

DATE: April 1, 2004

In Re:

SSN: -----

Applicant for Security Clearance

CR Case No. 03-01026

DECISION OF ADMINISTRATIVE JUDGE

HENRY LAZZARO

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant was arrested for driving an automobile while intoxicated in March 1998, received a deferred prosecution, was placed on probation, and was ordered to undergo alcohol abuse treatment. He was diagnosed at that time as alcohol dependent, and was advised to remain abstinent from alcohol use. The same advice was given to him in April 2003. Despite the diagnosis and two admonitions he continued to consume alcohol until at least December 2003. Although he resumed attending alcoholics anonymous meetings in January 2004, it is too soon to be able to predict with any degree of certainty whether he will remain sober in the future. Applicant has failed to mitigate the security concerns that arise from his alcohol consumption. Clearance is denied.

STATEMENT OF THE CASE

On November 7, 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant stating they were unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. [\(1\)](#) The SOR, which is in essence the administrative complaint, alleges a security concern under Guideline G, alcohol consumption. Applicant submitted an answer to the SOR that was received by DOHA on November 21, 2003, requested a hearing, and admitted four of the five SOR allegations.

The case was assigned to me on January 12, 2004. A notice of hearing was issued on January 13, 2004, scheduling the hearing for February 4, 2004. The hearing was conducted as scheduled. The government submitted six documentary exhibits that were marked as Government Exhibits (GE) 1-6 and admitted into the record without an objection. The Applicant testified, and submitted two documentary exhibits that were marked as Applicant's Exhibits (AE) 1 & 2 and admitted into the record without an objection. The transcript was received February 12, 2004.

PROCEDURAL MATTERS

The SOR was amended upon motion of Department Counsel to strike the word "sentence" in subparagraph 1.b. and

substitute the word "prosecution" therefore. The amendment made clear, and Department Counsel so acknowledged, that this case did not involve any issue under 10 U.S.C. § 986. Applicant did not object to the amendment.

FINDINGS OF FACT

Applicant's admissions to four of the five SOR allegations are incorporated herein. In addition, after a thorough review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 49-year-old man who has been employed as a maintenance carpenter by a defense contractor since February 2002. He submitted two letters of recommendation attesting to his excellent performance in that employment. Prior to being hired by the defense contractor, Applicant worked for several other companies as a carpenter since at least June 1988. He is a high school graduate and has completed 42 credit hours of college work at a community college. Applicant was married in September 1982 and divorced in September 1992. He does not have any children.

Applicant began drinking to excess in approximately 1978. From that time until approximately 1991 he would consume an estimated four beers four times a week, and would drink to the point of some degree of impairment about once a week. He began drinking more heavily in 1991/92 after his brother committed suicide and he was divorced. He estimates that he began drinking four to six beers about five times a week during this time, and often drank to the point of impairment. He has a family history of alcoholism based upon his description of his grandfather and two uncles being alcoholics.

Applicant was involved in a property damage automobile accident on March 10, 1998. On that occasion he struck a vehicle in traffic as he was exiting the parking lot of a tavern in which he had been drinking. His blood alcohol concentration was approximately 0.22 when he was arrested, and he was charged with Driving Under the Influence of Alcohol (DUI). A judgment of deferred prosecution was entered on the DUI charge on April 23, 1998, and Applicant was placed on probation for two years. He was also required to attend an intensive outpatient alcohol abuse program, Alcoholics Anonymous (AA) meetings, pay a fine, and have an alcohol interlock system installed in his car. He successfully completed the alcohol program, was diagnosed as alcohol dependent, and advised to abstain from alcohol use. He attended AA meetings until approximately November 2000, and remained abstinent until approximately December 2001. The DUI charge was dismissed on March 24, 2000 based upon Applicant's successful completion of all terms of probation.

As of August 2002, Applicant estimated he might consume two beers approximately five nights a week, become impaired approximately twice a month, and that it would take three to four beers to cause him to become alcohol impaired. At present, he does not consider himself to be an alcoholic, but quit drinking in December 2003 and resumed attendance at AA meeting in January 2004 on a twice weekly basis.

Applicant obtained a substance abuse evaluation from a physician on April 18, 2003 as part of the security clearance application procedure. He told the doctor during the evaluation that drinking had not caused any work interference and he did not recall ever experiencing blackouts. Records in the doctor's possession contradicted those assertions. Applicant informed the doctor that he questioned the prior diagnosis of alcohol dependence and felt that if he could demonstrate a persistent ability to drink socially he would disprove the diagnosis. Faced with the conflicting information provided by Applicant and contained in the reports, the doctor was still able to determine that Applicant "clearly had a substance abuse problem, could be an alcoholic, but in either count should maintain an alcohol free state." (GE 6) The doctor discussed his opinions with Applicant, who acknowledged the importance of his resuming an alcohol free existence and indicated he was accepting the recommendation as of that date. However, as noted above, he continued to drink until December 2003.

POLICIES

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the Disqualifying Conditions (DC) and Mitigating Conditions (MC) for each applicable guideline. Additionally, each clearance decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against

clearance is not outcome determinative, the adjudicative guidelines should be followed whenever

a case can be measured against this policy guidance. Considering the evidence as a whole, Guideline G, pertaining to alcohol consumption, with its respective DC and MC, is most relevant in this case.

BURDEN OF PROOF

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽²⁾ The government has the burden of proving controverted facts.⁽³⁾ The burden of proof in a security clearance case is something less than a preponderance of evidence⁽⁴⁾, although the government is required to present substantial evidence to meet its burden of proof.⁽⁵⁾ "Substantial evidence is more than a scintilla, but less than a preponderance of the evidence."⁽⁶⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.⁽⁷⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽⁸⁾

No one has a right to a security clearance⁽⁹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽¹⁰⁾ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.⁽¹¹⁾

CONCLUSIONS

Under Guideline G, alcohol consumption is a security concern because 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. Those who abuse alcohol are more likely than others to engage in high risk, thoughtless, and sometimes violent behavior. Recurrent use of alcohol to the point of intoxication may affect an individual's ability to exercise the care, judgment, and discretion necessary to protect classified information.

Applicant was placed on a deferred prosecution, sentenced to two years probation, and ordered to attend an intensive outpatient alcohol abuse program in 1998. He was diagnosed as alcohol dependent while participating in the program 1998, and advised to abstain from alcohol. He did maintain sobriety for more than two years thereafter, but in August 2002 acknowledged he was drinking to the point of impairment approximately twice a month. In April 2003, Applicant was evaluated by a physician who informed him that he could be an alcoholic and recommended Applicant maintain an alcohol free state. Although Applicant acknowledged the need to remain alcohol free in April 2003, and indicated he would do so, he was still consuming alcohol as recently as December 2003.

Applicant is once again attending AA meetings, and had not consumed alcohol for over a month as of the date of the hearing. Although he still denies that he is an alcoholic, it appears that Applicant is once again making an effort to overcome his alcohol dependence. Still, based on his history, it is far too early to be able to make any reliable prediction that he will not resume drinking in the future. Disqualifying Condition (DC) 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* applies in this case.

I have considered all the Mitigating Conditions (MC) under Guideline G and none apply in this case. Specifically, MC 1⁽¹²⁾ does not apply, because while Applicant has only one arrest for an alcohol related offense, he acknowledged that was not the only time he had driven a vehicle while impaired by alcohol when he was evaluated in April 2003. Additionally, the records possessed by the doctor during that evaluation also indicated there were work interference issues that arose from Applicant's alcohol consumption. MC 2⁽¹³⁾ does not apply based upon Applicant's continued consumption of alcohol, at times to the point of impairment, after being advised to remain alcohol free on two occasions. MC 3⁽¹⁴⁾ does not apply, even though Applicant has resumed attendance at AA meetings, because of the recency and short-duration of that attendance. Finally, MC 4⁽¹⁵⁾ does not apply because, while Applicant once met most if not all of the criteria, he resumed drinking to the point of impairment and has only recently again started himself back on the path to sobriety. Guideline G is decided against Applicant.

Considering all relevant and material facts and circumstances present in this case, the whole person concept, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, and the applicable disqualifying and mitigating conditions, I find that Applicant has failed to overcome the case against him and satisfy his ultimate burden of persuasion. It is not clearly consistent with the national interest to grant Applicant a security clearance.

FORMAL FINDINGS

SOR ¶ 1-Guideline G: Against the Applicant

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: 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 Applicant. Clearance is denied.

Henry Lazzaro

Administrative Judge

1. This action was taken under Executive Order 10865 and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. ISCR Case No. 96-0277 (July 11, 1997) at p. 2.
3. ISCR Case No. 97-0016 (December 31, 1997) at p. 3; Directive, Enclosure 3, Item E3.1.14.
4. *Department of the Navy v. Egan* 484 U.S. 518, 531 (1988).
5. ISCR Case No. 01-20700 (December 19, 2002) at p. 3 (citations omitted).
6. ISCR Case No. 98-0761 (December 27, 1999) at p. 2.
7. ISCR Case No. 94-1075 (August 10, 1995) at pp. 3-4; Directive, Enclosure 3, Item E3.1.15.
8. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15
9. *Egan*, 484 U.S. at 528, 531.
10. *Id* at 531.
11. *Egan*, Executive Order 10865, and the Directive.
12. The alcohol related incidents do not indicate a pattern.
13. The problem occurred a number of years ago and there is no indication of a recent problem.
14. Positive changes in behavior supportive of sobriety.

15. Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare 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.