The Applicant has thus met the mitigating conditions of Guidelines G and J, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guidelines G and J.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. For the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of 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.

Richard A. Cefola

Administrative Judge