

DATE: November 29, 2004

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-13684

DECISION OF ADMINISTRATIVE JUDGE

ROGER C. WESLEY

APPEARANCES

FOR GOVERNMENT

Francisco J. Mendez, Jr., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

While Applicant has a history of DuI arrests and convictions over an eight-year period spanning 1996 and August 2002 (for which he received counseling and probation, respectively, following each of his two such incidents), he has since committed to AA and sustained abstinence (almost 20 months). Never diagnosed with being either alcohol-dependent or an alcohol abuser, Applicant has averted any alcohol-related incident or abusive situation since his last DuI incident in August 2002. With almost 20 months of sobriety and an AA network to provide support, Applicant persuades he will be able to sustain his self imposed abstinence future. Clearance is granted.

STATEMENT OF THE CASE

On November 25, 2003, the Defense Office of Hearings and Appeals (DOHA), under Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, 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, and recommended referral to an administrative judge for determination whether clearance should be granted or continued.

Applicant responded to the SOR on December 23, 2003, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on February 24, 2004. Applicant responded to the FORM within the 30 days provided him with supplemental documentation regarding his alcohol issues. The case was assigned to me March 29, 2004.

SUMMARY OF PLEADINGS

Under Guideline G, Applicant is alleged to have been twice arrested on DuI charges: once in January 1996, to which he plead guilty and was imposed probation before judgment and ordered to complete an alcohol treatment program, and again in August 2002, to which he plead guilty and was sentenced to 60 days in jail (with 50 days suspended) and two years of supervised probation and ordered to complete and alcohol treatment program. Applicant is alleged to have

attended a 6-week alcohol treatment program (A facility) pursuant to the court's order between March and May 1996, and another 6-week alcohol treatment program with the same facility following his 2002 DuI arrest and conviction. Applicant's DuI arrests and convictions are re-alleged by incorporation under Guideline J.

For his answer to the SOR, Applicant admitted most of the allegations. He denied being assessed by A facility and that his DuI arrests should be considered criminal conduct governed by Guideline J.

FINDINGS OF FACT

Applicant is a 53-year-old logistian for a defense contractors who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are incorporated herein by reference adopted as relevant and material findings. Additional findings follow.

After consuming about 12 beers in a local restaurant in January 1996, Applicant drove too fast on his way home and crashed his vehicle. He left the scene briefly to find a tow truck. When he returned he found the police waiting and was arrested on charges of DuI. In court he plead guilty and was imposed probation before judgment and ordered to attend an alcohol treatment program with A facility. The program was essentially educational in scope and did not entail individual assessments by licensed treatment physicians or counselors.

Applicant self-referred himself to A facility for assessment and counseling in March 1996. He was assigned to the facility's 6-week alcohol education program, which he successfully completed in May 1996 (*see ex. 9*). While he provided background information to A facility's substance abuse counselors, his counseling records don't report any diagnosis of his condition. He is credited with being honest in answering the questionnaire provided by the facility.

Applicant was arrested again on DuI charges in August 2002. This arrest followed his drinking in a local nightclub. After consuming two to three alcoholic beverages over a one-hour period, he again made the mistake of driving home. After colliding with another vehicle on the way home, investigating police arrested him for DuI. In court he plead guilty to DuI and was sentenced to 60 days in jail (50 days suspended), in addition to being placed on two years probation and ordered to complete an alcohol treatment program.

Applicant self-referred himself again to A facility following his 2002 DuI conviction (entering the program in August 2002) and is credited with successfully completing the education program's 6-month outpatient course. His counseling records indicate he was assessed but not diagnosed with any kind of an alcohol problem by the facility's staff. His program participation encompassed weekly group sessions as well as random urine screens. His attendance was considered satisfactory, and his records indicate he was scheduled to complete the program in February 2003.

While not believing he has ever been addicted to alcohol, Applicant realized he had an alcohol problem after his second DuI in August 2002. Applicant assures he not only completed his 6-month A facility alcohol education program successfully, but that he has been a regular participant in AA and has maintained his abstinence from alcohol since August 2002, a period of almost 20 months. A fellow AA-participant of Applicant's corroborates Applicant's AA attendance/abstinence claims. This fellow participant credits Applicant with receiving chips commemorating his sobriety through 18 months and attests to Applicant's commitment to remain alcohol-free. Applicant's assurances that he has no intention of returning to drinking are accepted.

Applicant is highly regarded by his program manager who describes him as not only skilled and responsible but a person who has impressed him with his positive lifestyle changes since his 2002 DuI conviction. The supervisor interacts with Applicant daily and didn't notice even the slightest indication of the latter having an alcohol problem, or even consuming alcohol. He credits Applicant with being a superior employee of utmost trustworthiness.

POLICIES

The Adjudicative Guidelines of the Directive (Change 4) list "binding" policy considerations to be made by Judges in the decision making process covering DOHA cases. The term "binding," as interpreted by the DOHA Appeal Board, requires 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.

Disqualifying Conditions:

DC 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.

Mitigating Conditions:

MC 3 Positive changes in behavior supportive of sobriety.

Burden of Proof

By virtue of the precepts framed by the Directive, a decision to grant or continue an Applicant's request 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 nexus to the applicant's eligibility to obtain or maintain a security clearance. The required showing of nexus, 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.

CONCLUSION

Applicant presents as a highly regarded logistian for a defense contractor who seeks a security clearance. His two alcohol-related incidents over the eight years reflect alcohol abuse by Applicant and documented proof of his having a recurring problem with alcohol through August 2002 (when he was involved in his last-reported DuI incident). Never diagnosed as an abusive drinker or alcohol dependent, Applicant, nonetheless, occasionally drank excessively while in night club social situations.

Following his 1996 DuI conviction, Applicant was court-ordered to attend education and counseling classes. This counseling afforded him some relief from episodic drinking excesses for a while, but did not prevent his recurrent problem in 2002. Having resumed his drinking in social situations, he confronted law enforcement authorities on a second occasion: this one in August 2002 following an accident on the way home. Pleading guilty to a DuI charge

arising out of this incident, he accepted a sentence of 60 days in jail (50 days suspended), two years of supervised probation and court-ordered alcohol education. On the strength of the evidence presented, one disqualifying condition (DC) of the Adjudication Guidelines for alcohol consumption may be applied: DC 1 (alcohol-related incidents away from work).

Assessment of Applicant's alcohol-related conduct must be made on the basis of a review of the entire evidentiary record developed to date, not merely the information developed with respect to his identified two DuI offenses. In making an overall assessment of Applicant's clearance eligibility, major emphasis must be accorded his most recent drinking history, which includes his impressive commitment to AA attendance, his sustained abstinence (almost 20 months), highly regarded work history, and the absence of any more alcohol-related incidents since his August 2002 incident.

By his actions and improved understanding, Applicant demonstrates he has taken the necessary restorative and corrective measures in his personal affairs to ensure that he does not repeat the same or similar judgment lapses associated with his prior problems with alcohol abuse. His mitigation efforts reflect important sobriety decisions and a lifetime commitment to abstinence, aided by his AA network support. During the last 20 months, he has been able to avert any alcohol abuse relapses or recurring problems with law enforcement authorities. So while he still has several months to go on his court-ordered probation (based on this administrative record), his reformatory efforts provide a good and sufficient foundation for making predictive judgements about his ability to sustain his manageable drinking in the future.

Applicant's demonstrated efforts to remedy his judgment lapses associated with alcohol abuse enable him to take advantage of one of the mitigating conditions (MC) of the Adjudication Guidelines for alcohol consumption: MC 3 (positive changes in behavior). Altogether, Applicant provides sufficient demonstrative indications of sustained mitigation of both his drinking problems and encounters with law enforcement authorities to overcome any residual security risks associated with his past alcohol-related judgment lapses.

Considering the record as a whole, Applicant makes the convincing showing that he has both the maturity and resource support at his disposal to avert any recurrent problems with judgment lapses related to alcohol and personal conduct (repeated rule violations) to warrant safe predictions that he is no longer at risk to judgment impairment associated with such conduct. Favorable conclusions warrant with respect to the alcohol-related allegations covered by Guidelines G and J.

In reaching my decision in this case, 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): FOR APPLICANT

Sub-para. 1.a: FOR APPLICANT

Sub-para. 1.b: FOR APPLICANT

Sub-para. 1.c: FOR APPLICANT

Sub-para. 1.d: FOR APPLICANT

GUIDELINE J (CRIMINAL CONDUCT): FOR 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 Applicant's security clearance.

Roger C. Wesley

Administrative Judge