

DATE: May 24, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-02892

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Eric H. Borgstrom, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Security concerns persist over Applicant's alcohol abuse which led to multiple alcohol-related arrests and convictions from 1996 to 2001. He has attended alcohol treatment programs and diagnosed alcohol dependent in 2000. He failed to mitigate these alcohol abuse security concerns as he provided no favorable prognosis nor evidence of a continuing involvement in Alcoholics Anonymous (AA). Instead he continues to drink at times to excess. On the other hand Applicant mitigated his multiple other arrests which have not recurred since 1998 and also mitigated his past use and purchase of marijuana which ended in 2002. He has substantially reformed his conduct with respect to criminal conduct and drug abuse and is rehabilitated in those areas of security concern. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on September 15, 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 in paragraph 1 over alcohol issues (Guideline G), in paragraph 2 over criminal conduct (Guideline J), and in paragraph 3 over drug abuse (Guideline H). Applicant responded to these SOR allegations in an Answer notarized on October 9, 2003, where he requested a hearing.

On January 13, 2004, Department Counsel indicated that the case was ready to proceed. The case was assigned to me on January 22, 2004. Subsequently, a mutually convenient date for hearing was agreed to. A Notice of Hearing, issued on January 29, 2004, set the matter for February 27, 2004, at a location near where Applicant works and lives.

At the hearing the Government offered eighteen exhibits which were admitted into evidence. (Exhibits 1-18) Applicant testified, called three witness, and offered three exhibits. (Exhibits A-C). He requested that the record remain open for seven days to provide additional evidence. (TR 111) As the Government did not object, I granted him seven days and allowed the Government time to review until March 11, 2003, to review his additional evidence. (TR 112, -113; 128)

On March 6, 2004, Applicant submitted an additional two-page document (Exhibit D) to Department Counsel. Department Counsel, who did not object to its admission, forwarded the document to me. I admitted Exhibit D into evidence on March 17, 2004; and the record closed. The transcript (TR) was received on March 8, 2004.

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, 27 years old, worked for Defense Contractor #1 in State #1 from July 2002 to November 2003 when he left because he did not have an interim security clearance. He now works for Defense Contractor #2 and still needs a security clearance; however, no documentation was provided from his new employer. Previously, he had a variety of other jobs. He completed a Security Clearance Application (SF 86) in July 2002. (Exhibit 1; TR 44-45, 51-53; 62-63; 106)

Applicant has studied at a computer center and a community college. He received computer certification in 1999. He married in May 2001; he and his wife have purchased a home. He has excellent credit. (Answer; Exhibit 1; TR 65-67)

Alcohol Consumption and Criminal Conduct

Applicant first used alcohol when he was 15 years old. He began regularly consuming alcohol in 1996 when he was 19 years old: he would have 6-9 beers two times a week. At times he would consume twelve beers in an evening. When his parents were transferred, Applicant moved to State #2 in November 1995 from State #3 and returned to high school to finish his degree. He found that State #2 had different standards from State #3 with respect to alcohol abuse; and he was frequently arrested. In 1998 he decreased his drinking to five beers twice per month. He never believed he had a problem with alcohol, but at times he was "unable to remain in control after drinking alcohol." He has continued to drink, at times to excess; he was last intoxicated in February 2004. (Answer; Exhibit 2 at 9; TR 65; 78-79; 99-101) (SOR 1.a.)

Applicant was arrested in May 1996 in State #2 and charged with purchase/possession of alcoholic beverage under 21; he admitted the charge and pleaded guilty. He was fined \$50 plus costs and his driver's license was suspended 30 days. (Answer; Exhibit 11; TR 79-80) (SOR 1.b.)

Applicant was arrested in August 1996 in State #2 and charged with drunk in public at a party at his home while his parents were away on vacation; he was 19 at the time. He admitted the charge and pleaded guilty. He was fined \$52 plus costs. (Answer; Exhibits 2, 4; TR 80-81) (SOR 1.c.)

Applicant was arrested again three days later in August 1996 in State #2 and charged with drunk in public at a party at a friend's house; he admitted the charge and pleaded guilty. He was fined \$52 plus costs. (Answer; Exhibits 2, 5; TR 81) (SOR 1.d.)

Applicant was arrested in September 1996 in State #2 and charged with alcohol possession by individual under 21; he admitted the charge and pleaded guilty. He was fined \$75 plus costs. (Answer; TR 82) (SOR 1.e.)

Applicant was arrested in November 1996 in State #2 and charged with alcohol possession by individual under 21; this charge was dismissed. (Answer; Exhibit 8) (SOR 1.f.)

Applicant was arrested in December 1996 in State #2 and charged with alcohol possession by individual under 21; he admitted the charge and pleaded guilty. He was fined \$50 plus costs and his driver's license was suspended for six months. (Answer; Exhibit 12) (SOR 1.g.)

Applicant was arrested in July 1997 in State #2 and charged with (1) driving while under the influence of alcohol (DUI) and (2) driving after privilege to drive has been revoked/suspended. He admitted the charges and was found guilty of operating motor vehicle after consuming alcohol and was fined \$500 with \$250 suspended and his operator's license was suspended for six months; he also was found guilty of count (2) and fined \$100. (Answer; Exhibits 9, 13) (SOR 1.h.)

In February 1997 he was arrested for stealing bingo lottery tickets and found guilty and fined \$100. (Exhibit 14)

Applicant was arrested in November 1997 in State #2 and charged with alcohol possession by individual under 21; he admitted the charge and pleaded guilty. He was fined \$500 plus costs and his operators license was suspended for 6 months. He was referred to an Alcohol Safety Action Program (ASAP) and attended a 12-week class conducted by the county. (Answer; Exhibit 17; TR 82-84) (SOR 1.i.) He was given a restricted license to go to work. (TR 84)

Applicant was arrested in May 1998 in State #2 and charged with alcohol possession by individual under 21; this charge was *nolle prosequi*. (Answer; Exhibit 10) (SOR 1.j.)

Applicant was arrested in July 1999 in State #2 and charged with (1) failure to submit to blood/breath test and (2) DUI. Charge (1) was *nolle prosequi*, and he was found guilty of count (2). He was sentenced to 90 days confinement (82 days suspended) and fined \$750 plus costs with \$300 suspended. His operators license was suspended for 12 months, and he was ordered by the court to attend ASAP and had his driving privileges restricted. ASAP recommended that he get additional counseling. (Exhibits 2, 7, 15; Answer; TR 85-89) (SOR 1.k.)

A treatment facility assessed Applicant in April 2000 using a multi-fold diagnostic and evaluation process and diagnosed Applicant as alcohol dependent. He received outpatient treatment for alcohol dependence in group meetings three times a week from April 2000 to July 2000. He was also required to attend twelve step self-help groups and get a sponsor for the one year he was on probation. When he completed probation, he stopped attending AA. He abstained from alcohol during this program and successfully completed the program. He never believed he was an alcoholic. While Applicant claimed he was never told that he had been diagnosed alcohol dependent, he had requested a letter from the treatment center to help him get his driving privileges back and that July 2000 letter disclosed the alcohol dependent diagnosis. (Answer; Exhibits 1, 16; TR 67, 93-96, 103-104, 107, 110) (SOR 1.l.)

Applicant was arrested in July 2001 in State #1 and charged with operating while intoxicated/DUI. While this charge was *nolle prosequi*, he admitted he had consumed one drink prior to the accident which resulted in his arrest. He struck a car while on the way home from a club; he was arrested and his wife was taken to a hospital for her injury. His BAC test results were .07 and .065, within the legal limit. (Answer; Exhibit 2; TR 89-91) (SOR 1.m.)

Applicant has had no subsequent alcohol-related arrests or other incidents. (TR 101) However, he continues to consume alcohol notwithstanding his treatment for alcohol dependence. He drinks two to four beers once very two months. He drank to the point of intoxication in February 2004. He no longer attends AA. (Answer; TR 78-79; 102) (SOR 1.n.)

Criminal Conduct

Applicant was arrested in December 1994 in State #3 and charged with vandalism and resisting arrest. (Answer; Exhibit 3; TR 69-70) (SOR 2.a.)

Applicant was arrested in March 1995 in State #3 and charged with burglary-felony. He pleaded guilty and was sentenced to serve two months confinement. He broke into a residence in his own neighborhood. He was 18 at the time of the incident. (Answer, Exhibit 2; TR 70-72) (SOR 2.b.)

Applicant was arrested in November 1996 in State #2 and charged with contributing to the delinquency of a minor as underage drinking was taking place. That charge was dropped. (Answer; TR 72-73) (SOR 2.c.)

Applicant's employment with a department store was terminated in February 1997 after he was caught stealing merchandise from the store. He took a T-shirt valued at \$20 and a sample bottle of cologne valued at \$40. He was 19 years old and living with his parents. (Answer; Exhibit 2; TR 73-74) (SOR 2.d.)

Applicant was arrested in March 1997 in State #2 and charged with petit larceny after a friend of his took lottery tickets from a convenience store and Applicant left the store with him. He was found guilty and sentenced to 30 days confinement (suspended) and fined \$100 plus costs. (Answer; Exhibit 3; TR 74-77) (SOR 2.e.)

Applicant was arrested in March 1998 in State #2 and charged with (1) discharging a weapon on street and (2)

possession of alcohol. He was found guilty of an amended charge of trespassing and sentence to 90 days confinement, suspended, and fined \$100 plus costs. He and his friends were target shooting with a shotgun and a pistol on private property. (Answer; Exhibits 2, 3, 18; TR 76-77) (SOR 2.f.)

Applicant was arrested in October 1998 in State #2 and charged with contributing to the delinquency of a minor. (Answer; TR 77-78) (SOR 2.g.)

Applicant has no intention of again engaging in criminal conduct. (TR 66)

Drug Abuse

Applicant used marijuana with varying frequency and amounts on approximately 50 occasions from February 1999 to May 2002 when he last used marijuana to celebrate his birthday. However, he does not intend to use any illegal drugs in the future. (Answer; Exhibit 2; TR 97-99; 104-105) (SOR 3.a.) He has also purchased marijuana for \$10 to \$20 for personal use. (Answer; Exhibit 2; TR 99) (SOR 3.a.)

References

A friend who met Applicant in 1999 and later supervised him in 2001-2002 on several projects testified that he never observed Applicant act in an untrustworthy or irresponsible way. He has observed Applicant drink socially. He "mentored him into technology" and has observed Applicant make "drastic changes" in the time he has known him. (TR 37-48)

Applicant's supervisor from October 2002 to January 2003 stated that Applicant's attendance was very good at work; he never came to work intoxicated or under the influence of any substance. He recommended him for a security clearance; he continues to see Applicant as they have become friends. (TR 49-54)

An individual who hired Applicant at Defense Contractor #1 in spring 2002 and supervised Applicant for two years while he worked for the company recommended Applicant for a security clearance. The company had no concerns about the quality of his work, but terminated Applicant in November 2003 as Applicant had not yet been granted a required security clearance. (TR 55-61)

Applicant's supervisor who observed his work for 18 months assessed him as "a trustworthy and responsible individual." (Exhibit A)

A friend praised Applicant as "a well-balanced person with an abundance of positive qualities." (Exhibit B)

A government employee who interacted with Applicant from July 2002 to November 2003 saw no reason to question his trustworthiness or integrity. Applicant provided exceptional support to the organization. (Exhibit C)

Applicant's step-father who has known him since he was four years old catalogued the difficulties Applicant faced growing up, but declared in the past five years Applicant has totally changed his lifestyle. He recommended Applicant for a position of trust. (Exhibit D)

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;

5. Habitual or binge consumption of alcohol to the point of impaired judgment;

Conditions that could mitigate security concerns include:

3. Positive changes in behavior supportive of sobriety;

Guideline J - Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

a. Allegations or admissions of criminal conduct

b. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

a. The criminal behavior was not recent;

d. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur;

f. There is clear evidence of successful rehabilitation.

Guideline H - Drug Involvement

Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Drugs are defined as mood and behavior altering:

[First] Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and

[Second] Inhalants and other similar substances.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Conditions that could raise a security concern and may be disqualifying include:

1. Any drug abuse (see above definition);

2. Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution;

Conditions that could mitigate security concerns include:

1. The drug involvement was not recent;

3. A demonstrated intent not to abuse any drugs in the future;

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 established security concerns over Applicant's alcohol abuse as he has a history of drinking to excess and has had multiple alcohol-related arrests and convictions from 1996 to July 2001. When he was convicted of DWI in 1997 and again in 1999, his license was suspended and he was ordered to attend ASAP. He received a severe sentence after the July 1999 DWI conviction because his alcohol related incidents do indicate a pattern. In 1999 he was given one year of probation until July 2000. Because of this 1999 conviction, he entered an out-patient treatment program where he was diagnosed as alcohol dependent. He abstained from alcohol and complied with the terms of his probation; but after it was completed, he returned to drinking to excess. While he was in treatment, Applicant attended AA meetings; but after he completed the alcohol treatment program in 2000, Applicant stopped attending AA, returned to drinking to excess. The treatment program provided no favorable prognosis. He intends to drink in the future and was intoxicated as recently as February 2004. Applicant's conduct falls within DC 1 and 5.

Applicant provided some evidence of some positive changes in behavior supportive of sobriety; but given his alcohol dependence diagnosis in 2000, he failed to provide sufficient evidence to demonstrate that he meets the mitigating condition ⁽²⁾ (MC) 4: Following diagnosis of alcohol abuse or alcohol dependence, the individual has to successfully complete inpatient or outpatient rehabilitation along with after-care requirements, participate frequently in meetings of AA, 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. While Applicant successfully completed outpatient rehabilitation in 2000, he no longer participates in meetings of AA. While he maintained his sobriety while he was in the treatment program in 2000, he began to drink again after he completed his probation. While his witnesses attested to positive changes in his behavior, it is still too soon to predict that he will be able to maintain this sobriety as he no longer attends AA and has returned to intermittent alcohol abuse, at time to excess as recently as February 2004. Thus, he has not abstained from alcohol for at least 12 months. Further, there is no evidence he 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. Given Applicant's long history of alcohol abuse with eleven alcohol-related incidents from 1996 to 2001 and his continuing intermittent abuse of alcohol, it is too soon to conclude with certainty that he has sufficiently changed his behavior.

After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on Subparagraph 1.f. where the charge was dismissed, but against Applicant on subparagraphs 1.a. through 1.e. and 1.g. through 1.n. under SOR Paragraph 1.

Criminal Conduct

As discussed above under alcohol abuse, the Government established security concerns over his criminal conduct as related to his alcohol use, (SOR 1.b., 1.c., 1.d., 1.e., 1.g., 1.h., 1.j., 1.k, and 1.m.) and also over multiple criminal incidents alleged under SOR paragraph 2. Except for allegation 2.c. where the charges were dropped, Applicant repeatedly engaged in criminal conduct from 1995 to 1998, including an incident at a department store where he worked and stole merchandise, but was not criminally charged. Conditions that could raise a security concern and may be

disqualifying include: a. allegations or admissions of criminal conduct, regardless of whether the person was formally charged; and b. a single serious crime or multiple lesser offenses.

On the other hand Applicant's last criminal incident was in 1998 and his last alcohol-related conviction was in 1999. Applicant stated persuasively that he has no intention of again engaging in criminal conduct which was mostly a product of his troubled teenage and young adult years. He testified that he has changed and provided several references who supported his rehabilitation from criminal conduct. Thus, I conclude he has met conditions that could mitigate security concerns include: a. the criminal behavior was not recent; d. the factors leading to the violation are not likely to recur; f. there is clear evidence of successful rehabilitation. Applicant provided sufficient evidence that he has reformed⁽³⁾ his conduct and that the factors leading to those violations are unlikely to recur. He provided several favorable references and reference letters from his work colleagues, his supervisors and his step-father which establish clear evidence of his successful rehabilitation. One supervisor from 2001-2002 on several projects testified that he never observed Applicant act in an untrustworthy or irresponsible way. He has observed Applicant make "drastic changes." Another supervisor from 2002 to 2003 recommended him for a security clearance. Finally, the individual who hired Applicant at Defense Contractor #1 in spring 2002 and supervised Applicant for two years while he worked for the company recommended him for a security clearance and had no concerns about the quality of his work.

Consequently, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 2.a. through 2. h. under SOR Paragraph 2.

Drugs

The Government established security concerns over Applicant's drug use to May 2002 and his intermittent marijuana purchases. (SOR 3.a. and 3.b.) Conditions that could raise a security concern and may be disqualifying include: 1. any drug abuse and 2. illegal drug possession, including purchase.

The DOHA Appeal Board recently ruled in a Guideline H case that there must be a "reasoned analysis of all of the facts and circumstance of an applicant's case based on a careful evaluation of the totality of the evidence" as there is no "bright line"⁽⁴⁾ to determine when conditions could mitigate security concerns under C 1, whether or not the drug involvement was recent. In that case they found six years since the last use of marijuana met that test. Here it has been two years since May 2002 when he last used marijuana to celebrate his birthday. Two months later he went to work for Defense Contractor #1 and completed his SF 86⁽⁵⁾ in July 2002. He has not used marijuana since that time. He disclosed this past marijuana use in November 2002 when interviewed by the Defense Security Service (DSS). Since he has refrained from any drug use while he has been in a job that requires a security clearance, I conclude that his two years of abstinence is sufficient to mitigate his drug use. I accept his statement that he has no intent to use drugs in the future to establish, under MC 3, his demonstrated intent not to abuse any drugs in the future. His favorable references also establish how he has substantially changed. Thus, Applicant provided sufficient evidence that he has reformed⁽⁶⁾ his conduct.

Consequently, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraph 3.a. and 3.b. under SOR Paragraph 3.

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: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: Against Applicant

Subparagraph 1.h.: Against Applicant

Subparagraph 1.i.: Against Applicant

Subparagraph 1.j.: Against Applicant

Subparagraph 1.k.: Against Applicant

Subparagraph 1.l.: Against Applicant

Subparagraph 1.m.: Against Applicant

Subparagraph 1.n: Against Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Subparagraph 2.b.: For Applicant

Subparagraph 2.c.: For Applicant

Subparagraph 2.d.: For Applicant

Subparagraph 2.e.: For Applicant

Subparagraph 2.f.: For Applicant

Subparagraph 2.g.: For Applicant

Subparagraph 2.h.: For Applicant

Paragraph 3. Guideline H: FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For 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.

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. **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.
3. **Conditions that could mitigate security concerns include:** a. The criminal behavior was not recent; b. The crime was an isolated incident; c. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life; d. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur; e. Acquittal; f. There is clear evidence of successful rehabilitation.
 4. Appeal Board Decision and Reversal Order, ISCR Case No. 02-08032 (May 14, 2004) at 7.
5. The signed copy of the SF86 in evidence is incomplete as it does not contain the page that asks questions about his past drug use or purchase.
6. **Conditions that could mitigate security concerns include:** 1. The drug involvement was not recent; 2. The drug involvement was an isolated or aberrational event; 3. A demonstrated intent not to abuse any drugs in the future; 4. Satisfactory completion of a prescribed drug treatment program, including rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable diagnosis by a credentialed medical professional.