

DATE: March 5, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 02-21614

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was convicted of driving an automobile while intoxicated in October 1996 and on two occasions in May 1998. Following the last two arrests, she was sentenced to substantial jail sentences and placed on a lengthy term of probation. She remained sober for more than three years following her last arrest, but relapsed in September 2002, was arrested for hindering and obstructing a police officer, and is again serving a probationary sentence. Although she is presently attending Alcoholics Anonymous meetings and participating in a relapse prevention program, it is too soon to be able to predict with any degree of certainty whether she will remain sober in the future. Applicant has failed to mitigate the security concerns that arise from her alcohol consumption. Clearance is denied.

STATEMENT OF THE CASE

On October 3, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating it was unable to find it 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 October 20, 2003, requested a hearing, and admitted all SOR allegations.

The case was assigned to me on December 2, 2003. A notice of hearing was issued on January 14, 2004, scheduling the hearing for January 30, 2003. The hearing was conducted as scheduled. The government submitted three documentary exhibits that were marked as Government Exhibits (GE) 1-3 and admitted into the record without an objection. The Applicant testified, called one character witness, and submitted one documentary exhibit post-hearing that was marked as Applicant's Exhibits (AE) 1 and admitted into the record without an objection. The transcript was received February 9, 2004.

PROCEDURAL MATTERS

Applicant claimed at the hearing that although the notice of hearing was dated January 14, 2004, she did not receive it until January 20, 2004. She also claimed that she had been contacted by an administrative assistant from DOHA to determine where the notice could be sent by FEDEX, she provided the assistant with a location, and the first she became aware of the date of the hearing was when she picked the notice up at the agreed upon location on January 20, 2004. Applicant also asserted that because of the abbreviated notice of the hearing date, she had been unable to secure a document she wished to submit as evidence.

I informed Applicant that if she wanted a continuance one would be granted. I also informed her that if she desired, I could instead leave the record open for her to submit whatever documents she wished after the hearing concluded on January 30, 2004. She stated she wished to proceed with the hearing at that time and submit the document post-hearing. AE 1, the document she had been unable to obtain prior to the hearing, was received post-hearing and made part of the record.

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 26 years old, single, and is pregnant with her first child. She presently resides with her fiancé in a mobile home she purchased in February 2002. She is a high school graduate, and has been employed as a data collector by a defense contractor since November 2001. Her prior work history consists of numerous unskilled jobs, the majority of which she held for only a few months.

Applicant first consumed alcohol when she was 13 years old, and began to use it on a regular basis when she was approximately 16 years old. Her first alcohol related arrest occurred in October 1996 when she was charged with Driving While Intoxicated (DWI) after she was involved in an automobile accident. She was convicted of that offense and sentenced to 30 days in jail (29 days suspended), three years supervised probation, 50 hours community service, a fine, and she was required to attend Alcoholics Anonymous (AA) meetings twice a week. Additionally, she attended a 26-week alcohol awareness program. Applicant's driving privileges were suspended as a result of her inability to perform a breath test following this arrest due to the degree of her intoxication, which was deemed a refusal.

Applicant was arrested on May 15, 1998 and May 21, 1998, and charged with DWI on each occasion. Both arrests again followed her involvement in automobile accidents. She was convicted of both charges and sentenced to one year in jail for each offense (nine months suspended on one charge and ten months suspended on the other), ⁽²⁾ and placed on three years supervised probation. She was also sentenced to 30 days in jail for violating the probationary sentence she was serving from her earlier DWI arrest.

Applicant admitted herself into an inpatient treatment program from June 18, 1998 to July 5, 1998, was diagnosed as alcohol dependent, and stayed sober until approximately August 2002. She was arrested in September 2002 and charged with hindering and obstructing a police officer. She was intoxicated at the time of the arrest and interjected herself into police efforts to arrest the intoxicated driver of the vehicle in which she was a passenger. She was convicted of this offense in March 2003, and placed on 18 months probation and ordered to attend a 26-week alcohol treatment program. She continued drinking alcohol following this arrest until July 2003, and has remained sober since that date.

Applicant enrolled in a 52-week relapse avoidance program on July 30, 2003 that involves a multi-phase approach to treating chemical dependence. She has attended individual and group sessions on a regular basis and is an active participant in the treatment sessions. All breath tests and urine screens that have been administered as parts of the program have proven negative for the presence of alcohol. She also attends AA sessions on a twice weekly basis, has a home group she regularly attends, and is in the process of securing a sponsor.

One of Applicant's supervisors testified that she is an excellent worker and gets along well with her coworkers. There has been no indication of alcohol affecting her work performance since she has been employed with this defense contractor, and her supervisor does not believe she poses a risk to national security. He recommends she be granted a security clearance.

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.⁽³⁾ The government has the burden of proving controverted facts.⁽⁴⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁵⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁶⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁷⁾ 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.⁽⁸⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁹⁾

No one has a right to a security clearance⁽¹⁰⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹¹⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹²⁾

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 three alcohol-related driving offenses between October 1996 and May 1998. She has been sentenced to substantial jail sentences, placed on supervised probation, and mandated to attend alcohol treatment programs. She was diagnosed as alcohol dependent in 1998, and stayed sober for more than three years afterwards. However, although not alleged in the SOR, Applicant was again arrested for an alcohol related offense in September 2002, continued drinking for almost a year thereafter, and remains on probation as a result of being convicted of that offense.

She is now once again enrolled in an alcohol abuse prevention program, attending AA meetings, and appears to be pursuing a healthy lifestyle. She claims to have not consumed alcohol since July 2003, and the multiple breath tests and urine screens that have been administered confirm that assertion. Applicant is making a commendable effort to overcome her alcohol dependence, still, based on her history, it is far too early to be able to make any reliable prediction that she will not resume drinking in the future.

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 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*; 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 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 her and satisfy her 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

Subparagraph e: Against the Applicant

Subparagraph 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 Applicant. Clearance is denied.

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. Department Counsel was questioned at the hearing and indicated there was no information to indicate the sentences were ordered to run consecutive or any other information that might implicate the granting of a security clearance prohibition mandated by 10 U.S.C. § 986.
3. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
4. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
5. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
6. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
7. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
8. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
9. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
10. *Egan*, 484 U.S. at 528, 531.
11. *Id* at 531.
12. *Egan*, Executive Order 10865, and the Directive.

