

DATE: March 19, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-05127

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jennifer I. Campbell, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

The Applicant had two alcohol related arrests when he was in his early 20s. Since the second arrest, he has made considerable changes in his lifestyle supportive of his sobriety. The alcohol related offenses do not indicate a pattern and the Applicant submitted considerable mitigating evidence. Adverse inference is overcome. Clearance is granted.

STATEMENT OF THE CASE

On June 27, 2003, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended) and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed 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.

The Applicant responded to the SOR in writing on July 28, 2003, and requested a hearing. The case was received by the undersigned on September 22, 2003, and a Notice of Hearing was issued on September 24, 2003.

A hearing was held on October 14, 2003, at which the Government presented seven documentary exhibits. Testimony was taken from the Applicant, who also submitted two exhibits. The transcript was received on October 27, 2003.

FINDINGS OF FACT

The Applicant is 24, single and has Bachelor of Science degree in Computer Engineering. He is employed by a defense contractor as Software Engineer 2, and he seeks to obtain a Secret-level DoD security clearance in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a security clearance, based upon the allegations set forth in the

Statement of Reasons (SOR). The following findings of fact are entered as to each paragraph and guideline in the SOR. They are based on the Applicant's Answer to the SOR, the exhibits and the live testimony.

Paragraph 1 (Guideline G - Alcohol Consumption). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he abuses intoxicants to excess. The Applicant admitted all the allegations of the Statement of Reasons. Those admissions are deemed findings of fact.

The Applicant was a non-drinker until his last year in college in State One. Then, he joined a fraternity and began drinking on a daily basis. On June 11, 2001, he attended a party and drank to excess. He was arrested for Driving Under the Influence of Alcohol when he was driving home. The Applicant plead guilty to an amended charge of Alcohol Related Reckless Driving. He received three years informal probation, a fine and required to attend a First Offender Alcohol Program. (Government Exhibits 4 through 7.)

On September 1, 2002, the Applicant was with some friends in State Two. The Applicant drank to intoxication and then drove. He was stopped by police and arrested for Driving Under the Influence. He plead guilty to an amended charge of Reckless Driving and was fined. (Government Exhibit 3, Transcript at 55-59.)

In his sworn statement, the Applicant admitted this second arrest, which was unknown to the Defense Security Service Special Agent, but denied drinking at the time. (Government Exhibit 2 at 2.) However, at the hearing and in his Answer to the SOR, he admitted drinking to excess that day. The Applicant explained that he was confused about what to admit during the interview because of the ongoing criminal case in State Two. He was represented by counsel, who had advised him not to admit to anything. (Transcript at 49-53.) The Applicant was extremely remorseful over his conduct and stated that he thought, when he admitted the allegation in the SOR, which included the breathalyzer results, he was correcting all his prior actions. (Transcript at 59-64.)

Mitigation.

The Applicant testified that he has really matured in the last year. He has a fiancé, with whom he had a daughter in 2003. Since his second arrest, the Applicant has reduced his drinking habits. Now that he has a family, he no longer associates with his fraternity drinking buddies. He may drink once a month at a family outing. When he does drink he only has one or two and he never drives after drinking. (Transcript at 35-37.)

The first and second line supervisors of the Applicant submitted a joint letter of recommendation (Applicant's Exhibit A). They state that the Applicant has been a trusted employee for over two years and that he "exercises a high degree of professionalism at work and performs well with only general supervision." The supervisors also point out that the Applicant has "been recognized twice for performance achievements at high levels" by company management.

The Applicant's fiancé also submitted a letter on his behalf (Applicant's Exhibit B). She sets forth in great detail how the Applicant's life has changed since they got together, and especially since the birth of their daughter in July 2003. She concludes her letter by saying, "Since I have met [the Applicant] he has made many positive and wise decisions about his life. He has improved his habits and found positive friends to help him. He has made a conscious decision to become and stay sober. He has improved his living standards. [The Applicant] has removed the negative influences in his life."

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive, has set forth policy factors which must be given "binding" consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent guideline. However, the factors are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned decision. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline G (Alcohol consumption)

Condition that could raise a security concern:

(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 abuse;

Conditions that could mitigate security concerns:

(1) the alcohol related incidents do not indicate a pattern;

(3) positive changes in behavior supportive of sobriety;

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, "In evaluating the relevance of an individual's conduct, the [Administrative Judge] should consider the following factors [General Factors]:

- a. The nature, extent and seriousness of the conduct
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence."

The eligibility guidelines established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for clearance may be involved in acts of alcohol abuse that demonstrates poor judgement, untrustworthiness or unreliability on the Applicant's part.

The DoD Directive states, "Each adjudication is to be an overall common sense determination based upon consideration and assessment of all available information, both favorable and unfavorable, with particular emphasis placed on the seriousness, recency, frequency, and motivation for the individual's conduct; the extent to which conduct was negligent, willful, voluntary, or undertaken with the knowledge of the circumstances or consequences involved; and, to the extent that it can be estimated, the probability that conduct will or will not continue in the future." The Administrative Judge 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. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order...shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

CONCLUSIONS

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational

connection, between the Applicant's conduct and the granting of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant was involved in two alcohol related incidents (Guideline G).

The Applicant, on the other hand, has successfully mitigated the Government's case. The evidence shows that, since his second arrest in September 2002, the Applicant has completely eliminated alcohol abuse from his life. The two arrests do not indicate a pattern of alcohol abuse, but rather the conduct of an immature person who was not ready to accept the responsibilities of adult life. His testimony shows that work, his fiancé and his child have had a profound impact on him. In addition to his testimony, documentary evidence from his supervisors and his fiancé support his statements about his exemplary work performance and the changes in his personal life that bring Mitigating Condition 2 to bear on his current conduct.

In addition, application of the General Factors is appropriate and supports a decision in the Applicant's favor. The Applicant was an immature young man when the conduct occurred, but he has shown good judgment since the second arrest (factor d.), he is motivated to continue his sobriety (factor g.), he shows considerable evidence of rehabilitation (factor f.), and, under the circumstances of this case, the probability that the Applicant will return to his drinking ways are virtually nil (factor i.). In evaluating this case under the whole person concept, I have specifically considered all the evidence.

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 of the Government's Statement of Reasons.

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

DECISION

In light of all 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.

Wilford H. Ross

Administrative Judge