

DATE: May 25, 2005

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-04707

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's alcohol-related arrests in 1981 and 2000 and personal conduct in failing to disclose this adverse information to his supervisor establish security concerns. Applicant continues to drink and failed to provide any documents which show positive changes in his behavior supportive of sobriety. Doubt remains as to whether he is fully rehabilitated given his arrests and questionable conduct in failing to disclose his 2000 alcohol-related arrest while on company business. 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 April 29, 2004. 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 over Alcohol Consumption (Guideline G) and personal conduct (Guideline E). (Item 1) Applicant responded to these SOR allegations in a notarized Answer dated May 13, 2004, where he admitted all the allegations as well as Additional Information; he did not request a hearing. (Item 3)

The case was assigned to Department Counsel to prepare for a decision on the administrative record. On August 16, 2004, she prepared the File of Relevant arial (FORM) for the Applicant's review and advised Applicant that he had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that he had the right to be represented by counsel. She sent the FORM to Applicant advised the Applicant that he had 30 days from receipt of the letter to submit objections and/or information before the FORM was submitted to an administrative judge. Applicant received the FORM on August 23, 2004. On September 17, 2004, Applicant requested additional time to submit reference letters. He submitted two letters dated October 1, 2004. On October 13, 2004, Department Counsel indicated she had no objection. On October 19, 2004, the case was assigned to me.

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, 51 years old, has been an employee of Defense Contractor #1 in State #1 since 1981. In June 2002 he submitted a Security Clearance Application (Standard Form 86) (SF 86) (Item 4) Applicant was granted a Secret security clearance in September 1981. The electronic version of the SF 86 (EPSQ) is dated July 2002.(Item 5)

Applicant received a BA from a university in State #2 in 1978. He married in 1984 and has two children. (Items 4, 5)

Alcohol Consumption and Personal Conduct

Applicant's 2002 EPSQ documents a February 2002 alcohol offense, a DWI (misdemeanor) in State #3. (Item 5) In his August 2002 interview and statement Applicant explained that he was on business with a rental car paid for by his company when he was arrested in State #3 for DWI. He spent a night in jail and came home; he misrepresented to his supervisor why he came home early and explained he was not feeling well. He never told his supervisor about this incident as he feared that the company would take some type of disciplinary action against him, such as a reprimand or termination. Since 2000 DWI, he has continued to drive his vehicle while legally intoxicated on two occasions; however he was not arrested again. He claims he does "not have a drinking problem." (Item 6) However, the police department offense report documents that he was driving after 10 PM at night with only his parking lights on; there was no accident. He told the officers who stopped him that he had only had two beers. He failed the field sobriety test, he was arrested, and his vehicle was impounded. (Item 7) He admitted he was sentenced to ninety days in jail, suspended, placed on one year of probation, ordered to pay a \$500 fine and \$225 in court costs, and ordered to complete 50 hours of community service and to undergo random urinalysis tests, attend traffic safety education program and abstain from alcohol and attend alcohol counseling if warranted by his probation officer. (Exhibits 1, 3)

Applicant began to drink in 1984 when he went to college. Applicant became depressed when his father died in 1996 and from 1996 to 2000 he drank a few beers twice a week and drank to intoxication a few times a year. Since 2000 he has continued to drink but at a reduced rate. From 2001 to 2002 he had "a couple of beers once every couple of weeks." At one time his wife considered him an alcoholic, but he never sought any counseling or treatment for alcohol. He was arrested in State 1 in 1981 for DWI and resisting arrest; he went to an alcohol awareness class after the 1981 arrest. He made a decision not to list this arrest on his EPSQ as he thought it might make his second DWI arrest "more relevant and stand out." He willfully and intentionally withheld the fact that he was arrested in 1981 from the government. (Item 6)

References

Applicant's manager who has known him for 23 years recommends that he retain his current security clearance; he is highly trusted and regarded by his fellow employees and his military contacts and foreign customers. While this manager acknowledges Applicant's past "mistakes" he does not explain what they are, *i.e.* there is no confirmation he knows about Applicant's 2000 DWI arrest while on a business trip. (Exhibit A)

A team leader who has known Applicant for 18 years recommended that Applicant retain his security clearance as he is highly trusted and regarded highly by his fellow employees and his military contacts and foreign customers. While this supervisor acknowledges Applicant's past "mistakes" he does not explain what they are, *i.e.* there is no confirmation he knows about Applicant's 2000 DWI arrest while on a business trip. (Exhibit A)

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.

Guideline E - Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

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 has security concerns over Applicant's alcohol-related arrests: he admits two incidents in 1981 and 2002. Conditions that could raise a security concern and may be disqualifying (DC)⁽²⁾

include: (1) Alcohol-related incidents away from work, such as driving while under the influence, and (5) Habitual or binge consumption of alcohol to the point of impaired judgment. His alcohol-related incidents show a pattern even though the two incidents were separated by several years. Despite this pattern of alcohol-related problems, he has yet to make a decision not to drink again and admitted drinking again at least twice while intoxicated. Thus, doubt remains as to whether he is fully rehabilitated. While he provided favorable supportive evidence from two supervisors, they do not discuss any alcohol-related issues so I can give them little weight on the extent of his alcohol concerns especially in light of his admissions that he has concealed the 2002 arrest and conviction from them.

While there is no indication he was ever diagnosed with an alcohol abuse problem, he failed to detail any positive changes in behavior which would support a basis to mitigate these concerns. Further, he has made no assertion that he regularly attends Alcoholics Anonymous (AA), or wants to achieve sobriety. Thus, he fails to meet conditions that mitigate⁽³⁾ security concerns by showing positive changes in behavior supportive of sobriety. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 1.a. through 1.d. under SOR Paragraph 1.

Personal Conduct

Applicant failure to disclose his two DUI arrests raise security concerns over his place his personal concerns ahead of his duty to report adverse information to his supervisor. This personal misconduct raise a security concern and may be disqualifying also include: (4.) personal conduct or concealment of information that increases an individual's vulnerability to coercion, exploitation or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing or render the person susceptible to blackmail; and (5.) a pattern of dishonesty or rule violations, including violation of any written or recorded agreement made between the individual and the agency.

To rebut and overcome the Government's case, Applicant would have to demonstrate that he has mitigated⁽⁴⁾ this concern. He had a obligation to disclose adverse information to his supervisors; while they endorse him for a security clearance and speak forgivingly of his "past mistakes" it is unclear what they know about his misconduct. Therefore, I

can give them little weight. Further, there is no evidence in the DSS statement that Applicant later made any disclosure about the 2001 DWI while on company business.

Hence, none of the mitigating conditions apply. Also, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 2.a. under SOR Paragraph 2.

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

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: Against 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 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.

3. **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.

4. **Conditions that could mitigate security concerns include:** 1. The information was unsubstantiated or not pertinent to a determination of judgment, trustworthiness, or reliability; 2. The falsification was an isolated incident, was not recent, and the individual has subsequently provided correct information voluntarily; 3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts; 4. Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided; 5. The individual has taken positive steps to significantly reduce or eliminate vulnerability to coercion, exploitation, or duress; 6. A refusal to cooperate was based on advice from legal

counsel or other officials that the individual was not required to comply with security processing requirements and, upon being made aware of the requirement, fully and truthfully provided the requested information; 7. Association with persons involved in criminal activities has ceased.