

DATE: January 29, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-00902

DECISION OF ADMINISTRATIVE JUDGE

DARLENE LOKEY ANDERSON

APPEARANCES

FOR GOVERNMENT

Juan J. Rivera, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's history of criminal conduct beginning in 1987, and continuing until May 2002 has not been mitigated. Applicant's numerous alcohol related incidents have also not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On April 30, 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 clearance should be denied or revoked.

The Applicant responded to the SOR in writing on May 20, 2003, in which he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM), consisting of Items 1 through 9, to the Applicant on October 3, 2003. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on October 25, 2003, and he submitted a reply dated January 21, 2004.

The case was assigned to the undersigned for resolution on January 15, 2004.

FINDINGS OF FACT

The Applicant is 35 years old and unmarried. He is employed by a defense contractor as a General Expediter, and is seeking to retain his security clearance in connection with his employment.

The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth in the Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the

SOR:

Paragraph 1 (Guideline J - Criminal Conduct). The Government alleges that the Applicant is ineligible for clearance because he engaged in criminal conduct.

The Applicant admitted all of the allegations set forth in the SOR under this guideline. Between May 1987, and May 2002, the Applicant was arrested on at least eight separate occasions for various of the violations of the law.

On May 3, 1987, he was arrested and charged with Malicious Wounding. The Applicant explained that a twenty-five year old man grabbed his girlfriend (who later became his wife) twice between the legs. The charge was dismissed.

On May 16, 1989, the Applicant was arrested and was charged with Trespassing. The incident occurred as a result of a domestic argument between he and his wife. The Applicant caught her with another man at her mother's apartment. The Applicant was found guilty and was ordered to pay a fine of \$100.00, court costs of \$40.00, and restitution of \$217.00. The Applicant appealed, and was found guilty of Trespassing, sentenced to ten days in jail with sentence suspended and ordered to pay \$217.00 restitution and \$73.00 court costs.

On May 16, 1989, the Applicant was arrested and charged with Assault. On appeal on September 11, 1989, the charge was entered Nolle Prosequi.

The Applicant was arraigned on September 11, 1989 on a charge of Summary Contempt. He pleaded guilty and was ordered to pay a \$250.00 fine and \$25.00 in court costs. (*See*, Item 5).

The Applicant was arrested on June 6, 1992, and charged with Drunk in Public. The charge was dismissed on June 22, 1992.

The Applicant was arrested on August 15, 1994, and charged with Driving Under the Influence of Alcohol. He was found guilty on November 21, 1994, and was sentenced to ten days in jail, with ten days suspended, and ordered to pay a \$375.00 fine and \$121.00 court costs. On appeal on April 13, 1995, he was found guilty of Driving Under the Influence and was placed on probation for one year, ordered to pay a \$200.00 fine, which was suspended, plus court costs, and required to submit to random breath and urine analysis. He was ordered to attend an alcohol safety program and his driver's license was restricted to use for going to and from employment. (*See*, Item 6).

The Applicant was arrested six years later and charged with Driving Under the Influence on September 27, 2000. He pleaded guilty and was sentenced to six months in jail, with five months, twenty days suspended. He was placed on twelve months probation. He was ordered to complete 40 hours of community service and to pay court costs of \$110.00 and a fine of \$2,500.00 with \$500.00 suspended. His driver's license was restricted and he was referred to an alcohol safety program. (*See*, Item 7).

He was arrested on January 13, 2002, and charged with Assault and Battery of a Family Member. The Applicant explained that the incident occurred because, after fifteen years of marriage and two beautiful daughters, the Applicant caught his wife cheating with another man. The charge was dismissed without prejudice on February 5, 2002. (*See*, Item 8).

He was arrested on May 16, 2002, and charged with Drunkenness and Simple Assault. He was found guilty on May 17, 2002, and ordered to pay fines and costs of \$67.00. (*See*, Item 9).

Paragraph 3 (Guideline G - Alcohol Consumption). The Government alleges that the Applicant is ineligible for clearance because he abuses intoxicants.

The Applicant's alcohol related arrests set forth in allegations 1.(c)., 1.(f)., 1.(g)., and 1.(i)., were discussed above.

Mitigation.

The Applicant states that he is now divorced from his wife and no longer consumes alcohol. He has also established a

relationship with Jesus Christ and has changed his life around. The Applicant further states that he has learned from his mistakes. (*See*, Item 2).

POLICIES

Enclosure 2 and Section E.2.2. of the Directive sets forth adjudication policies divided into "Disqualifying Factors" and "Mitigating Factors." The following Disqualifying Factors and Mitigating Factors are found to be applicable in this case:

Guideline J (Criminal Conduct)

Conditions that could raise a security concern:

1. Allegations or admissions of criminal conduct, regardless of whether the person was formally charged;
2. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns:

None.

Guideline G (Alcohol Consumption)

Conditions that could raise a security concern:

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

Conditions that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly

consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable should be considered in reaching a determination." The Administrative Judge can draw only those inferences or conclusions that have 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours per day, seven days per week. The Government is therefore appropriately concerned when available information indicates that an Applicant for clearance may be involved in criminal conduct and alcohol abuse that demonstrates poor judgment or unreliability.

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation, which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant her a security clearance.

In this case the Government has met its initial burden of proving that the Applicant has engaged in criminal conduct (Guideline J); and alcohol abuse (Guideline G). This evidence indicates poor judgment, unreliability and untrustworthiness on the part of the Applicant. Because of the scope and nature of the Applicant's conduct, I conclude there is a nexus or connection with her security clearance eligibility.

Considering all of the evidence, the Applicant has not introduced persuasive evidence in rebuttal, explanation or mitigation that is sufficient to overcome the Government's case under Guidelines J and G of the SOR.

The Applicant's long history of criminal conduct and excessive alcohol abuse between May 1987 and May 2002, involves eight separate arrests. These arrests involved domestic disputes between he and his wife and/or alcohol abuse. Given the Applicant's extensive pattern of poor judgment, occurring over a fifteen year period, sufficient rehabilitation and mitigation have not been shown. The Applicant claims that he has learned from these mistakes and has changed his life around. The evidence does show that the Applicant has not been arrested within the past two years. He is commended for this progress, however, it is still too soon to determine that the Applicant will not return to his regular bad habits and commit a violation in the future. More time is needed to demonstrate to the Government that the personality changes the Applicant has recently made are permanent. None of the mitigating factors apply. At the present time, the Applicant has not demonstrated that he is trustworthy, and does not meet the eligibility requirements for access to classified information. Accordingly Guidelines J and G are found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the SOR.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subpara. 1.a.: Against the Applicant.

Subpara. 1.b.: Against the Applicant.

Subpara. 1.c.: Against the Applicant.

Subpara. 1.d.: Against the Applicant.

Subpara. 1.e.: Against the Applicant.

Subpara. 1.f.: Against the Applicant.

Subpara 1.g.: Against the Applicant.

Subpara 1.h.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subpara. 2.a.: Against the 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 a security clearance for the Applicant.

Darlene Lokey Anderson

Administrative Judge