

DATE: January 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21107

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant's alcohol-related arrests in 1998 and 2000, along with his diagnosis of alcohol dependence from treatment programs, raised security concerns, Applicant stopped drinking after his last incident, entered an intensive outpatient program which he completed with a favorable prognosis in March 2001, and for almost three years has maintained his sobriety. References from his co-workers establish he is now rehabilitated and has made positive changes in his behavior to support his sobriety. 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 June 11, 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 July 14, 2003, where he admitted all the allegations except for 1.a. and requested a hearing.

On September 2, 2003, the Department Counsel indicated the case was ready to precede and the case was assigned to another administrative judge on September 5, 2003 and reassigned to me on September 12, 2003. After a mutually convenient date for hearing was agreed to, a Notice of Hearing issued on September 16, 2003, set the matter for November 13, 2003. At the hearing the Government introduced seven exhibits which were admitted into evidence. (Exhibits 1-7) Applicant testified and offered two exhibits (Exhibits A and B) which were admitted into evidence. He requested and was granted a two week extension to November 28, 2003, to submit additional evidence; and the Government was granted until December 3, 2003, to submit her comments. (TR 66-67; 78-79) On November 19, 2003, Applicant submitted a letter stating that he planned to submit no additional evidence. (Exhibit C) Department Counsel forwarded Exhibit C on December 1, 2003, with no objection. I admitted Exhibit C into evidence, and the record closed on December 1, 2003. The transcript (TR) was received on November 24, 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, 45 years old, has been an employee of Defense Contractor #1 in State #1 since 1980. He received a Secret clearance in December 1987. In September 2000 he applied for a security clearance by completing a Security Clearance Application (Standard Form 86) (SF 86). Applicant received a BS degree in 1980 from a university in State #2. He married in August 1993 and was divorced in June 2002, but his wife remains supportive of him. (Exhibit 1; TR 29-30; 57-58)

Alcohol Consumption

Applicant's mother died when he was eight and his paternal grandmother helped to raise him. Applicant's father was an alcoholic and died of cancer in 1996. (Exhibit 3; TR40-41) Applicant has worked for Defense Contractor #1 since he graduated from college in 1980. He had cancer in 1985 and recovered. He became active in Big Brothers and worked with one child for seven years. He was transferred to State #1 in 1993. He married in 1993 and his wife had unexpected health problems which persist. (TR 21-22) The State #1 office closed in 1997 and became a monitoring center; before they had sixty people; in 1997-98 he was the only one remaining. He then has had to travel constantly from 1999 to the present. In 2000 he was on one assignment where he had to work 10-15 hours a day in a basement for six months which created health problems for him. (TR 18; 22-24)

After Applicant recovered from cancer, he began drinking when he was 27. After he was taken off of his medication, he began to drink wine. From 1985 to 1993 he drank moderately, but from 1997 to 2000 his drinking accelerated as he thought he was going to lose his job. He began to engage in binge drinking. He has not consumed alcohol since December 2000. (SOR 1.a.) (Answer; Exhibits 1, 2, 3; TR 32-35; 41-46; 74)

Applicant's first alcohol-related arrest in 1998 was for Public Intoxication when he was waiting at an airport in State #3 and was drinking with friends. He was released after he paid a \$75 fine. (SOR 1.b.) (Answer; Exhibits 1, 2; TR 35-36)

In May 1999 his wife took Applicant to an emergency room which admitted him to intensive care at Hospital #1 and treated him for alcohol withdrawal. (SOR 1.c.) (Answer; Exhibits 1, 2, 3; TR 24; 37; 62)

Applicant voluntarily sought treatment in May 1999 at Hospital #2 and reported he had been drinking 1.5 liter of wine every other day for several years. He was diagnosed with Alcohol Dependence, Severe, Continuous, and Severe Withdrawal with recent hallucinations. He had outpatient treatment from May 1999 to July 1999 for Alcohol Dependence. Hospital #2 recommended he attend Alcoholics Anonymous (AA) and continue individual counseling. But at that point his motivation was poor. (SOR 1.d., 1.e.) (Answer; Exhibits 1, 2, 3, 4; TR 24-25; 37-40; 62)

Applicant had six months of sobriety and then began to drink again, so he again voluntarily sought treatment at Hospital #3 from April 2000 to June 2000 at an intensive outpatient program and was diagnosed with Alcohol Dependence. Hospital #3 recommended he attend AA while in State #1 or while traveling for his job. He was given a guarded prognosis. Hospital #3 recommended that he continue to attend the Hospital #3 aftercare program on a weekly basis. He got an AA sponsor after he left treatment in a city where he had to travel for his work. (SOR 1.f.) (Answer; Exhibits 1, 2, 6; TR 24-25; 63-64)

Applicant again had six months of sobriety and relapsed. He was arrested in December 2000 in State #1 after he went "bar hopping with friends" and had ten mixed drinks. He tried to drive home, but instead pulled over to sleep by the side of the road. When the police tapped on his window, he was startled and disoriented and held onto the steering wheel. When they pulled him out; he could not follow police orders. He was charged with (1) public intoxication with a blood alcohol content of .23 and (2) resisting law enforcement. Applicant plead guilty and was fined \$1,000 plus court costs and fees, was ordered to attend AA, and was placed on reporting probation for one year to end in April 2002. He never failed any of the random tests while he was on probation. (SOR 1.g.) (Answer; Exhibits 1, 2, 5; TR 25, 30-31; 40-41; 50) He immediately advised his supervisor of this arrest and was put on one year's probation by his supervisor. (TR 49-50)

After the binge drinking that led to his arrest in December 2000, Applicant voluntarily sought treatment again at Hospital #3 in higher level program. He participated in an intensive outpatient program from January 2001 to February 2001 and was diagnosed again with Alcohol Dependence. The certified counselor concluded Applicant was dedicated to treatment and determined to learn and follow all treatment suggestions and guidelines. Applicant attended AA meetings and obtained a sponsor. He agreed to maintain abstinence, continue attending support group meetings, maintain a sponsor and attend weekly aftercare sessions at Hospital #3. Ms. G, a licensed clinical social worker, a staff member of this recognized alcohol-treatment program, concluded in March 2001 his prognosis was good if he followed the aftercare plan as agreed. (SOR 1.h.) (Answer; Exhibits 1, 2, 7; TR 25-26; 47-48; 78)

Applicant continues to go to AA two or three times per week in various cities when he travels and has a list of people that he can call at any time and does so when he needs to if he is having any problems. He had a sponsor in one city when he was working there, but the sponsor left the AA program. Applicant is doing well, but he has not yet found another sponsor. He has not felt ready to become an AA sponsor himself, but he plans to stick with AA. He continues to attend AA meetings both at home and on his travels for work. Every morning he says the serenity prayer and works on the AA steps. He reminds himself regularly of December 2000 as that is his sobriety date. He is very motivated to maintain his sobriety. Applicant also does research on the internet on AA and attends some internet AA meetings. His family is very supportive, especially his sister, as well as his co-workers. He also has developed an exercise program to help maintain his health. He never associates people who drink and does not go to places that serve alcohol. (Exhibit A; TR 26-31; 48, 51-62; 65-66; 75-77)

References and Evaluations

One co-worker who has know Applicant for approximately ten years stated that he observed Applicant's problems with alcohol in 1999 and early 2000. However, he noted that Applicant made a "drastic change" after his December 2000 arrest and strove to improve himself. He stopped drinking and "turned himself around completely" since December 2000. This co-worker would recommend him or a project or employment. Another co-worker who has known him from 2001 to 2003 has seen Applicant's "new outlook" on health and his life in general and has respect for him. A third co-worker who has known Applicant since 1982 stated that after he hired Applicant in 1992 for the State #1 office, Applicant did an excellent job for five years. (Exhibit A; TR 18-19; TR 46)

Applicant submitted 22 years of evaluations and other personnel records with his company which document consistent raises, merit increases, and promotions. In April 2002 he received a raise and was paid \$55,000 annually. (Exhibit B; TR 19)

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;

(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;

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

(6) Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Conditions that could mitigate security concerns include:

(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;

(4) Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with after-care requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

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 the provisions of 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

Applicant has mitigated the Government's security concerns⁽²⁾ over his two alcohol-related arrests in 1998 and December 2000 as well as over his diagnoses of Alcohol Dependence assessed during his three voluntary efforts to seek treatment in 1999, 2000, and 2001. To his credit, after his December 2000 arrest for public intoxication, he again voluntarily sought treatment. After being repeatedly diagnosed with alcohol dependence when he sought treatment, Applicant finally turned a corner in the third intensive outpatient program in January to February 2001 where he sought counseling. When he completed that program, a licensed clinical social worker, a staff member of this recognized alcohol treatment program, concluded in March 2001 his prognosis was good if he followed the aftercare plan as agreed. He has done so.

Applicant has been able to sustain his decision to abstain from alcohol for almost three years. He has taken several steps to insure he maintains his sobriety since he stopped drinking in December 2000. He has maintained that resolve for sobriety by a commitment to AA and by his positive changes in his behavior supportive of sobriety. Applicant thus established that he is fully rehabilitated. He has been regularly attending AA since that time both at home and on his business travels. Thus, he has established that he has met conditions that mitigate⁽³⁾ security concerns by showing positive changes in behavior supportive of sobriety. Since the last diagnosis of alcohol dependence, Applicant successfully completed intensive outpatient rehabilitation in March 2001 and has complied with the after-care requirements. Thus, he has fulfilled the favorable prognosis of his licensed clinical social worker, a staff member of a recognized alcohol treatment program, issued in March 2001. Finally, the problem occurred a number of years ago in December 2000 and there is no indication of a recent problem. He has favorable evaluations from his long-term employer and favorable assessments from his co-workers. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a. through 1.h. 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

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: 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.
2. 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; (4) evaluations of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program; (5) habitual or binge consumption of alcohol to the point of impaired judgment; and (6) consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.
3. 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; 4. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with after-care requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, has abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional or licensed clinical social worker who is a staff member of a recognized alcohol treatment program.