

DATE: January 14, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-26728

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn D. McKinnon, Esquire, Department Counsel

FOR APPLICANT

Stephen L. Ukman, Esquire

SYNOPSIS

While Applicant's two alcohol-related arrests and convictions in 1994 and 2001 raised security concerns, Applicant stopped drinking to excess in 2001 and provided evidence which shows positive changes in his behavior for the past two years which is confirmed by his supervisor at work, his father at home, as well as his friend and girlfriend who see him socially. 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 retained counsel and responded to these SOR allegations in an Answer notarized and dated July 1, 2003, where he denied 1.a. and admitted all other allegations.

Department Counsel on September 2, 2003, stated the Government was Ready to Proceed, and the case was assigned to me. Subsequently, a mutually convenient date for hearing was agreed to; and a Notice of Hearing issued on September 4, 2003, set the matter for September 17, 2003, at a location near where Applicant works and lives. At the hearing the Government offered four exhibits which were admitted into evidence (Exhibit 1-4). Applicant's counsel offered twelve documents (Exhibits A through L) which were admitted into evidence, called Applicant and four witnesses to testify, and asked that I take Official Notice of three DOHA decisions issued by other Administrative Judges: ISCR Cases No. 01-05555, 01-10005, and 01-21526 (ON I, II, & III) to which the Government did not object. The transcript (TR) was received on September 29, 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, 32 years old, has been an employee of Defense Contractor #1 in State #1 since January 1998. In April 2002 he applied for a security clearance by completing a Security Clearance Application (Standard Form 86) (SF 86). Applicant was granted a Secret security clearance by the Defense Department in arch 1998. In March 2000 he was offered a position with Defense Contractor #1 in State #2 and took it for a year. (Exhibit 1)

He received a Bachelors degree from a university in State #1 in January 1998 and previously attended a community college. He is currently in a master's degree program. (Exhibits 1; E, F)

Applicant was married in July 1995 and divorced in March 1999.

Alcohol Consumption

On his SF 86 Applicant documented two Driving While Intoxicated (DWI) arrests and convictions in 1994 and March 2001 in State #1. (Exhibit 1)

When interviewed by the Defense Security Service (DSS) in June 2002, Applicant admitted he first started drinking before he was 16 and sometimes drank to the point of blackout. He continued to drink to this extent until 1992. Prior to his arrest in December 1994, he had celebrated his engagement; he had consumed 18 beers and registered .18 on the breathalyser test. He was sentenced to two years probation and attended a Care Intervention Program for one weekend. He completed his probation. From 1994 to 2001 he reported being drunk about ten times, but not to the point of blackout. (Exhibit 2; TR 46-48; 51-52; 67-70; 72-73)

Applicant returned from State #2 to State #1 and was again arrested in March 2001 after the sheriff declared he was weaving from lane to lane. He was charged with DWI and Failure to Drive in Single Lane. He pled guilty to DWI in October 2001 and was awarded an 180 days suspended imposition of sentence. He was placed on two years supervised probation until October 2003, ordered to attend Substance Abuse Traffic Offender Program, Victim Impact Panel, and attend Alcoholics Anonymous (AA) once per week for six months, and fined \$100. After the 2001 conviction, Applicant had to drive on a restricted license that only allowed him to go to and from work until June 2002. He completed the court's requirements and stayed abstinent while he attended AA. He stopped attending AA in March 2002. In June 2002 he stated he got his license back, and he declared he would not attend AA meetings in the future. Further, he would "probably drink wine with a meal and maybe an occasional beer, but . . . will never drink to excess"⁽²⁾ or drive after drinking. After his 2001 DWI Applicant "radically changed"⁽³⁾ his lifestyle: he rarely joins colleagues for happy hour and went back to school to get his master's degree. He made a whole new set of friends, and now studies karate and has run in a half marathon. He is now saving money to invest. (Exhibits 2, 4; Exhibits G, I, J, K, L; TR 52-55; 61-64, 71-75) In September 2003 he stated he drinks very little, but is not willing to make a commitment to abstain from alcohol. (TR 64-65, 76, 79-81)

Applicant has not had any subsequent arrests for DWI. nor any other alcohol-related incidents. He had a traffic accident with a motor cycle in October 2002 that was not alcohol-related; he was rear-ended by a person in a car and was injured fairly seriously. (Exhibit H; TR 49, 55-61) He has never been treated at an alcohol treatment center nor diagnosed as an alcoholic. (TR 61)

Evaluations and Recommendations

His 1999 performance review reported that Applicant met and exceeded expectations and was viewed as hard worker, flexible in his work schedule and willing to work many extra hours. (Exhibit A) His 2002 performance evaluation reported that he met and/or frequently exceeded expectations and was viewed as "technically one of the most capable members" of the team. (Exhibit B) (TR 39-41) He also received a recognition award in 2002. (Exhibit C; TR 41) He recently received a 6 per cent raise, which was above average. (Exhibit D; TR 42)

The manager who supervises Applicant testified that he has known Applicant since April 2001. Applicant has a critical position in their group. The manager rated him in 2001 and 2002 very high as he has been a very good performer. He

either met or exceeded expectations and was nominated for an award which he received in 2002. Applicant recently received an above average raise. Applicant has never had a problem with tardiness, and often has had to work late hours or weekends to "get the job done." This manager has never seen any evidence of Applicant drinking either on or off the job, but he does not socialize with Applicant. He would like to keep the Applicant on his team. (Exhibits B, C, D; TR 83-94; 94-95)

A co-worker who met Applicant in 1997 at Company #1 and continues to socialize with him observed that in the time he has known him Applicant has "cleaned up his act." This friend now sees Applicant drink no more than a couple of beers. (TR 97-103)

Applicant's father testified there was no history of alcoholism in the family. From 1994 to 2001 the father observed a significant decrease in Applicant's drinking. Since 2001 Applicant's father rarely sees him take a drink at his house when he visits once a week. He recommended his son for a security clearance. (TR 104-110)

The woman that Applicant has been dating for four months stated that both she and Applicant are light drinkers. She sees him five times a week and has never seen him drink to excess. She recommended him for a security clearance. (TR 111-116)

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;

Conditions that could mitigate security concerns include:

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

The Government's security concerns arise from Applicant's two alcohol-related arrests and convictions in 1994 and 2001 and his decision to continue to drink. 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.

To his credit, Applicant has not had any subsequent arrests for DWI, nor any other alcohol-related incidents. While he had a traffic accident with a motor cycle in October 2002 that was not alcohol-related. He has never been treated at an alcohol treatment center nor diagnosed as an alcoholic. After the 2001 DWI incident Applicant "radically changed" his lifestyle: he rarely goes to happy hour and drinks very little. He returned to school to get his master's degree, made a new set of friends, and involves himself in physical fitness activities. While Applicant has not been willing to make a commitment to abstain from alcohol, for over two years (since his last incident in 2001) he has not abused alcohol. While abstinence is often favored in assessing future reliability, the guidelines mandate abstinence only after a diagnosis of alcohol abuse or dependence. Applicant has been to court-ordered programs but has no such diagnosis. He successfully met the requirements ordered by the court during his two years of probation.

Further, there is evidence of rehabilitation in all areas of his life. He has received very favorable reviews from his manager on his work performance. His friend, father and girlfriend have observed no drinking to excess in his personal life. Thus he has met conditions that mitigate⁽⁴⁾ security concerns: he has shown under Mitigating Condition (MC) 2 that the problem occurred a number of years ago and there is no indication of a recent problem and under MC 3 positive changes in behavior supportive of sobriety.

Applicant now has demonstrated over two years of responsible behavior which is confirmed by his supervisor at work, his father at home, his friend and girlfriend who see him socially. Therefore, I conclude that Applicant has mitigated his long history of alcohol abuse and the 1994 and 2001 DWI convictions. 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

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. Exhibit 2, Statement, June 2002.

3. Answer, July 2003.

4. 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.