

DATE: April 13, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-01903

DECISION OF ADMINISTRATIVE JUDGE

RICHARD A. CEFOLA

APPEARANCES

FOR GOVERNMENT

Edward W. Loughran, Esquire, Department Counsel

FOR APPLICANT

Barry J. Sherman, Esquire, Applicant's Counsel

SYNOPSIS

The Applicant has only one alcohol related incident, an arrest which occurred in May of 2001, almost three years ago. Although he has never been diagnosed to have a problem with alcohol, since his arrest, the Applicant only consumes alcohol on rare social occasions, once or twice a year, and never to the point of intoxication. Mitigation is shown. Clearance is granted.

STATEMENT OF THE CASE

On October 14, 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 November 10, 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 also submitted documentary evidence. The transcript was received on February 19, 2004. The issues raised here are whether the Applicant's alleged alcohol consumption militates against the granting of a security clearance. [The Applicant admits the allegation as to May 2001 arrest, subparagraph 1.b., but denies that he drank to excess in the past or that he drinks to excess now, subparagraphs 1.a. and 1.c.]

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 58 years of age, and is employed by a defense contractor which 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

1.a.~1.c. From about 1996 until May of 2001, the Applicant would typically drink a six pack of beer a week, 3~4 beers on Saturday after cutting the grass, and 2~3 beers on Sunday afternoon (Transcript (TR) at page 33 lines 5~14, and Government Exhibit (GX) 2 at page 2). In May of 2001, the Applicant was arrested for, and subsequently pled guilty to, Driving Under the Influence (DUI) (TR at page 23 line 15 to page 26 line 17, at page 28 line 13 to page 30 line 23, GX 2 at pages 1~2, and GXs 3 and 4). The Applicant consumed "three or four beers within a couple of hours" of this arrest (TR at page 23 lines 15~18).

After his May 2001 arrest, the Applicant decided, voluntarily, to drastically cut down his consumption of alcohol (TR at page 33 line 15 to page 34 line 1). The remainder of 2001, he did not consume alcohol at all (TR at page 34 lines 2~5). In 2002, he consumed alcohol "a couple of times the whole year," and not to the point of intoxication (TR at page 34 lines 8~16). Finally, in 2003, he consumed alcohol twice, some wine at his wedding in June, and another glass of wine "around New Years" (TR at page 34 line 17 to page 35 line 17). He does not "drink beer anymore" (TR at page 35 lines 18~22).

Mitigation

The Applicant's most recent job performance evaluation shows that he exceeded or met all of his performance factors (Applicant's Exhibit B).

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 G (Alcohol Consumption) 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 had one alcohol related incident, which occurred in May of 2001. The first disqualifying condition this therefore applicable as this was an "[a]n alcohol-related incident away from work. Such as driving while under the influence" However, this is countered by three mitigating conditions: the first, one alcohol related incident does "not indicate a pattern;" the second, the "problem occurred a number of years ago [three] and there is no indication of a recent problem;" and the third, there are "[p]ositive changes in behavior supported of sobriety." The Applicant has significantly cut down his consumption of alcohol to once or twice a year, and then not to the point of intoxication. As mitigation is clearly shown, Guideline G is found for the Applicant.

Considering all the evidence, the Applicant has rebutted the Government's case regarding his Alcohol Consumption. The Applicant has thus met the mitigating conditions of Guidelines G, and of Section E.2.2. of the Directive. Accordingly, he has 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: FOR THE APPLICANT

- a. For the Applicant.
- b. For the Applicant.
- c. 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 national interest to grant or continue a security clearance for the Applicant.

Richard A. Cefola

Administrative Judge