

DATE: November 1, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-08085

ECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Nygina T. Mills, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's four alcohol-related incidents between 1982 and 2000 establish a case of alcohol consumption that has not been mitigated. Given Applicant's deliberate falsification of his security clearance questionnaire (SCA) in August 2002 and continuing denial that he falsified the document, he has also not met his ultimate burden of persuasion under the personal conduct guideline. Clearance is denied.

STATEMENT OF CASE

On September 25, 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, amended April 4, 1999, issued a Statement of Reasons (SOR) to Applicant. The SOR 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 Applicant and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

Applicant furnished his answer to the SOR on December 16, 2003. Applicant elected to have his case decided on a written record. The Government provided Applicant a copy of the File of Relevant Material (FORM) on April 6, 2004. Applicant received the FORM on April 9, 2004. His response to the FORM was due by May 9, 2004. No response was received. The case was assigned to me on May 20, 2004.

FINDINGS OF FACT

The SOR alleges alcohol consumption and personal conduct. Applicant generally admitted the factual allegations under the alcohol guideline. He denied he intended to falsify the security clearance application on August 20, 2002. Applicant is 44 years old and employed as a programmer with a defense contractor. He seeks a secret security clearance.

Alcohol consumption. Applicant admitted subparagraph 1 a. that he has consumed alcohol to excess and occasionally

to the point of intoxication from 1977 to at least September 23, 2002. However, he did not believe his drinking habits in high school were excessive. On May 30, 1982 (1 b.), Applicant was arrested for operating (auto) under the influence of intoxicating liquor/excessive blood alcohol content. Applicant was convicted of the charge and fined \$250.00; his driver's license was suspended for 45 days. Following the May 1982 operating charge, Applicant vowed not to drive if he thought he was going to drink. In February 1983, Applicant, 22 years old, was involved in an incident in a college dormitory where he was loud and boisterous. He was highly intoxicated. He was cited for violations of drinking and conduct policies and placed on college suspension. He was required to attend four Alcoholics Anonymous (AA) meetings. In February 1997 (1 d.), Applicant was employed as a teacher at a high school. Applicant took issue with the type of function and how much he had been drinking. The school function was a voluntary, after school event that Applicant was not required to attend. He had consumed two beers before the event. Applicant denied the superintendent of schools recommended rehabilitation that he declined. Item 8 of the FORM contains a letter from the superintendent of schools placing Applicant on leave for two days and recommending participation in a thirty day rehabilitation at a regional hospital. Item 8 also contains a letter from the superintendent informing Applicant that his probationary contract (for continued employment) would not be renewed.

On July 18, 2000, Applicant was arrested for driving while intoxicated (DWI). He had been drinking an unknown amount of alcohol. Applicant pleaded guilty to a lesser included offense of reckless driving and was sentenced to 60 days in jail with 60 days suspended, fined \$1,500.00 with \$1,300 suspended, and required to attend an alcohol safety action program. Applicant's license was suspended for six months with restricted driving privileges to employment and the alcohol program only. Applicant successfully completed all the terms of his sentence.

Applicant's Drinking Pattern. A letter dated February 23, 1983 from the residential director strongly suggests Applicant had been drinking excessively for at least a three week (an possibly a year) period before the date on the letter. After becoming highly intoxicated on two occasions in a three week period in February 1983, Applicant was placed on suspension. In a sworn statement dated June 15, 1983, Applicant indicated he reduced his drinking so he would not create a problem for himself or others. After the high school drinking incident leading to his 1997 termination, Applicant was found guilty of an alcohol-related incident in July 2000. In his sworn statement dated September 23, 2002, Applicant noted he still drank sociably but was not drinking while driving. He did not believe he was an alcoholic. In his response to the SOR, Applicant stated he continued to drink but never at work or in a way to pose a threat.

Personal Conduct. On August 20, 2002, Applicant answered "no" to the question 20 of his SCA. Question 20 applies to an involuntary termination in the last 10 years from a job because of (1) being fired, (2) quitting after being told of the firing, (3) leaving a job by mutual agreement following allegations of misconduct, (4) leaving a job by mutual agreement following allegations of unsatisfactory job performance, and (5) leaving a job for other reason(s) under unfavorable circumstances. Applicant does not believe he left the high school job in 1997 (1 d.) following an allegation of misconduct. Applicant opined he may have furnished information about his termination in another part of the SCA. If he did not, then he misunderstood question 20. Applicant also surmised his employment contract was not renewed because he could not control a student who threatened him. Applicant also believed the termination letter he received from the superintendent did not state any specifics for not renewing the contract. In addition, observation of Applicant at bars on an occasional basis was the driving force for the superintendent's dislike of Applicant.

In response to 2 b., Applicant reiterated his belief his contract was not renewed for other reasons and not misconduct or less than favorable circumstances.

Character Evidence. Applicant still consumes alcohol but he has never been drunk and he has never been careless with classified information. He believes he was treated unfairly by the superintendent of schools in 1997.

POLICIES

Enclosure 2 of the Directive sets forth policy conditions which must be given binding consideration in making security clearance determinations. These conditions must be considered in every case according to the pertinent guideline; however, the conditions are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts

and circumstances, it should not be assumed that the conditions exhaust the entire realm of human experience or that the conditions apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Conditions most pertinent to evaluation of the facts in this case are:

Alcohol Consumption

Disqualifying Conditions (DC):

1. Alcohol-related offenses away from work;

Mitigating Conditions (MC):

1. The alcohol-related incidents do not indicate a pattern.
3. Positive changes in behavior supportive of sobriety.

Personal Conduct

Disqualifying Conditions (DC):

1. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire use to determine security clearance eligibility;
5. A pattern of dishonesty or rule violations.

Mitigating Conditions (MC):

1. The information was unsubstantiated or not pertinent to judgment, trustworthiness, or reliability;
3. The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information 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.

The Government must establish a *prima facie* case under the alcohol consumption and personal conduct guidelines that establishes doubt about a person's judgment, reliability and trustworthiness. Then, the burden shifts to applicant to refute, explain, mitigate, or extenuate the facts. An applicant has the ultimate burden of persuasion to demonstrate he qualifies for a security clearance.

CONCLUSIONS

Excessive alcohol consumption often leads to the exercise of questionable judgment while increasing the risk of unauthorized disclosure of classified information due to carelessness. While the evidence of Applicant's alcohol habits between 1977 and May 1982 is meager, Applicant's conviction in May 1982 for operating an auto under the influence falls within the purview of DC 1 of the guideline even though Applicant was 21 and still in college. Applicant's alcohol-related behavior continued in February 1983 when he was cited by the college dormitory discipline organization for threatening and violent behavior because of drinking. (Item 9) While the authors of the investigative letters are clearly not experts, I am entitled to apply a commonsense interpretation to the factual assertions in the letters and investigatory material. Considering all the material in Item 9, specifically the threatened sanctions and the AA meetings Applicant was required to attend, I conclude Applicant drank excessively during at least the three weeks preceding his citation in February 1983.

Fourteen years later in February 1997, Applicant attended a high school function after consuming alcohol. Applicant considers the small amount of beer he drank and voluntary attendance at the function should decrease the seriousness of the infraction of a faculty member attending a school event with liquor on his breath. The superintendent recommended counseling which Applicant declined. Applicant's probationary contract at the school was not renewed. In July 2000, Applicant was charged with DWI. Though the charge was reduced to reckless driving, Applicant had been drinking before his arrest. Applicant continues to drink.

Considering the pattern of four alcohol-related incidents between 1982 and 2000, Applicant bears a heavy burden of persuasion that demonstrates alcohol is no longer a problem. MC 1 may apply to mitigate when the alcohol-related incidents do not indicate a pattern. Applicant could argue the 14 year period between 1983 and 1997 frustrates the finding of a pattern of alcohol-related behavior. Even though there is no evidence of alcohol-related behavior in the 14-year period, Applicant's continued consumption during the period makes it probable that he continued to commit alcohol-related conduct but was not apprehended. Applicant has not met his burden of persuasion under MC 1 because the most recent alcohol-related incident was only four years ago.

MC 3 of the alcohol guideline recognizes positive changes in behavior supportive of sobriety. However, where an applicant has provided no evidence of what his current drinking habits are, I cannot assume he has made the requisite changes in his behavior that facilitate sobriety. MC 3 is removed from consideration. Having weighed and balanced the entire record, Applicant's unsubstantiated statements about the status of his alcohol consumption are insufficient to meet his ultimate burden of persuasion under the alcohol consumption guideline.

Personal Conduct. Conduct involving questionable judgment, dishonesty or an unwillingness to comply with rules and regulations could indicate the person may not properly safeguard classified information. Applicant's "no" answer to question 20 (involuntary job termination in the last 10 years) was a deliberate falsification of relevant and material facts from a personnel security questionnaire used to determine security clearance eligibility (DC 2). The documentation indicates Applicant left his job following an allegation of misconduct.

Applicant has offered a number of guiltless explanations that are not persuasive. First, he stated his termination from this job was explained in another part of the SCA. A careful review of the entire form shows there is no information about an employment termination in any part of the form. Second, Applicant indicated he may have misunderstood the question. After reviewing the question, the reasonable person would interpret the question to apply to an involuntary job termination. I do not see how Applicant could be confused by the termination question. The third reason Applicant provides for defending his "no" answer to question 20 is that he was really fired for other reasons. While other reasons are mentioned briefly in the correspondence from the superintendent, the primary reason was liquor on Applicant's breath during his attendance at the high school event. The third reason Applicant offered for the "no" answer was that the superintendent did not like him, and wanted him out of the school system. Regardless of Applicant's personality problems with the superintendent, common sense should have influenced Applicant (in his position as a teacher at the school) not to attend the function with liquor on his breath.

MC 1 of the personal conduct guideline may mitigate dishonest conduct when the information was unsubstantiated or not pertinent to judgment and trustworthiness. MC 1 is not applicable because the termination was substantiated by the

superintendent. Moreover, Applicant's falsification has a negative impact on his judgment and trustworthiness. MC 3 is not available to mitigate Applicant's falsification as Applicant continues to deny he falsified anything.

Applicant's violations of the college drinking and conduct policies in 1983 and the infraction for appearing at the high school event in February 1997 with liquor on his breath also represent rule violations as set forth in DC 5 of the personal conduct guideline. The rule involved in 1983 that was violated is self-explanatory. The rule involved in the high school infraction in 1997 is to not set a bad example for teenagers at high school events by exposing them to addictive drugs.

In reaching my decision against Applicant under the alcohol and personal conduct guidelines, I have considered the general policy factors of the whole person concept. Applicant's eagerness to blame others rather than accept full responsibility for the 1997 high school incident also precludes a finding in his favor under the whole person concept.

FORMAL FINDINGS

Paragraph 1 (alcohol consumption, Guideline G): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. Against the Applicant.

Paragraph 2 (personal conduct, Guideline E): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the 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 Applicant a security clearance.

Paul J. Mason

Administrative Judge