

DATE: March 2, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-22062

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant stopped using alcohol in November 2000, after his second Driving Under the Influence arrest. He is engaged in continuing aftercare, including Alcoholics Anonymous, has refrained from alcohol abuse for almost three years, and has a positive prognosis from his primary therapist. Sufficient mitigation is shown. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On June 4, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) 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.

The Applicant responded to the SOR in writing on June 26, 2003, and requested a hearing. The case was received by the undersigned on August 19, 2003, and Notices of Hearing were issued on September 8 and September 24, 2003.

A hearing was held on September 30, 2003, at which the Government presented eight documentary exhibits (Government Exhibits 1 through 8). Testimony was taken from the Applicant, who also submitted 23 hearing exhibits (Applicant's Exhibits A through W) and one post-hearing exhibit (Applicant's Exhibit X consists of court records concerning SOR subparagraph 1.a.). The transcript was received on October 15, 2003.

FINDINGS OF FACT

The Applicant is 44, married and has a high school diploma. He is employed by a defense contractor as a Mission Controller, and he seeks to retain a Secret-level DoD security clearance previously granted in connection with his

employment in the defense sector.

The Government opposes the Applicant's request for a continued security clearance, based upon the allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline J - Criminal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in criminal acts.

Paragraph 2 (Guideline G - Alcohol consumption). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he uses intoxicants to excess.

The Applicant began drinking alcohol when he was 16 or 17 years old. Until 1999, he kept his drinking under control. In 1999 the Applicant's drinking increased to the point where he was arrested in November 1999 for Driving Under the Influence (DUI). This was due to his driving his car into a telephone pole. He subsequently pled no contest to the charge and was sentenced to pay a fine and three years unsupervised probation. (Government Exhibits 2, 3 and 5 at page 2.)

His drinking continued to be out of control, and he was again arrested in November 2000 for Driving Under the Influence. In July 2001, he pled guilty to this charge and was sentenced to serve 45 days in jail (he actually served 15 days), and ordered to pay a fine, to have an ignition interlock installed on his vehicle, to attend an alcohol education program for 30 months, and was placed on five years supervised probation. (Government Exhibit 7.) The supervised probation was converted to unsupervised probation in September 2003. (Applicant's Exhibits M and X.)

Since his second arrest the Applicant has worked hard to turn his life around. (Transcript at 40, 43, 45 and 53-54) He successfully completed an 18 month alcohol awareness program in March 2003 (Government Exhibit 6, Applicant's Exhibit O). He joined another program to complete the 30 month requirement ordered by the court (Applicant's Exhibit J).

The Applicant admits he is an alcoholic and has been an active member of Alcoholics Anonymous since November 2000, attending on at least a weekly basis. (Applicant's Exhibits B and I, Transcript at 86-90.) He has abstained from alcohol since his second DUI, with the exception of one slip in November 2001. Several of the Applicant's counselors submitted positive letters on his behalf. (Applicant's Exhibits C, D, F and G.)

During the late 1990s, the Applicant admits that his spending habits got out of control. The addition of his attorney fees for the second DUI put he and his family over the edge. The Applicant was forced to file for Chapter 7 bankruptcy in order to resolve over \$90,000 in unsecured credit card debt, \$17,000 of which was for attorney fees. (Government Exhibit 4.) The Applicant testified that his current financial situation is good. (Transcript at 60-62.)

The evidence of record shows that, after his second arrest, the Applicant changed his life completely. He rode a bike to work while his driver's license was suspended, and continues to cycle for fun and exercise. He has been very open with his family, co-workers and friends about his alcohol problem. The Applicant has taken complete responsibility for his alcohol problem, worked diligently to resolve it, and continues to work on it.

Mitigation.

In addition to many exhibits dealing directly with his alcohol recovery, the Applicant submitted several exhibits concerning his work performance. His supervisor states that the Applicant is reliable and trustworthy. With knowledge of his problems, this supervisor describes the Applicant as "a valuable member of our team." (Applicant's Exhibit E.) The records from his employer show that he is a talented and able worker who is respected by his superiors. (Applicant's Exhibits K, L, P and Q.)

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance

determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline J (Criminal conduct)

Condition that could raise a security concern:

(2) A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns:

(1) the criminal behavior was not recent;

(6) there is clear evidence of successful rehabilitation.

Guideline G (Alcohol consumption)

Conditions that could raise a security concern:

(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 abuse;

(3) diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

Conditions that could mitigate security concerns:

(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 aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, 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 treatment program.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

a. The nature, extent and seriousness of the conduct

b. The circumstances surrounding the conduct, to include knowledgeable participation

c. The frequency and recency of the conduct

d. The individual's age and maturity at the time of the conduct

e. The voluntariness of participation

- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse and related criminal conduct that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has abused alcohol and that he had been involved in two alcohol related criminal incidents (Guidelines J and G).

The Applicant, on the other hand, has successfully mitigated the Government's case. The evidence shows that, since he entered treatment in 2000, the Applicant has eliminated alcohol consumption. He has successfully completed an alcohol rehabilitation program with a favorable prognosis from his principal therapist. With the exception of one slip, the Applicant has abstained from alcohol for over two years. The period of the Applicant's alcohol abuse was relatively short, about two years. The last arrest occurred almost three years before the record closed. His formal probation was ended early, and the evidence shows that he has taken complete responsibility for his conduct.

The fact that the Applicant was forced to file bankruptcy is unfortunate. However, the evidence shows that he understands the impact of his poor financial judgment and is determined not to repeat it.

In addition, application of the General Factors is appropriate and supports a decision in the Applicant's favor. The Applicant is motivated to continue his sobriety (factor g), he shows clear and considerable evidence of rehabilitation (factor f), and, under the circumstances of this case, the probability that the Applicant will return to his drinking ways, and/or receive another alcohol related arrest, are virtually nil (factor i).

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraphs 1.a. through 1.b.: For the Applicant.

Paragraph 2: For the Applicant.

Subparagraphs 2.a. through 2.e.: For the 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.

Wilford H. Ross

Administrative Judge