

DATE: March 4, 2005

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-11906

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Rita C. O'Brien, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of five alcohol-related arrests and charges over a fifteen-year period spanning 1987 and 2002. These arrests and charges resulted in convictions, jail time, fines, supervised probation and suspended driving privileges. Twice, he has attended outpatient counseling sessions for alcohol abuse, and in 2001 was diagnosed alcohol dependent. After relapsing in 2002 and becoming involved in two alcohol-related domestic violence incidents, he has continued to drink. Applicant's restorative efforts to date, while encouraging, are insufficient to enable safe predictive assessments about Applicant's ability to avoid recurrence in the foreseeable future. While Applicant fails to fully mitigate government security concerns about his alcohol abuse and security concerns associated with his criminal offenses. Clearance is denied.

STATEMENT OF CASE

On March 8, 2004, 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 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 Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on March 22, 2004 and requested a hearing. The case was assigned to me on September 24, 2004, and was scheduled for hearing on October 29, 2004. A hearing was convened on October 29, 2004, for the purpose of considering whether it is clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of eight exhibits; Applicant relied on two witnesses (including himself) and three exhibits. The transcript (R.T.) of the proceedings was received on November 10, 2004.

SUMMARY OF PLEADINGS.

Under Guideline G, Applicant is alleged to have (a) consumed alcohol to intoxication for most of his adult life (approximately 1980 to October 2002), (b) been arrested for DuIs in 1987, 1992, and 2002, each time being found not guilty, (c) been arrested for alcohol-related domestic violence offenses in 2001 and 2002 (in addition to DuI), after which the charges were dropped, (d) received inpatient treatment from July 2001 to August 2001, with a final diagnosis of alcoholism, and alcohol withdrawal syndrome, resolved, and (e) continued to consume alcohol notwithstanding his treatment for alcoholism. Applicant's alcohol-related domestic violence incidents pleaded under subparagraphs 1.d, 1.e (sic) and 1.f were incorporated under Guideline J (Criminal Conduct) as well.

For his response to the SOR, Applicant admitted each of the allegations covered by Guideline G, but denied without explanation the allegations incorporated under Guideline J.

FINDINGS OF FACT

Applicant is a 45-year old electrical technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR, and admitted to by Applicant, are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant has used alcohol most of his adult life. Between 1980 and October 2002 he consumed alcohol regularly, but only occasionally to intoxication. Sometimes he would drink two to six beers over the course of a day.

Following his divorce from his first wife in 1997, Applicant married his current spouse (W) in November 2000. Like Applicant, W also consumed alcohol, mostly "the hard stuff" (ex. 2). They were good friends before they married and were used to drinking. After they married, though, they both escalated their drinking (*see* ex. 2; R.T., at 51-52). W was a self-characterized binge drinker: She would sometimes drink all day to the point of intoxication. Applicant who consumed beer primarily would also drink habitually at times.

Beginning in 1987, Applicant committed the first of his five alcohol-related offenses. In December 1987, he was arrested and charged with DuI. He pleaded guilty and was sentenced to 11 months and 29 days in jail (suspended to 48 hours), fined \$250.00 plus court costs, and had his driver's license suspended for a year.

Applicant was arrested again on DuI charges in February 1992. After pleading guilty, he was sentenced to 11 months and 29 days in jail (suspended this time to five days), fined \$300.00, and had his driver's license suspended for one year. Applicant continued his binge drinking after his second DuI offense without the benefit of any professional intervention.

In March 2001, Applicant and W became embroiled in an argument. In the heat of their argument, W stabbed Applicant in the arm. Applicant proceeded to push her away, causing her to hit her head and scratch her arm (*see* ex. 4: R.T., at 52-53). Applicant, in turn, called the police who came to their home to investigate Applicant's complaints. Once inside the house, the police charged Applicant with domestic assault, only to dismiss the charges when W declined to press charges.

Responding to conveyed company concerns over Applicant's deteriorating job performance, Applicant's employer union recommended in March 2001 that he seek alcohol counseling. Applicant, in turn, self-referred himself to an outpatient treatment center (C Center) in June 2001. Upon admission, he was diagnosed with alcoholism, alcohol withdrawal syndrome and nicotine abuse. In his initial interview with C Center counselors, he acknowledged powerlessness over alcohol and dedicated himself to the development of a personal program of recovery for him. During his 30-day inpatient stay he participated in 12 Step meetings and completed steps one through five of the 12 step model (R.T., at 106-07). Acknowledging the lack of a spiritual foundation to support his recovery. Before his discharge, Applicant agreed to attend several 12-step meetings per week, identify and contact his sponsor regularly, attend weekly aftercare meetings, continue recovery literature reading and daily prayer, and facilitate arrangements to return to work (*see* ex. 8). Applicant's medical state at the time of his discharge was unchanged.

Following his discharge from C Center in July 2001, Applicant continued with his AA meetings for a number of months and maintained his abstinence for a short period. After receiving a 30-day chip from AA (R.T., at 133), he resumed his

drinking and didn't seek any more chips from his AA chapter. He and W periodically attended AA meetings for the ensuing eight months before March 2002, when they quit their AA involvement altogether over smoking issues (R.T., at 78-79, 119-21, 127-29).

Both Applicant and W continued their binge drinking between October 2001 and January 2002. In January 2002, Applicant and W became involved in an alcohol-related domestic altercation. Following a physical exchange between them (which caused scratches on W's face and bruises on her arms), Applicant left the apartment and was promptly arrested for DuI and domestic violence by the police who had arrived at the scene (*see ex. 5*; R.T., at 56-57). Unable to perform any field tests, he was arrested for DuI, and later for domestic violence and violation of implied consent. Applicant was found guilty of DuI and was sentenced to 11 months and 29 days in jail (suspended to 96 hours), fined \$350.00 plus court costs, suffered the loss of his driver's license for a year, and placed on supervised probation. The remaining counts were dismissed.

One month after his January 2002 arrest, and while they were attending periodic AA meetings, Applicant was arrested again for domestic violence. Specifically, in February 2002 he was arrested and charged with domestic violence/assault (striking W on her head and hurting her hand). Applicant had been drinking and was intoxicated when investigating officers arrived at Applicant's home.

Applicant and W continued their drinking, albeit at reduced levels, after his February 2002 domestic violence incident. At Applicant's subsequent hearing on his February 2002 charges, the court continued the domestic violence charges to afford Applicant and W the opportunity to seek counseling (*see exs. 2 and 6*). Both W and Applicant, in turn, enrolled in separate outpatient counseling programs in February 2003 (*see ex. C*; R.T., at 68). Applicant is credited with completing an outpatient program in D Center for substance abuse before being given a regular discharge in April 2003 without any diagnosis or prognosis (*see ex. C*). However, the program was essentially of an educational nature and did not include an evaluation. Upon proof of his completing the required outpatient program, Applicant's domestic violence charges were dismissed.

After completing his outpatient counseling at D Center, Applicant returned to drinking, albeit occasionally, mostly on weekends with W. Applicant and W last consumed alcohol at dinner in October 2004: She consumed wine, while he drank beer (R.T., at 115-17). While he doesn't consider himself an alcoholic at this time (R.T., at 117), he is not able to provide any corroboration from a medical physician or licensed substance abuse counselor.

Applicant is highly regarded by his supervisors and coworkers who regard him as an excellent electrician and conscientious, dependable performer (*see ex. B*). His performance evaluations indicate he meets his job standards (*see ex. A*).

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2

of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Alcohol Consumption

The Concern: 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.

Criminal Conduct

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

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's for security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

CONCLUSIONS

Applicant is an electrical technician for a defense contractor with over 20 years of meritorious military service, during which he held a security clearance for most of his career. His five documented alcohol-related incidents over a fifteen-year period reflect alcohol abuse by Applicant and documented proof of his having a recurring problem with alcohol.

Applicant's history of alcohol-related incidents, habitual consumption and dependence diagnosis reflect both a recent pattern alcohol abuse and a dependency problem that are security significant. On the strength of the evidence presented, several disqualifying conditions (DC) of the Adjudication Guidelines for alcohol consumption are applicable:

E2.A7.1.2.1 (*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*), E2.A7.1.2.3 (*Diagnosis by a credentialed medical professional*), E2.A7.1.2.5 (*Habitual or binge consumption of alcohol to the point of intoxication*), and E2.A7.1.2.6 (*consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program*).

To his credit, Applicant has sought counseling and curtailed his drinking since his last alcohol-related incident (February 2002). However, his lack of sponsor contact in over two years, limited time in AA attendance and 12-Step work, and failure to furnish a favorable diagnosis and prognosis preclude application of any of the mitigating conditions of the Guidelines. His renewed commitment to controlled drinking does reflect positive changes in behavior supportive of sobriety, and for these efforts Applicant is to be commended. Favorable views of his progress from work colleagues who know him are also helpful in gauging the strength of his recovery.

All in all, though, Applicant's mitigation efforts to date reflect too little sustained commitment to AA and its tenets of sobriety to conclude he is no longer at risk to recurrence. Without a favorable prognosis, it would be imprudent to relax the time requirements of Guideline G's E2.A7.1.3.4 (*Following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient ro outpatient rehabilitation along with aftercare 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*) or credit Applicant generally

with successful rehabilitation at this point in his still ongoing recovery.

Considering the record as a whole, Applicant fails to make the convincing showing that he has both the commitment and systems support at his disposal to avert any recurrent problems with judgment lapses related to alcohol to warrant safe predictions that he is no longer at risk to judgment impairment associated with such conduct. Unfavorable conclusions warrant with respect to the alcohol-related allegations covered by sub-paragraphs 1.a through 1.h of Guideline G.

While Applicant's three alcohol-related domestic violence charges and dispositions (covered by allegation 2.a) are neither isolated nor aged when grouped as a pattern, they require separate consideration under the Adjudicative Guidelines covering criminal conduct. The charges and dispositions reflect mistakes of judgment which are security significant. Our Appeal Board has repeatedly stated that the government can prove applicant engagement in criminal conduct, even in the absence of a criminal conviction. *Cf.* ISCR Case No. 94-1213 (June 7, 1996). Two disqualifying conditions of the Guidelines covering criminal behavior apply: E2.A10.1.2.1 (*Allegations or admission of criminal conduct*) and E2.A10.1.2.2 (*A single serious crime or multiple lesser offenses*).

Applicant's restorative efforts (which now exceed two years since his last incident in 2002) are encouraging. But without strong probative evidence of his resolving his judgment risks associated with his past abuse of alcohol, it is still too soon to make safe predictive judgments about his avoiding recurrent domestic violent incidences in the future. Applicant's evidence is insufficient at this time to enable him to mitigate concerns associated with his judgment lapses that mark his three criminally-linked domestic violence incidents. So, while Applicant may claim some benefit of one of the mitigating conditions of the Guidelines (*viz.*, E2.A10.1.3.6 1 (*The criminal behavior was not recent*)), it is premature to credit him with the mitigation benefits of E2.A10.1.3.6 (*There is clear evidence of successful rehabilitation*). Unfavorable conclusions warrant with respect to subparagraph 2.a of Guideline J.

In reaching my decision, I have considered the evidence as a whole, including each of the E 2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

FORMAL FINDINGS

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, this Administrative Judge makes the following FORMAL FINDINGS:

GUIDELINE G (ALCOHOL): AGAINST APPLICANT

Sub-para. 1.a: AGAINST APPLICANT

Sub-para. 1.b: AGAINST APPLICANT

Sub-para. 1.c: AGAINST APPLICANT

Sub-para. 1.d: AGAINST APPLICANT

Sub-para. 1.e: AGAINST APPLICANT

Sub-para. 1.f: AGAINST APPLICANT

Sub-para. 1.g: AGAINST APPLICANT

Sub-para. 1.h: AGAINST APPLICANT

GUIDELINE J (CRIMINAL CONDUCT): AGAINST APPLICANT

Sub-para. 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 Applicant's security clearance. Clearance is denied.

Roger C. Wesley

Administrative Judge