

DATE: March 18, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-21824

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Mark A. Rassas, Esquire

SYNOPSIS

Applicant mitigated security concerns over his past criminal conduct, alcohol use, and personal conduct. He has mitigated his criminal conduct by not having any adverse incidents for two years; he has reformed and demonstrated clear evidence of successful rehabilitation by his record of excellence at work and endorsements by eight witnesses who testified to his good character. Despite five past alcohol-related arrests from 1982 to 2001, an expert psychologist concluded that Applicant no longer has an alcohol-related problem based on his clinical interview and Applicant's test results. Applicant chose to become abstinent in August 2003 and has demonstrated his intent not to abuse alcohol in the future. The omissions on his security form were not intentional as he disclosed substantial adverse information on earlier security forms. 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 July 25, 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 Applicant.⁽¹⁾ The SOR alleges specific concerns over criminal conduct (Guideline J) in paragraph 1, alcohol (Guideline G) in paragraph 2, and personal conduct (Guideline E) in paragraph 3. Applicant responded to these SOR allegations in an Answer notarized on August 20, 2003, where he admitted allegations in paragraphs 1 and 2, but denied allegations in paragraph 3. He requested a hearing.

The case was assigned to Department Counsel who on October 30, 2003, attested it was ready to proceed. The case was assigned to me on October 31, 2003. Subsequently, a mutually convenient date for hearing was agreed to; a Notice of Hearing issued⁽²⁾ on November 20, 2003, set the matter for December 18, 2003, at a location near where Applicant works and lives. On December 3, 2003, Applicant's counsel entered his appearance.

At the hearing the Government offered nine Government exhibits which were admitted into evidence. (Exhibits 1-9)

Applicant's counsel called seven witnesses including Applicant and offered four exhibits which were admitted into evidence. (Exhibits A-D) The transcript (TR) was received on December 29, 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, 40 years old, has worked for a defense contractor (Company #1) in State #1 since February 2000. As Applicant needs a security clearance to perform his job, he completed a Security Clearance Application in July 2000 (2000 SF 86). Previously, Applicant had a similar job with another defense contractor (Company #2) from 1984 to 2000 where he had completed a Personnel Security Questionnaire (1984 SF 86). He was granted a Defense Department Secret clearance in April 1984 and has worked at a defense installation for twenty years. (Exhibits 1, 5; Exhibit A; TR 26-29)

Applicant attended a state university in State #2 from 1986 to 1988. He was married in 1986 and divorced in 1998. He has two children born in 1987 and 1992. (Exhibit 1; TR 26, 31-32)

Criminal Conduct, Alcohol, and Personal Conduct

Applicant has consistently disclosed his alcohol-related arrests on security paperwork. On his 1984 SF 86 Applicant admitted to two alcohol-related arrests:

- one in November 1983 where he was charged with Driving While Intoxicated (DUI) which was reduced to reckless driving where he was fined, served two-days and went to DUI School (alleged as December 1982) (SOR 1.a.); and
- another alcohol-related incident in October 1982 when he was arrested for a fight when he was working overseas after he had been drinking and spent a night in jail (not alleged) when he was 19.

At that time he did not believe alcohol was a problem as he then drank six beers only one night a week. (Exhibits 3, 4, 5; TR 29; 48-51)

On his 1993 SF 86 Applicant disclosed two more arrests:

- a November 1981 DWI (not alleged in the SOR) (which he testified was the same as the 1983 arrest disclosed earlier) and
- a May 1997 DUI where he was fined \$1,000, had his license revoked and went to alcohol abuse class. (SOR 1.b.)

(Exhibit 2; Exhibit A; TR 31)

On his 2000 SF 86 Applicant was advised that he only needed to list offenses for the past seven years. He listed two more alcohol-related arrests after he and his wife had divorced and he had trouble coping with the divorce:

- a DUI in August 1999 which was reduced to reckless driving; he was fined \$350, served two-days and went to DUI School.
- another DUI in April 2000 after he consumed six beers and drove home; he was fined \$696, served two days and went to DUI school. He was placed on probation and his license was suspended for one year except for driving to work.

(Exhibits 1, 2, 3, 6, 7, 8; TR 38-39; 45-48) (SOR 1.c., 1.d.)

While Applicant only listed two arrests on the 2000 SF 86, he had no intent to hide his earlier arrests which he had revealed on the earlier security forms. He thought he only had to go back seven years as it was a re-investigation. He also revealed his DUI schools on the security forms and has had no other treatment. (TR 40-43) (SOR 3.a. and 3.b.) I found him credible that he had no intent to falsify by these omissions on the 2000 SF 86 as he disclosed substantial adverse information in response to questions on earlier security forms.

When he was interviewed by the Defense Security Service (DSS) in April 2002, he was reminded by the agent he was also charged with DWI in May 1987, but Applicant stated he did not remember the incident, or that he had attended an alcohol abuse program. (He did not disagree with the information which he had document on an earlier SF 86). (SOR 1.b.) He also revealed to DSS an additional arrest since completing his 2000 SF 86: a July 2001 arrest for driving on a revoked license after he was stopped for speeding, jailed and released on \$500 bond. Although he was also charged with having an open container of alcohol, the charge was dropped when he went to court. He paid a fine of \$100 for driving without a license. (Exhibits 2, 3, 9; TR 34-36) (SOR 1.e)

Applicant began to drink when he was 16 or 17 and continued to drink on an intermittent basis until August 2003 when he made a decision to become abstinent. (TR 43; Exhibit 3; Exhibit C) In April 2002 he was drinking two to four twelve ounce cans of beer on one night of the weekend at home. He reduced his drinking after the last DUI but did not believe he was addicted to alcohol. (Exhibit 3) In answering Interrogatories Concerning Alcohol, Applicant admitted in April 2003 that he continued to drink; but he did not drink to the point of intoxication and was a social drinker. (Exhibit 2; TR 36-37) However, he stopped drinking and became abstinent in August 2003. (TR 43; Exhibit C)

Opinion of Expert Psychologist

Although Applicant has never received a diagnosis of alcohol abuse or alcohol dependence, Applicant agreed to an alcohol evaluation by an expert psychologist (Dr. D) which required two visits in November and December 2003. (TR 39-40, 55-56; Exhibits C, D) Dr. D is a licensed clinical psychologist who received a Ph.D. from Northwestern University in pastoral psychology and counseling in 1972. Dr D has had a variety of professional positions where he has worked with people with substance abuse issues, including alcohol. He has been in private practice for two years and is the vice chair of a state board of psychology which supervises the practice of psychology in the state. He administered a series of tests to Applicant. (TR 52-60; Exhibits C, D) After Dr. D was offered as an expert witness in alcohol and substance abuse evaluation, Department Counsel objected⁽³⁾; Dr. D provided more background on his expertise in evaluating alcohol abuse issues. In his thirty years of practice, Dr. D has had over 500 people with substance abuse issues and has supervised substance abuse evaluation programs. (TR 58-64) Over Department Counsel's objection, Dr. D was accepted as an expert psychologist with substantial experience in assessing individuals with substance abuse issues. (TR 64-65)

Dr. D reported that in the past Applicant has had problems with excessive drinking when he was in his teens and early twenties and again when his life was in turmoil after his divorce. Dr. D administered a variety of tests. He reported that Applicant's profile under the MMPI II was within normal limits. The two other tests he administered also confirmed Applicant did not have a current alcohol abuse problem. Based on his clinical interview and Applicant's test results, Dr. D provided his expert opinion that Applicant no longer has an alcohol abuse problem. Further, he stated that Applicant did not need treatment at this time but recommended he continue to be abstinent. (Exhibit C; TR 65-84)

References

Applicant's former wife testified on his behalf that Applicant gets along well with their two children, ages 11 and 16, and sees them several times a week. During their ten year marriage, Applicant did not have a problem with alcohol. She learned he had two DUIs after the divorce, but she has not subsequently seen him drink at any of the functions where they have been together. (TR 85-91)

Applicant's girlfriend testified that she has dated him since 1999. While Applicant was drinking in 2000, she was not seeing him then on a daily basis. From 2001 to 2003, she observed Applicant drink on the weekends, not on the week days. He stopped drinking in the summer 2003. She does not see his use of alcohol as a raising any concerns since his last alcohol-related incident in 2000. (TR 91-94)

Applicant's work colleague and friend who has known him for eight years since 1992 testified on his behalf. He worked with Applicant from 1992-98. He testified that Applicant has a reputation for truthfulness. He was very effective at work and could fix a problem 98 percent of the time if they had the part; if they did not, he would order the part and report the situation truthfully. His colleague thinks Applicant is very dependable and never saw him abuse alcohol. (TR

94-98)

The government's representative on the contract where Applicant has worked testified on his behalf. This individual had a secret clearance and served as the technical oversight representative. He observed Applicant on a daily basis from 1989 until his retirement in August 2003. He observed that Applicant was truthful and a good employee who completed tasks with no problems. He never saw any signs of alcohol abuse by Applicant. (TR 98-103)

The officer in charge of two facilities where Applicant worked testified on his behalf. He has known Applicant from 1987 to present and has had regular contact with him. He views Applicant as an honest man as he has always given a fair and honest report on conditions in the work place environment. He has never seen Applicant use any alcohol in the workplace and has never seen him under the influence of alcohol at work. He said that Applicant plays a crucial role that is important to his mission, but he does not supervise Applicant. (TR 103-116)

Applicant's overall supervisor testified on his behalf. He has supervised Applicant on a daily basis for five years. He has not seen any signs that Applicant has any alcohol problem. He assesses him as an excellent employee. He's a "great worker, trustworthy." He does not socialize with Applicant, but he has known Applicant for twenty years and observed his excellent work ethic. (TR 117-122)

His supervisor, who has known him since 1992 and supervised him for five years, provided a letter attesting to Applicant's good character. He has never observed Applicant come to work under the influence of alcohol. He also has observed Applicant at home and seen his dedication to his children. He did not believe Applicant had falsified his 2000 security form as he had revealed earlier alcohol-related incidents on earlier forms. (Exhibit B)

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, I weighed relevant Adjudication Guidelines as set forth below:

Guideline J - Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

- a. Allegations or admissions of criminal conduct
- b. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

- a. The criminal behavior was not recent
- d. [T]he factors leading to the violation are not likely to recur;
- f. There is clear evidence of successful rehabilitation

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;

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

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;

Guideline E - Personal Conduct

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.

Conditions that could raise a security concern and may be disqualifying also include:

None

Conditions that could mitigate security concerns include:

None

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. 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

Criminal Conduct

Applicant mitigated the Government's security concerns over his misdemeanor criminal conduct in 1982, 1987, 1999, 2000, and 2001 when he had arrests and convictions related to his alcohol abuse. To his credit, Applicant now has reformed his conduct. He has a very successful work record and favorable community references which indicate his successful change in his lifestyle. Consequently, the actions that led to his convictions may now be mitigated under C a, as the criminal behavior was not recent as there has been no reoccurrence in the past two years, under MC d. as the factors leading to the violation are not likely to recur as he no longer drinks, and under MC f. as there is clear evidence of successful rehabilitation as testified to by multiple witnesses who think highly of Applicant's character and workplace performance. Hence, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a. through 1.e. incorporated under SOR Paragraph 1.

Alcohol

Similarly Applicant mitigated the Government's security concerns over his alcohol-related incidents detailed above. Although he has had several incidents, several years separate them- two occurred in his youth and three during the turbulence after his divorce. Applicant has never received a diagnosis of alcohol abuse or alcohol dependence. To his credit, after his last arrest, Applicant moderated his drinking and in August 2003 made a decision to stop drinking. Although he has only six months of abstinence, he has not had any subsequent alcohol-related incidents for over two

years. Applicant has maintained his resolve for sobriety and his witnesses, especially his former wife and current girlfriend, support his testimony that he has lived up to his resolve to make positive changes in behavior supportive of sobriety. Significantly, an expert witness, while recognizing Applicant's past alcohol-related problems, concluded that based on his clinical interview and Applicant's test results that Applicant no longer has an alcohol related problem. Further, he stated that Applicant did not need treatment at this time.

Thus, Applicant established that he has met conditions that mitigate⁽⁴⁾ security concerns by showing positive changes in behavior supportive of sobriety. Finally, the last incident occurred a number of years ago in June 2001, and there is no indication of a recent problem. He has favorable evaluations from six employment and personal references as detailed in the findings. For example, Applicant's overall supervisor who has known him for twenty years and supervised Applicant on a daily basis for five years has not seen any signs that Applicant has any alcohol problem. He assessed him as an excellent employee with an excellent work ethic; he described Applicant as a "great worker, trustworthy." After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 2.a. through 2.d. under SOR Paragraph 2.

Personal Conduct

While the Government raised security concerns over Applicant's personal conduct in failing to disclose fully all adverse information in answering fully questions on 2000 his security form, I am persuaded that he had no intent to falsify, as he disclosed substantial adverse information on two earlier security forms. He believed he only needed to provide an update on the current form. Thus, no disqualifying conditions apply. In addition to his omissions not being intentional, I also conclude Applicant's consistently good work record and favorable references establish that he is generally viewed as an honest and trustworthy person. Hence, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 3.a. and 3.b. under SOR Paragraph 3

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 J: 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

Paragraph 2. Guideline G: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Paragraph 3. Guideline E: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: 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. Because of a hurricane in the Washington, DC, area which closed the federal government, the formal notice did not give Applicant the recommended 15 days notice; however, at the hearing Applicant made clear that he wanted his case expedited and had no objection to going forward with his hearing on the scheduled date. (TR 11-12)
3. Dr. D has a masters degree in divinity and a PhD in philosophy which Department Counsel argued would qualify him in pastoral psychology, not as a clinical psychologist. She also objected to the fact that she was not provided the report in advance of the hearing. (TR 59, 63-64, 70) Applicant's counsel questioned the witness further and established his expert credentials in assessing alcohol abuse in patients.
4. 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.