

DATE: April 14, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01076

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant's past criminal conduct is evidenced by a citation in April of 1999 and an arrest in July 2002, both for Driving Under the Influence of Alcohol (DUI). Since his last arrest, he no longer consumes alcohol, he attends Alcoholics Anonymous (AA) on a regular basis, he also attends church on a regular basis, and he intends no future consumption of alcohol. As there is "clear evidence of successful rehabilitation," mitigation is shown and the clearance is granted.

STATEMENT OF THE CASE

On October 7, 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 the 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 or about November 5, 2003.

The case was received by the undersigned on January 8, 2004. A notice of hearing was issued on January 13, 2004, and the case was heard on February 5, 2004. The Government submitted documentary evidence. Testimony was taken from the Applicant, who submitted documentary evidence on his behalf. The transcript was received on February 19, 2004. The issue raised here is whether the Applicant's admitted past criminal conduct militates against the granting of a security clearance. [The Applicant admits the underlying factual basis of the two allegations, but denies he was ever arrested in April of 1999.]

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The

Applicant is 49, and is employed by a defense contractor that 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 J - Criminal Conduct

1.a. and 1.b. In April of 1999, the Applicant was cited for, and subsequently pled Nolo Contendere to, DUI (Transcript (TR) at page 15 line 20 to page 17 line 8, at page 19 line 10 to page 25 line 7, and Government Exhibits (GXs) 4 and 5). He consumed between 12 and 18 beers prior to this citation, which resulted in an accident (*id*). In July of 2002, the Applicant was arrested for, and again pled Nolo Contendere to, DUI (TR at page 29 line 21 to page 31 line 2, and GXs 6 and 7). He consumed "six to eight beers" prior to this arrest (*id*). Since his arrest, although the Applicant has never been diagnosed as being an alcoholic, he has ceased the consumption of the intoxicant (TR at page 32 line 2 to page 33 line 8, and at page 37 lines 4~7). He is enrolled in an alcohol rehabilitation program, attends AA and church on a regular basis, and intends no future consumption of alcohol (TR at page 35 line 11 to page 37 line 3, at page 37 line 15 to page 38 line 12, at page 39 line 14 to page 40 line 1, and Applicant's Exhibit (AppX) A).

Mitigation

The Applicant's pastor, and those with whom he works, all think highly of the Applicant and attest to his integrity (AppX A at pages 5~8).

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. Furthermore, 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 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, there exists the possibility that an applicant may demonstrate the same attitude towards security rules and regulations.

CONCLUSIONS

The Applicant's admitted past Criminal Conduct, is evidenced by a 1999 citation and by a 2002 arrest. The second disqualifying condition under Criminal Conduct is therefore applicable, as there are "multiple lesser offenses" present. However, the last mitigating condition is also applicable, as "[t]here is clear evidence of successful rehabilitation." Both of the Applicant's offenses were directly related to the consumption of alcohol. Since his last arrest, about 20 months ago, he no longer consumes alcohol, he attends AA and church on a regular basis, and he intends no future consumption of the intoxicant. Mitigation is shown; and as such, Guideline J is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his past Criminal Conduct. The Applicant has thus met the mitigating conditions of Guidelines J, and of Section E.2.2. of the Directive. Accordingly, he has met his ultimate burden of persuasion under Guideline J.

FORMAL FINDINGS

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

Paragraph 1: FOR THE APPLICANT

- a. For the Applicant.
- b. 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 clearly consistent with the interests of national security to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge