

DATE: September 10, 2003

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23131

DECISION OF ADMINISTRATIVE JUDGE

ROBERT ROBINSON GALES

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Esquire, Department Counsel

FOR APPLICANT

A. Brian Phillips, Esquire

SYNOPSIS

Twenty-five-year-old Applicant's relatively brief period of alcohol abuse during his freshman year at college in 1997-98, as well as during a five month period in 2001, and his two alcohol-related incidents in 2001, including one charge of drunk in public--which was eventually dismissed by the court as "no offense"--and a charge of driving while intoxicated, have been mitigated by his apparent rehabilitation. He successfully completed a court-mandated alcohol program and attended Alcoholics Anonymous meetings; has, with the exception of a single glass of wine consumed in January 2003, remained abstinent since August 2001, has changed his lifestyle, and vowed future abstinence. Clearance is granted.

STATEMENT OF THE CASE

On February 19, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 a clearance should be granted, continued, denied, or revoked.

In a sworn, written statement, dated April 10, 2003, Applicant responded to the allegations set forth in the SOR, and requested a hearing. The case was initially assigned to another Administrative Judge on July 23, 2003, but, due to caseload considerations, was reassigned to me on August 6, 2003. A notice of hearing was issued that same date, and the hearing was held on August 20, 2003. During the course of the hearing, five Government exhibits, two Applicant exhibits, and the testimony of two Applicant witnesses (including the Applicant), were received. The transcript (Tr.) was received on August 29, 2003.

FINDINGS OF FACT

Applicant has admitted three of the factual allegations pertaining to alcohol under Guideline G (subparagraphs 1.a., 1.c., and 1.d.), as well as a portion of an additional allegation (subparagraph 1.b.). Those admissions are incorporated herein as findings of fact. He denied the remaining allegations (subparagraph 1.e., and a portion of subparagraph 1.b.).

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 25-year-old employee of a defense contractor seeking to obtain a secret security clearance. An interim security clearance was granted to him in August 2001.

Applicant is a former alcohol abuser. His early alcohol consumption was undistinguished as to quantity and frequency, but his subsequent consumption, commencing at the age of 19, and coinciding with his enrollment in college in August 1997, became somewhat troublesome. During his freshman year, on less than 10 occasions, he consumed unspecific, but excessive, quantities of alcohol to the point of intoxication.⁽¹⁾ None of those episodes resulted in incidents of a reportable nature, and none resulted in arrests.

Upon completion of his freshman year, Applicant dropped out of school to work, initially in the family business, and eventually elsewhere. His alcohol consumption during this entire post-freshman year in college was again undistinguished as to quantity and frequency. Three years later, two alcohol-related incidents occurred which would alter the characterization of Applicant's relationship with alcohol.

The first incident occurred in March 2001, when Applicant and his best friend were in a local bar for around three hours⁽²⁾ celebrating his friend's birthday.⁽³⁾ An unspecified number of alcoholic beverages were consumed during that period.⁽⁴⁾ Applicant and his friend departed the bar and were, as he described it, "talking loudly and generally having a good time."⁽⁵⁾ They were apparently making too much noise and were arrested and charged with a class 4 misdemeanor - drunk in public. Applicant spent the night in jail and was released the following morning.⁽⁶⁾ On April 17, 2001, the charge was dismissed with a notation "no offense."⁽⁷⁾ Although Applicant initially indicated he had been fined,⁽⁸⁾ he subsequently modified his position to indicate a fine had been mailed to the court but never processed or cashed.⁽⁹⁾ Court records reveal no evidence that a fine was ordered.⁽¹⁰⁾

The second, and most recent, incident occurred five months later, in August 2001, when Applicant and some friends were in a local club for about three hours celebrating his new job.⁽¹¹⁾ He consumed approximately seven alcoholic beverages, including beer and vodka,⁽¹²⁾ confident the designated driver among them would drive him home. Unfortunately, that person disappeared and Applicant decided to drive himself home.⁽¹³⁾ At about 2:46AM, he was stopped by the police and administered both field and breathalyzer tests, both of which he failed. Applicant registered .20 percent and was charged with driving while intoxicated (DWI) 1st offense.⁽¹⁴⁾

A pre-court evaluation of Applicant performed by a probation counselor with the county Alcohol Safety Action Program (ASAP) assessed him to be a "problem drinker."⁽¹⁵⁾ The probation counselor opined that Applicant was apparently minimizing his self-reported history of alcohol consumption and recommended referral to the county ASAP.⁽¹⁶⁾ In November 2001, Applicant pled guilty to the charge and was ordered to pay a fine of \$300.00 and entered into the county ASAP. In addition, his operator's license was suspended for a period of one year.⁽¹⁷⁾

When Applicant commenced his new position in another state, the county ASAP referred him to a similar program in the state of his new residence. He enrolled in the program in January 2002 and participated in 29 group sessions, one individual session, and two Alcoholics Anonymous (AA) meetings per week.⁽¹⁸⁾ Urinalyses were performed on two occasions and both tests were negative for mood-altering substances. As of May 2002, Applicant was still not convinced of the perils of alcohol, and denied the existence of an alcohol problem.⁽¹⁹⁾ Nevertheless, he vowed not to drink alcohol to excess in the future, but conceded he might continue to consume some wine with dinner.⁽²⁰⁾ Applicant eventually

accepted his powerlessness over alcohol and realized the dangers in continuing his relationship with alcohol.⁽²¹⁾ Upon his successful completion of the program in July 2002, the discharge diagnostic impression rendered by his substance abuse counselor--a person with an M.S. degree and no other apparent professional designation--was alcohol abuse, in apparent remission.⁽²²⁾ His prognosis was reflected as "good," provided he followed the two recommendations: 1) abstinence for an unspecified period, and 2) attendance at an unspecified number of AA meeting for an unspecified period.⁽²³⁾

Applicant has dramatically altered his attitude, relationship with alcohol, and his lifestyle, and he no longer goes to bars. Furthermore, he has abstained from any alcohol consumption since his August 2001 arrest, with the exception of a glass wine he consumed while having dinner with his parents in January 2003.⁽²⁴⁾ Thereafter, he apparently experienced an epiphany--in large measure motivated by his experiences in the alcohol program and the loss of his interim security clearance--and has sworn off all future alcohol consumption.⁽²⁵⁾

In July 2000, at the age of 22, Applicant was hired as a desktop technician by a government contractor. That company was taken over by his current employer, and Applicant was promoted, first to junior network engineer, and then to network engineer. Applicant's character and the quality of his job performance have been very favorably characterized by his direct supervisor.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Conditions) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Conditions).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision set forth in Section E2.2., Enclosure 2, of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

Alcohol Consumption - Guideline G: 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, as well as those which could mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the Conclusions section below.

Since the protection of the national security is the paramount consideration, the final decision in each case must be arrived at by applying the "clearly consistent with the interests of national security" standard⁽²⁶⁾ or "clearly consistent with the national interest" standard. For the purposes herein, despite the different language in each, I have concluded

those standards are one and the same. In reaching this Decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. Because of this special relationship the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions are predictive in nature and must often address potential, rather than actual, risk of compromise of classified information.

Finally, Applicant's allegiance, loyalty, and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than allegiance, loyalty, and patriotism. Nothing in this Decision should be construed to suggest I have based this decision, in whole or in part, on any express or implied decision as to Applicant's allegiance, loyalty, or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of credibility, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Guideline G, the Government has established its case. Commencing in about August 1997, and continuing for a period of one year, and then again for about five months in 2001 (March through August), Applicant seemingly threw caution to the wind and exhibited a pattern of questionable judgment, irresponsibility, and immature behavior by becoming an occasional alcohol abuser. While his college-related alcohol consumption created no legal problems and no incidents, the subsequent five month period saw two alcohol-related incidents with police involvement. On the first occasion, in March 1997, after consuming an unspecified number of alcoholic beverages during a three hour period in a local bar, he was charged with a class 4 misdemeanor--drunk in public--and spent the night in jail. Fortuitously, the charge was dismissed by the court with a notation "no offense."

The second, and more significant, incident occurred five months later, in August 2001, when Applicant spent three hours with friends in a local club consuming seven alcoholic beverages, including beer and vodka. When the designated driver among them disappeared, Applicant foolishly decided to drive himself home. These incidents and the conduct which contributed to the incidents fall within Alcohol Consumption Disqualifying Condition (DC) E2.A7.1.2.1. (*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*) and DC E2.A7.1.2.5. (*habitual or binge consumption of alcohol to the point of impaired judgment*).

The pre-court evaluation of Applicant performed by the county ASAP probation counselor in October 2001 assessed him to be a "problem drinker." That "assessment" term does not constitute a "diagnosis," and has not been further defined. Moreover, while the term "assessment" may be similar to an "evaluation," there is no evidence to indicate the probation counselor is a "licensed clinical social worker" as referred to in DC E2.A7.1.2.4. (*evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program*). Thus, DC E2.A7.1.2.4. does not apply.

The eventual July 2002 diagnostic impression of alcohol abuse, in apparent remission, was rendered by his substance abuse counselor--a person with an M.S. degree and no other apparent professional designation. There is no evidence to indicate the substance abuse counselor is a "credentialed medical professional" ⁽²⁷⁾ While there is substantial evidence, in my view, to support a finding Applicant was an alcohol abuser, there has been no such diagnosis provided by a "credentialed medical professional." Thus, DC E2.A7.1.2.3. *(diagnosis by a credentialed medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence)* does not apply.

For a relatively brief period, alcohol clearly adversely impacted Applicant's life. The pattern of his abuse has caused him to be fined, detained, and even jailed. It appears the most recent evidence of an alcohol problem occurred in August 2001, when he was last arrested. I do not give much security significance to his consumption of one glass of wine at dinner with his parents in January 2003. As indicated above, Applicant's attitude and relationship with alcohol have evolved over time. Initially, he saw no problem and occasionally consumed too much alcohol. Upon receiving professional intervention, guidance, counseling, and education, he became more accepting of the problem and limited his consumption to zero. His abstinence remained for approximately 17 months until it was briefly interrupted by his consumption of one glass of wine with dinner. While the impact of the alcohol program was substantial, the subsequent impact of the SOR solidified his resolve to swear off alcohol altogether. His job and his security clearance are far too important to him and he is now more mature and responsible to risk resuming any relationship with alcohol.

Applicant's changed behavior clearly falls within Alcohol Consumption Mitigating Condition (MC) E2.A7.1.3.3. *(positive changes in behavior supportive of sobriety)*. There is no evidence to rebut Applicant's contention he has abstained, with one exception in January 2003, since August 2001. The absence of any evidence of an alcohol problem for approximately two years clearly falls within MC E2.A7.1.3.2. *(the problem occurred a number of years ago and there is no indication of a recent problem)*.

Under the evidence presented, I am confident that Applicant's alcohol abuse of the past will not recur. There is convincing evidence of current sobriety. He has taken efforts to rehabilitate himself, and it appears he has, in fact, been successful. Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case with respect to the issue of alcohol consumption. Accordingly, allegations 1.a. through 1.d. of the SOR are concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is eligible for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline G: FOR THE APPLICANT

Subparagraph 1.a.: For the Applicant

Subparagraph 1.b.: For the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: For the Applicant

Subparagraph 1.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 Applicant.

Robert Robinson Gales
Chief Administrative Judge

1. Tr. at 36.
2. Tr. at 49.
3. Government Exhibit 2 (Statement, dated May 30, 2002), at 2.
4. Tr. at 49.
5. Government Exhibit 2, *supra* note 3, at 2.
6. *Id.*
7. Government Exhibit 3 (Court Record, dated April 17, 2001).
8. Government Exhibit 1 (Security Clearance Application (SF 86), dated July 26, 2001), at 8.
9. Tr. at 42.
10. Government Exhibit 3, *supra* note 7.
11. Government Exhibit 6 (County ASAP Pre-Court Evaluation, dated October 23, 2001), at 1; Tr. at 22-23, 44.
12. Tr. at 43.
13. Government Exhibit 2, *supra* note 3, at 2.
14. Government Exhibit 4 (Warrant of Arrest - Misdemeanor, dated August 24, 2001); *Id.*
15. Government Exhibit 6, *supra* note 11, at 2.
16. *Id.*
17. Government Exhibit 5 (Restricted Driver's License Order and Entry into ASAP, dated November 27, 2001); Government Exhibit 2, *supra* note 3, at 2.
18. Applicant Exhibit A (Substance Abuse Program Successful Discharge Summary, dated July 18, 2002).
19. Government Exhibit 2, *supra* note 3, at 2.
20. *Id.*, at 3.
21. *Id.*
22. *Id.*
23. *Id.*
24. Tr. at 29-30.
25. Tr. at 32, 40, and 46.

26. See Exec. Or. 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995, and further modified by memorandum, dated November 10, 1998. However, the Directive, as amended by Change 4, dated April 20, 1999, uses both "clearly consistent with the national interest" (*see* Sec. 2.3.; Sec.2.5.3.; Sec. 3.2.; and Sec. 4.2.; Enclosure 3, Sec. E3.1.1.; Sec. E3.1.2.; Sec. E3.1.25.; Sec. E3.1.26.; and Sec. E3.1.27.), and "clearly consistent with the interests of national security" (*see* Enclosure 2, Sec. E2.2.3.); and "clearly consistent with national security" (*see* Enclosure 2, Sec. E2.2.2.)

27. A credentialed medical professional is defined as "physician, clinical psychologist, or psychiatrist."