

DATE: January 27, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23092

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Erin C. Hogan, Deputy Chief Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of alcohol-related arrests and convictions (four in all) over a 17-year period spanning 1984 and December 2001. While he has since cut back significantly on his drinking, he has declined any counseling or evaluations by a credentialed substance abuse counselor, refused breath tests by investigating police officers at the scene in connection with two of his alcohol-related incidents, and still shows too many signs of potential denial to make the safe predictions he is no longer a recurrence risk. By contrast, he successfully mitigates security concerns associated with his SF-86 omissions, domestic abuse arrest, and his post-military financial problems that prompted his bankruptcy in 2000 by showing these actions were either unsubstantiated or involved isolated financial setbacks that Applicant has been able to studiously avoid since his discharge. Clearance is denied.

STATEMENT OF THE CASE

On February 19, 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 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on June 6, 2003, and requested a hearing. The case was assigned to this Administrative Judge on August 6, 2003. Pursuant to notice of August 15, 2003, a hearing was scheduled for September 23, 2003, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny or revoke Applicant's security clearance. A hearing was convened as scheduled. At hearing, the Government's case consisted of six exhibits; Applicant relied on one witness (himself) and no exhibits. The transcript (R.T.) of the was received on October 2, 2003.

SUMMARY OF PLEADINGS

Applicant is a 52-year-old specialist for a defense contractor who seeks a security clearance.

Under Guideline G, Applicant is alleged to have (a) consumed alcohol, at times to excess and to the point of intoxication, from approximately 1973 to at least ay 2002, (b) been charged with public intoxication in June 1984 and fined \$70.00, (c) been involved in three DuI incidents between January 1987 and December 2001 in which he was both arrested and convicted, and (d) reported to work in May 1999 smelling of alcohol on at least 4 to 5 occasions, after which he was confronted by his supervisor about it.

Under Guideline E, Applicant is alleged to have falsified his security clearance application (SF-86) in March 2000 by omitting his June 1984 and January 1987 arrests.

Under Guideline F, Applicant is alleged to have filed for Chapter 13 relief in October 1999, changed to a Chapter 7 bankruptcy petition in March 2000, in which his liabilities totaled \$187,168.34.

For his response to the SOR, Applicant admitted most of the allegations. He denied his alleged arrest of December 2001 as well as his alleged reporting to work in May 1999 smelling of alcohol.

FINDINGS OF FACT

The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

Applicant retired from the Army in 1999 at the rank of master sergeant after holding a security clearance for over 24 years. Over the course of a 17-year period spanning his military service and civilian career, Applicant was arrested on four separate occasions for alcohol-related incidents. Most of these incidents occurred while Applicant was in the military (*i.e.*, between May 1973 and July 1999). In the first such incident, Applicant was arrested for public intoxication in June 1984 and fined \$70.00. Three years later (in January 1987) he was arrested for DuI and having a blood alcohol concentration of .10 per cent or more. He had been involved in an altercation with another person at a local nightclub. He was arrested for DuI at the scene after he refused to submit to a Breathalyzer. In court, Applicant pleaded guilty to his DuI charge and was sentenced to four days in jail, fined \$700.00, ordered to make restitution to the victim, complete a drinking driver program II and placed on three years of probation.

Applicant was arrested for a third alcohol-related incident (a DuI offense) in October 1998 after consuming 12 beers over a 6-hour period at a local club. On his way home from the club he stopped at a red light and fell asleep. When the police arrived at the request of a caller, they administered a breath test to Applicant, which he failed. Applicant later pleaded no contest to a DuI charge and was fined \$200.00, in addition to being sentenced to five days in jail (which he served on weekends). Later (in 1999) he binged on alcohol for about a week after suffering a string of family losses: his mother, sister and mother-in-law passed away over a three-month period (*see* R.T., at 46).

Applicant's fourth alcohol-related incident (a DuI offense) occurred in December 2001. He had frequented a bar with his girlfriend and consumed three beers and a shot of tequila over a 4 to 5 hour span. As the result of a brief ensuing argument with his girlfriend, she called the police and accused him of domestic abuse. This was not the first such time she had charged Applicant with domestic abuse: She had called police with a domestic abuse charge just three months earlier (in September 2001). After investigation of this earlier 2001 incident involving Applicant and his girlfriend, the police arrested both of them for domestic abuse (*see ex. 4*).

After being confronted by police in his driveway of his home on the report of his girlfriend in December 2001, Applicant was charged with DuI after refusing to take a breath test at the scene. In their police report, the arresting officers described Applicant as exhibiting bloodshot eyes and unsteadiness on his feet when administered a field sobriety test. In court, he pleaded guilty to the DuI charge and was fined \$350.00, ordered to attend DuI school, and placed on unsupervised probation for six months.

Since his December 2001 DuI arrest, Applicant has cut back on his drinking to one to three times a week, mostly at

home. When he drinks at social gatherings, he designates a driver when a car is involved. Applicant has never thought he had a drinking problem; although, he did abstain from alcohol entirely for a two-year period between 1996 and 1998 after being advised to do so by his physician for health reasons (*see* R.T., at 46-47). He has never been diagnosed or treated for alcohol problems or attended an AA meeting. He assures no one has ever told him he has an alcohol problem, and he continues to believe that despite his history of alcohol-related incidents, he does not have an alcohol problem that needs addressing.

Until recently, Applicant consumed alcohol one to three times a month, consuming about 4 beers per occasion (*see* ex. 2). Since 1973, Applicant has consumed more than 4 beers at any one sitting on no more than 12 occasions. He assures he gave up drinking altogether two weeks before the hearing as the result of his finding God in his life (*see* R.T., at 42). He provides no corroboration for his conversion to abstinence, however, and nothing to document a positive prognosis free fo recurrence risks.

When completing his March 2000 SF-86, Applicant omitted his June 1984 and January 1987 DuI arrests. He attributed his omissions to a misunderstanding over the scope of question 24 (inquiring about his alcohol-related arrests). His FSO had counseled him to limit his response to incidents within the previous 10 years (*see* R.T., at 26). Applicant had listed these two arrests in a previous SF-86 (*see* ex. 5) and impresses to be sincere about his misunderstanding. Considering all of the circumstances surrounding his omissions and explanations, inferences warrant that his omissions are attributable to mistake and not deliberate concealment.

After retiring from the military in 1999, Applicant and his spouse encountered significant income losses: from \$4,000.00 a month to around \$1,800.00 a month. Unable to stay up with their debts, he and his spouse filed for Chapter 13 wage earner's relief in October 1999. Later they converted their Chapter 13 petition to a straight Chapter 7 bankruptcy petition and were discharged in bankruptcy in July 2000. Following their separation in March 2000, Applicant and his spouse later finalized their divorce and have maintained separate lives.

Since his July 2000 bankruptcy discharge, Applicant has managed to keep his debts current and has avoided any financial problems with his creditors. Applicant has been able to reduce the \$30,000.00 loan balance on his car purchase to about \$20,000.00. With a current monthly income of \$3,600.00, he has about \$200.00 in remainder each month.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Alcohol Consumption

The Concern: 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.

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.

Mitigating Conditions:

MC 3 Positive changes in behavior supportive of sobriety.

Personal Conduct

The Concern: Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Disqualifying Conditions:

DC 2 The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Mitigating conditions:

MC 1 The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability.

Financial Considerations

The Concern: An individual who is financially overextended is at risk at having to engage in illegal acts to generate funds. Unexplained influence is often linked to proceeds from financially profitable criminal acts.

Disqualifying Conditions

DC 1. A history of not meeting financial obligations.

DC 3. Inability or unwillingness to satisfy debts.

Mitigating Conditions:

MC 3. The conditions that resulted in the behavior were largely beyond the person's control (*e.g.*, loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation).

MC 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of

refutation, extenuation or mitigation of the Government's case.

CONCLUSION

Applicant presents as a specialist for a defense contractor with over 20 years of holding a security clearance in the Army preceding his retirement in 1999 at the rank of master sergeant. His four alcohol-related incidents over 17 years reflect alcohol abuse by Applicant and documented proof of his having a recurring problem with alcohol through December 2001 (when he was involved in his last-reported DuI incident). Never diagnosed as an abusive drinker or alcohol dependent, Applicant, nonetheless, occasionally drank excessively while in social situations or more recently in the company of his girlfriend.

Following his 1998 DuI conviction, Applicant was sentenced to ten days in jail in addition to being fined and directed to surrender his driving privileges for six months. Still not believing he had any kind of a drinking problem he avoided counseling or treatment. Three years later (in December 2001) he was convicted of still another DuI offense, and this time was ordered to attend a DuI school and placed on six months probation. Again, he declined to seek counseling or AA assistance, self-assured he didn't have an alcohol problem. He continued to drink, albeit less frequently, up until two weeks ago when he made the decision to give up alcohol altogether. He attributes his decision to embrace abstinence to finding God, however, and not to coming around to the belief he might have an alcohol problem. In addressing the questions raised in this proceeding as to whether he is still at risk to recurrent abusive drinking he provides no corroboration or documentation of any kind from family, work colleagues, or substance abuse counselors to counter his past impressions of denial.

Having continued on with his drinking following his latest two alcohol-related incidents, Applicant manifests not only denial of any potential alcohol problems associated with his drinking but also his unwillingness to seek the documentary support to corroborate his assurances. On the strength of the evidence presented, one disqualifying condition (DC) of the Adjudication Guidelines for alcohol consumption may be applied: DC 1 (alcohol-related incidents away from work). Allegations of Applicant's smelling of alcohol when reporting to report on several occasions over the past three years were never substantiated and cannot be considered disqualifying.

Assessment of Applicant's alcohol-related conduct must be made on the basis of a review of the entire evidentiary record developed to date, not merely the information developed with respect to his identified four alcohol-related offenses. In making an overall assessment of Applicant's clearance eligibility, major emphasis must be accorded his most recent drinking history, his lack of any resort to counseling or evaluation by a credentialed substance abuse counselor to assess any risks associated with his continued drinking, even at reduced frequency levels, and the adequacy of the time elapsed since his last DuI in the face of his continued drinking.

By his actions to date, Applicant provides too little evidence of his learning from his judgment lapses associated with his alcohol-related incidents. Applicant's situation is one where he might have acquired a firmer understanding of past excessive consumption of alcohol preceding his use of a motor vehicle but chose to rely on his own self assessments. Whether Applicant is in denial of an alcohol problem is uncertain and cannot be accurately assessed without a professional evaluation. His noted failure to submit to breath tests in two of his alcohol-related incidents (with the last preceding his December 2001 DuI arrest) are troubling, considering applicant's continued insistence he doesn't have an alcohol problem. His actions reveal possible denial.

So, all in all, Applicant's mitigation efforts to date reflect too much uncertainty to absolve him of risks of recurrent alcohol abuse. His avoidance of any additional alcohol-related incidents over the past 22 months, while encouraging, is still not enough to facilitate safe predictive judgments about his ability to avert any alcohol abuse relapses or recurring problems with law enforcement authorities in the foreseeable future.

Applicant's still limited efforts to remedy his judgment lapses associated with the abuse of alcohol preclude him at this time from taking enough advantage of any of the mitigating conditions (MC) of the Adjudication Guidelines for alcohol consumption to mitigate security concerns associated with his prior alcohol-related incidents. While he is to be encouraged in his recent abstinence commitments, more time is needed to mitigate current security concerns over his drinking.

Considering the record as a whole, Applicant fails to make the convincing showing that he has both the maturity and resource support at his disposal to avert any recurrent problems with judgment lapses related to alcohol to warrant safe predictions that he is no longer at risk to judgment impairment associated with such conduct. Un favorable conclusions warrant with respect to the alcohol-related allegations covered by sub-paragraphs 1.a through 1.e of Guideline G. Favorable conclusions warrant with respect to the allegations covered by sub-paragraph 1.f, which were never substantiated.

Posing potential security concern as well are Applicant's omissions of two of his previous DuI arrests from his March 2002 SF-86. Applicant's explanations of his misreading the question, which were preceded by his listing his omitted 1984 and 1987 DuI arrests in his 1994 SF-86, are sufficient to enable Applicant to surmount the falsification implications of his omissions. In a similar vein, Applicant's September 2001 arrest for domestic abuse of his girlfriend was subsequently dismissed and is too isolated to reflect any pattern judgment impairment and untrustworthiness.

On the strength of the evidence presented, Applicant may invoke MC 1 (information unsubstantiated) of the Adjudicative Guidelines for personal conduct and carries his evidentiary burden in refuting the allegations he falsified his SF-86 by omitting his two prior alcohol-related arrests in 1984 and 1987, respectively. Further, his lone September 2001 domestic abuse arrest is sufficiently unproven as to his culpability and isolated to avert inferences of questionable judgment and untrustworthiness. Favorable conclusions warrant with respect to sub-paragraphs 2.a and 2.b of the allegations covered by Guideline E.

Potential security concerns raised by Applicant's 1999 Chapter 13 petition and ensuing Chapter 7 conversion and discharge in March 2000 are neutralized by Applicant's demonstrated stabilization of his finances and avoidance of delinquencies. Altogether, Applicant can reasonably claim over three years of uninterrupted financial stability, with good prospects for maintaining healthy finances in the future.

Based on Applicant's testimony, Applicant's covered debts are both extenuated and mitigated by circumstances and time (*viz.*, his reduced income following his military retirement in 1999). Applicant may take advantage of two mitigating conditions of the Adjudicative Guidelines to extenuate and mitigate his actions: C 3 (conditions largely beyond the person's control) and MC 6 (good-faith effort to repay creditors). Favorable conclusions warrant, accordingly, with respect to sub-paragraph 3.a of the Adjudicative Guidelines governing financial considerations.

In reaching my recommended decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE G (ALCOHOL): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: FOR APPLICANT

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Sub-para. 2.a: FOR APPLICANT

Sub-para. 2.b: FOR APPLICANT

GUIDELINE F (FINANCIAL): FOR APPLICANT

Sub-para. 3.a: FOR 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley

Administrative Judge