

DATE: February 3, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-23792

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. MacKinnon, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant's alcohol-related arrests in 1977, 1994 and 2001 raised security concerns,

after the last incident Applicant started attending Alcoholics Anonymous (AA), got a sponsor, stopped drinking, and has more than one year of sobriety. References from her supervisor and co-workers establish she has made positive changes in her behavior to support her sobriety. 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 June 11, 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 the Applicant. ⁽¹⁾ The SOR alleges specific concerns over Alcohol Consumption (Guideline G). Applicant responded to the SOR in an Answer notarized on July 2, 2003, where she admitted all the allegations except for 1.b(2) and 1.d(1). She requested a hearing.

On September 25, 2003, Department Counsel indicated the case was ready to proceed and the case was assigned to me. After a mutually convenient date for hearing was agreed to, a Notice of Hearing issued on September 26, 2003, set the matter for October 14, 2003. At the hearing the Government introduced seven exhibits which were admitted into evidence. (Exhibits 1-7) Applicant testified and offered four exhibits (Exhibits A-D) which were admitted into evidence. The transcript (TR) was received on October 23, 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, 44 years old, has been an employee of Defense Contractor #1 in State #1 since June 1980 to present. She

received a Secret clearance in September 1996. In January 2001 she applied for a security clearance by completing a Security Clearance Application (Standard Form 86) (SF 86). Applicant did not graduate from high school, but completed her General Educational Development (GED) testing and received a GED certificate. Applicant married in 1978 and was divorced in 1979; she married again in 1981 and was divorced in 1983; and she was married again in August 1984 and divorced in 1991. (Exhibits 1, 6; TR 31)

Alcohol Consumption

Applicant left home at age 16 as her mother was mentally ill. Applicant began drinking alcohol on and off in social settings before she turned 21. She has not consumed alcohol since May 2002. (SOR 1.a.) (Answer; Exhibit 2, 3; Exhibits A, D; TR 39-42)

Applicant's was arrested in 1977 was for (1) Minor in Possession of Intoxicating Liquor and (2) Possession of a controlled substance. She admitted she was a minor in possession of alcohol when she was 17 as she had been drinking with friends in a park who were all arrested. She denied possession of a controlled substance. (SOR 1.b.) (Answer; Exhibits 3, 7; TR 36-37)

In May 1994, Applicant attended a baseball game and consumed alcohol, but decided to drive home. She was arrested for (1) Driving While Intoxicated (DWI) with a blood alcohol content (BAC) of .133 and (2) Failure to Stop at a Stop Sign; she plead guilty to Operating a Vehicle with Excess BAC in September 1994 and was fined \$700 plus court costs. (SOR 1.c.) (Answer; Exhibits 1, 2, 3, 5, 6; TR 37-40)

Applicant has worked with the same group for over 20 years. The group often has social events, including happy hours, which Applicant rarely attended. In arch 2001, as she was transferring to another group, she felt pressured by her supervisor to go to a happy hour which he said they were holding for her. After she had consumed six beers at a happy hour after work, she did not completely stop at a stop sign. She was arrested and charged with (1) Driving While Intoxicated- Alcohol Intoxication, (2) Exceeding Speed, and (3) Failure to Stop at a Stop Sign. Because of her need to take care of her father, she wanted to avoid any jail time. She plead guilty in July 2001 to a misdemeanor charge of count (1) and sentenced to six months confinement, suspended, placed on two years supervised probation, ordered to attend Substance Abuse Traffic Offender Program, Victims Impact Panel and attend Alcoholics Anonymous (AA) once a week for six months, and was fined \$333.50 in costs and fees. She saw her probation officer on a monthly basis for five months to establish she had attended AA; she completed the traffic offender program, paid the court costs and attended AA. (SOR 1.d.) (Answer; Exhibits 1, 2, 4; Exhibits A, B, C, F; TR 23-31; 44-52)

In May 2002 Applicant reported to the Defense Security Service (DSS) investigator that she still continued to consume alcohol, but did not drive after drinking. She did not consider herself an alcoholic and had never sought alcohol counseling. However, Applicant no longer attended her work "happy hours" and began attending AA, obtained an AA sponsor who attested she worked the steps and stayed sober. She celebrated one year of sobriety. While she continues to attend AA, her last meeting was in July 2003 as she has had to work overtime on two projects at work and has been working 64 hours a week. In addition to her demanding job, Applicant takes care of her elderly father and manages the house where they live. She has no intent to drink. (SOR 1.e.) (Answer; Exhibit 2; Exhibits A, D; TR 27; 43-44; 52-54; 58-66)

References and Evaluations

Applicant has taken care of her father after his wife died in 1993. He had a by-pass operation in May 2001. Her 76-year-old father wrote a letter assessing Applicant as "very reliable and trustworthy." (Exhibit D; TR 42-43)

One co-worker, an engineer who has know Applicant for approximately ten years, has observed Applicant's professionalism and willingness to help others. He thinks highly of her work performance and her personal commitment to take care of her father. (Exhibit D; TR 32)

Her supervisor, who was unable to testify for health reasons, stated that he found Appellant to be "a trustworthy, hard worker." She has successfully grown her career and has excellent skills. She has voluntarily taken on additional tasks and has taught a class related to their work responsibilities. (Exhibit D: TR 31-35)

A co-worker who has known her for eight years attested that Applicant is a person of integrity and sound ethics. She is very conscientious in her work. He remembered an incident where she received a data CD from a vendor which contained drawings classified Secret, but was improperly marked. She immediately contacted security to take corrective actions. (TR 66-67; Exhibit D)

Another co-worker who has known her 20 years stated that Applicant is a "highly responsible and hard working individual." (Exhibit D)

A former co-worker who knew her from 1988-89 but now lives in another city and views her as a friend stated that Applicant is "dedicated to her profession" and has always been conscientious about all aspects of her job - especially security. (Exhibit D; TR 56-58)

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 in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

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:

- (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;

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. Then 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

Alcohol Consumption

Applicant has mitigated the Government's security concerns over her three alcohol-related arrests: one in 1977 when she was a teenager, in 1994, and March 2001. She also refuted the 1977 possession of a controlled substance allegation. Although she has had three incidents, they do not indicate a pattern as several years separate them. To her credit, after her last arrest, Applicant turned to AA, obtained a sponsor and eventually made a decision to stop drinking. She has over a year of abstinence. Applicant has maintained her resolve for sobriety by a commitment to AA and by positive changes in behavior supportive of sobriety. Applicant thus established that she has met conditions that mitigate⁽²⁾ security concerns by showing positive changes in behavior supportive of sobriety. Finally, the problem occurred a number of years ago in March 2001 and there is no indication of a recent problem. She has favorable evaluations from her long-term employer and favorable assessments from her co-workers. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a. through 1.d. under SOR Paragraph 1.

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 G: 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

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. 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.