

DATE: February 25, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24743

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

In 2001, the Applicant admitted he had "a physical and mental addiction" to alcohol. His alcohol abuse is evidenced by two alcohol related convictions, one in 1999 and another in 2000. He now avers he is no longer "addicted or dependent on the use of alcohol;" and as such, continues to drink "in moderation." Although the Applicant's past criminal conduct is distant enough in time so as not to be of present security significance, he has a serious problem with alcohol consumption which he fails to recognize. Mitigation is not shown. Clearance is denied.

STATEMENT OF THE CASE

On August 26, 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 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.

Applicant filed an Answer to the SOR on September 23, 2003.

Applicant elected to have this case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on December 8, 2003. Applicant was instructed to submit objections or information in rebuttal, extenuation or mitigation within 30 days of receipt of the FORM. Applicant received his copy on December 16, 2003, and Applicant's Response was received on February 2, 2004. The case was received by the undersigned for resolution on January 29, 2004. The issues raised here are whether the Applicant's continued alcohol consumption and past criminal conduct militate against the granting of a security clearance. [The Applicant denies that he is currently addicted to alcohol, but admits the underlying factual basis of all of the other allegations].

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the File of Relevant Material and Applicant's Response. The Applicant is 44 years of age, and is employed by a defense contractor who seeks a security clearance on behalf of the Applicant. After a complete and thorough review of the evidence in the record, and upon due consideration of the same, I make the following additional findings of fact.

Guideline G - Alcohol Consumption & Guideline J - Criminal Conduct

1.a.~1.g, and 2.a. In July of 1999, the Applicant was issued a citation for having an Open Container on the Beach (Government Exhibit (GX) 5 at pages 13~14). He "was fined approximately \$110 (GX 5 at page 14). Two months later, in September of 1999, the Applicant was arrested, in part, for and subsequently pled guilty to, Operating a Vessel Under the Influence (GX 5 at pages 11~13). He had consumed alcohol prior to his arrest (GX 5 at page 12). The following year, in May of 2000, the Applicant was arrested, in part, for and subsequently pled guilty to, DUI with 0.08% or above blood alcohol concentration (GX 5 at pages 8~11, and GX 6). He had consumed "about four beers over a two hour period" prior to this most recent arrest (GX 5 at page 9).

In a sworn statement, executed by the Applicant on March 12, 2001, the Applicant described his alcohol consumption in the following terms:

I feel that my use of alcohol is a physical and mental addiction. . . . Once I drink I want more. I drink a glass of wine and then another. This is the classic sign of a person who drinks. . . . On weekends . . . I might drink a 12 pack of beer at most in one day or a whole bottle of wine. . . . At worst when I drink too much I fall asleep or pass out. I can recall drinking to the point where I have had loss of memory. . . . Now I have come to the conclusion that I cannot drink socially. I need to quit altogether. I plan to completely quit, and this interview might also be some of the motivation I need. . . . It is making me realizing(*sic*) it is a problem. It is reinforcing what I have learned from AA that drinking is a problem. This interview reinforces this from an employment perspective. It gives me motivation to change. I realize it could jeopardize my security clearance and my employment. I plan to quit drinking (GX 5 at pages 2, 3, 4 and 7~8).

In his September 2003 Answer to the SOR, the Applicant avers that he continues to consume alcohol, "but only in moderation" (GX 3).

Mitigation

The Applicant offers his most recent job performance appraisal which shows that he either "Exceeded" or "Significantly Exceeded" all of his objectives (Response at page 4).

POLICIES

Enclosure 2 and Section E.2.2. of the 1992 Directive set forth both policy factors and conditions that could raise or mitigate a security concern, which must be given binding consideration in making security clearance determinations. The conditions should be followed in every case according to the pertinent criterion, however, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security clearance case presents its own unique facts and circumstances, it should not be assumed that these conditions exhaust the realm of human experience, or apply equally in every case. Conditions most pertinent to evaluation of this case are:

Alcohol Consumption

Conditions that could raise a security concern:

1. Alcohol-related incidents away from work, such as driving while under the influence . . .;
5. Habitual or binge consumption of alcohol to the point of impaired judgement.

Conditions that could mitigate security concerns:

None.

Criminal Conduct

Condition that could raise a security concern:

2. A single serious crime or multiple lesser offenses.

Condition that could mitigate security concerns:

1. The criminal behavior is not recent.

As set forth in the Directive, each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in Enclosure 2, including as appropriate:

- a. Nature, extent, and seriousness of the conduct, and surrounding circumstances.
- b. Frequency and recency of the conduct.
- c. Age and maturity of the applicant.
- d. Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequence involved.
- e. Absence or presence of rehabilitation.
- f. Probability that circumstances or conduct will continue or recur in the future.

The Administrative Judge, however, 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.

The Government must make out a case under Guideline G (Alcohol Consumption) and under Guideline J (Criminal Conduct) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations at all times and in all places. If an applicant has demonstrated a lack of respect for the law in his private affairs, there then exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

The Applicant has a serious problem with the consumption of alcohol, a problem he seemed to recognize when he executed his sworn statement in March of 2001. He had three alcohol related incidents, two resulting in convictions, in less than two years from July 1999 to May 2000. Although I find that his most recent criminal conduct is distant enough in time, more than 40 months ago, so as not to be of present security significance, the same can not be said for his continued consumption of the intoxicant. He recognizes he has a problem but is ignoring it. He avers consistently that he must cease consuming alcohol, but discounts his own advice. He is an admitted alcoholic, despite his recent attempt to

recant this self-realization, with no positive changes in his behavior supportive of sobriety. Guideline G is therefore found against the Applicant.

Considering all the evidence, the Applicant has not rebutted the Government's case regarding his Alcohol Consumption. The Applicant has thus not met the mitigating conditions of Guideline G, and of Section E.2.2. of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline G.

FORMAL FINDINGS

Formal Findings required by paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.
- f. Against the Applicant.
- g. Against the Applicant.

Paragraph 2: FOR THE APPLICANT

- a. For the Applicant.

Factual support and reasons for the foregoing are set forth in **FINDINGS OF FACT** and **CONCLUSIONS**, supra.

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge