

DATE: December 28, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-13558

ECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

James Bradley Norman, Esquire, Department Counsel

FOR APPLICANT

Thomas Albin, Esquire

SYNOPSIS

Applicant has mitigated security concerns about his alcohol-related arrests, his criminal conduct related to those arrests, and over his debts which totaled \$10,000. He provided evidence that he has reformed his conduct since the last arrest in December 2000. He now is committed to sobriety, attends AA, and has established his rehabilitation. He has paid all his debts. Also, he has a 30-year history of outstanding performance on the job. Clearance is granted.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on February 17, 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 alleged specific concerns over alcohol consumption (Guideline G) in paragraph 1, criminal conduct (Guideline J) in paragraph 2, and finances (Guideline F) in paragraph 3. Applicant responded to these SOR allegations in an Answer notarized on March 4, 2004, where he admitted all of the allegations except the sentence alleged in SOR 1.b. and requested a hearing. On April 14, 2004, Applicant retained counsel who entered his appearance.

Department Counsel on April 30, 2004, indicated the case was ready to proceed. The matter was assigned to another administrative judge on May 3, 2004 and transferred to me on May 20, 2004. Subsequently, a mutually convenient date for hearing was agreed to. A Notice of Hearing issued on May 17, 2004, set the matter for June 9, 2004, at a location near where Applicant works and lives.

At the hearing the Government offered six exhibits which were admitted into evidence. (Exhibits 1-6) Applicant's attorney called three witnesses including the Applicant and offered six exhibits which were admitted into evidence. (Exhibits A-F) Applicant was allowed two weeks after the hearing until June 23, 2004, to submit additional documents; the Government had until July 6, 2004, to submit their comments. (TR 77-79, 121) On June 21, 2004, Applicant's counsel submitted Exhibit G and on June 22, 2004, he submitted Exhibit H. On June 22, 2004, Government's counsel

indicated he had no objection to the documents, so Exhibits G & H were admitted into evidence, and the record closed. The transcript (TR) was received on July 2, 2004.

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, 58 years old, has worked for a defense contractor in State #1 for thirty years since 1974. He was promoted until he became a first-class mechanic and working leader in 1978; he has been a working leader for 22 years. He completed a Security Clearance Application (SF 896) in October 2001. Previously, he was granted a Defense Department Confidential and Secret security clearance. The Department of Energy also granted him a security clearance in March 1984. (Exhibit 1; TR 43-45; 65; 97-98)

Applicant graduated from high school in 1965. (TR 44) He married in 1973 and was divorced in 1992; he has four children born in 1974, 1978, 1984, and 1986. He received custody of his children who were then 6, 8, 14, and 18. In a June 1998 court action his former wife got custody of their daughter when she was 12; she is now 18. (Exhibits 1, 2, TR 83-84, 92-94) Thus, Applicant had substantial responsibilities for raising his children. (TR 99-100)

Alcohol Consumption and Criminal Conduct

Even though Applicant sees himself as an infrequent drinker (TR 99), he has had a series of alcohol-related arrests:

In December 2000, Applicant was returning by taxi from his annual company Christmas party where he had been drinking. When he crossed through the parking lot of a garage to go to his home, a police officer questioned him as he thought Applicant was acting suspiciously. The exchange escalated until Applicant was arrested for Simple Trespass, Breach of Peace, and Interfering/Resisting arrest. Applicant conceded that he might have been better able to handle the situation if he had not been drinking prior to the incident. The following April 2001 he was found guilty of disorderly conduct and paid a \$150 fine. (Answer; Exhibits 2, 5; TR 47- 50; 99, 102-103)

In April 1998, Applicant was returning from a retirement party and drove home when he was intoxicated; he was arrested for Operating Under the Influence (OUI), Improper use of Marker Plate, Operating an Unregistered Motor Vehicle, and Failure to wear Safety Belt as he had a blood alcohol content above the legal limit. In court the charge was reduced to reckless driving and he paid a \$300 fine. His license was suspended for five months. He received no jail sentence. (Answer; Exhibit 6; TR 51- 53; 96-97; 102)

In February 1991, Applicant was arrested for OUI and an Improper Turn. He was found guilty in March 1991, sentenced to six months jail (suspended) and placed on probation for one year. (Answer; TR 53-54)

In January 1991, Applicant was arrested for Driving While Intoxicated and his driver's license was suspended for 90 days. He was court-ordered to attend Alcoholics Anonymous (AA) meetings. He attended for six to eight months and stopped drinking, but then he stopped attending AA and resumed intermittent drinking. (Answer; TR 54-57, 63; 100-102)

In November 1989, Applicant was arrested for Driving While Impaired and was fined \$500. (Answer; TR 57-59)

In December 1987, Applicant came home late after drinking at an office Christmas party; his wife was upset and he pushed her. He was arrested for Assault, Breach of Peace, and Risk of Injury to a Minor; the charges were dismissed after he completed a Family Violence Education program. (Answer; TR 59-60)

In August 1967 Applicant was arrested for Driving Under the Influence and was fined \$150. (Answer; TR 60-61)

In June 1966, Applicant had not been drinking but was arrested for disorderly conduct and fined \$100 when he was twenty years old. (Answer; TR 61-62)

In April 2003, Applicant reported on the frequency of his drinking: prior to 1992, Applicant would on average go drinking 2- 3 nights a week and have six to seven beers each time. Between 1993 and 2000, Applicant cut back on his drinking and would only go out one night per week, usually drinking three beers. (Exhibit 3)

Applicant had curtailed his drinking and has only had one drink in the past seven weeks at his son's wedding in May 2004 when he had two beers and a glass of champagne. Since April 2004 Applicant began attending AA and will continue to attend AA once to twice a week. (TR 62-62, 67; 103-107) Applicant never renewed his driver's license, so he currently is not driving. (TR 68) He decided in June 2004 to stop drinking as he wants to avoid the potential for future arrests. (TR 66-67)

Finances

In November 2003 Applicant's annual pay was \$40,289. (Exhibit F) In April 2003 Applicant had a net monthly income of \$1,568, but had monthly expenses of \$1, 753. (Exhibit 2) Applicant admitted that he owed money for five debts which totaled approximately \$10,000. In June 2004, he reported on the status of his efforts to resolve all of his debts:

3.a. The debt of \$311 to a collection agency (Creditor #1) for a utility bill for services at another address where he lived in 2001 was paid in full in May 2004. (Exhibits 2, 4; Exhibit B; TR 68-69, 87-88)

3.b. The debt of \$924 to another utility (Creditor #2) for services at another address was paid in full in April 2004. (Exhibits 2, 4; Exhibit D; TR 70-71)

3.c. The debt of \$260 to another utility (Creditor #3) for services was paid in full in April 2004. (Exhibits 2, 4; Exhibit C; TR 71-72)

3.d. The debt of \$8,068 to an automobile finance services agency (Creditor #4) was a result of his having co-signed his son's car loan; when his son lost his job, Applicant continued making payments. Then his son went back to work, but again lost his job. The car was repossessed in January 2002 when they were behind two payments. Applicant settled his debt with them for \$1,054 which he paid in full in April 2004. (Exhibits 2, 4; Exhibit A, G; TR 72-75, 88-89)

3.e. The judgment of \$1,200 to Creditor #5 resulted after his son had an accident that damaged a fence in January 2002; Applicant had co-signed the insurance and began payments in May 2003 immediately after the court judgment; he had paid the amount in full in May 2004. (Exhibits 2, 4; Exhibit E; TR 79-82, 88-89)

Applicant's financial situation has improved as he is working over-time, often six days a week. He rents an apartment and lives with his son who is 20, his son's wife, and their child. He only has one credit card with a small balance. (TR 83, 85-86, 89, 91-92) He no longer has to pay \$100 per month child support as his daughter is now 18, but he has an arrear of \$1,100 for the period when his wife initially got support from the state before he was ordered to pay child support. He is resolving that debt through an allotment from his salary. (TR 92-96) He was able to resolve all these debts as he made extra money when he went on the road to another state to work from January to March 2004. (TR 90) In June 2004 Applicant reported a gross monthly income of \$2,800 to \$4,000 (depending on overtime) and did not report his net income; he has monthly expenses of approximately \$1,350. (Exhibit H)

References

Applicant's second-level supervisor since 1982, a superintendent who has worked at the company for 38 years, attested that he had reviewed Applicant's personnel record. He reported Applicant has been an outstanding employee for thirty years. He has an excellent work ethic and is well respected by management and co-workers. Applicant has been a working leader for 22 years as he is a "standout worker, great work ethic, and the type of person you would intrust five other individuals to help the foreman accomplish the days work." He stated that Applicant demonstrates integrity and loyalty. Applicant has a blemish-free record and excellent attendance: in 2002 he had zero percent lost time; in 2003 he had 1.8 percent lost time (well below the department goal of 4%) and in 2004 he had not missed a day in a thousand hours worked. His supervisor does not socialize with Applicant. The supervisor finds Applicant to be trustworthy and extremely honest. The supervisor agreed to testify because Applicant is valued as a "special employee." (Exhibit F; TR 21-34)

Applicant received commendations for excellent work in April 1990, April 1984 and in 1977. He has received attendance commendations. He has received certificates for training. (Exhibit F)

A senior manufacturing representative who has know Applicant 25 years also testified on his behalf. Originally, he worked for Applicant and then for eight years this individual became Applicant's supervisor and Applicant worked for him for 13 years, from 1987 to 2000. He described the quality of Applicant's work as excellent; Applicant serves in an important position as a "working leader." He reported that Applicant currently has a Secret clearance and is an honest person. (TR 36-41)

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.

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;

Conditions that could mitigate security concerns include:

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;

Guideline J - Criminal Conduct

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

Conditions that could raise a security concern and may be disqualifying include:

- a. Allegations or admissions of criminal conduct
- b. A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

- a. The criminal behavior was not recent;
- f. There is clear evidence of successful rehabilitation.

Guideline F - Financial Considerations

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying include:

1. A history of not meeting financial obligations;
3. Inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns include:

6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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 established security concerns over Applicant's multiple alcohol-related incidents in 1966, 1967, 1987, 1989, 1991, 1998 and 2000. Thus, Applicant's conduct falls within DC 1. Applicant has never been diagnosed with an alcohol abuse problem.

However, Applicant mitigated these security concerns as Applicant provided evidence to demonstrate that he falls within several mitigating conditions: ⁽²⁾ these problems occurred a number of years ago with the most recent occurring in December 2000; he has had no subsequent arrest in over three years. Thus he falls within MC 2. (the problem occurred a number of years ago and there is no indication of a recent problem) and MC 3 (positive changes in behavior supportive of sobriety). Recently, he has addressed these concerns by initially curtailing his drinking and attending AA since April 2004. More recently in June 2004 he decided to become abstinent and provided persuasive evidence of his current goal to maintain his sobriety. While a longer period of commitment to AA would be more persuasive, for over three years he has given no indication of a recurring problem. Significantly, although security concerns extend to off-duty conduct, he has an outstanding record of performance on the job. To his credit Applicant has a thirty-year history of exemplary conduct on the job. Applicant has been a working leader for 22 years and is viewed by his second-level supervisor as a "standout worker, great work ethic, and the type of person you would intrust five other individuals to help the foreman accomplish the days work." Applicant demonstrates integrity and loyalty and has a blemish-free work record and excellent attendance. Also, he has had shown responsibility by having custody of his children since a 1992 divorce. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 1.a. through 1.h.. under SOR Paragraph 1.

Criminal Conduct

The Government established security concerns over his criminal conduct as related to his alcohol-related arrests, as discussed above. Conditions that could raise a security concern and may be disqualifying include: a. allegations or admissions of criminal conduct, regardless of whether the person was formally charged; and b. a single serious crime or multiple lesser offenses. As discussed above, Applicant provided evidence that he has reformed ⁽³⁾ his conduct with respect to his alcohol-related arrests. He thus falls within MC a.: the criminal behavior was not recent and MC f.: there is clear evidence of successful rehabilitation both on his job and in his personal life as discussed above. He has not had a recurrent incident for over three years and has consistent reliable performance on the job. Consequently, after considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 2.a. incorporated under SOR Paragraph 2.

Financial Considerations

Applicant also mitigated security concerns over (1) history of financial problems and his (3) inability or unwillingness to satisfy all of his debts. He recently resolved all of these alleged debts which total approximately \$10,000. Two of the debts were the result of his helping his son by co-signing for a car and car insurance. He provided documentary evidence of his having resolved his multiple debts. Applicant has now made managing his finances a priority. While he has not received counseling for the problem, there are clear indications that the problem is being resolved or is under control. For example, he provided a current budget where he is living modestly and within his means; he has limited his current debts to two credit cards with low balances. Applicant has mitigated⁽⁴⁾ his debts under mitigating condition (MC) 6 when he initiated a good faith effort to repay those overdue creditors. After considering the Adjudicative Process factors and the Adjudicative Guidelines, I conclude that he has mitigated the allegations in SOR Paragraph 3 with respect to subparagraphs 3.a. through 3. e.

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: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Subparagraph 1.e.: For Applicant

Subparagraph 1.f.: For Applicant

Subparagraph 1.g.: For Applicant

Subparagraph 1.h.: For Applicant

Paragraph 2. Guideline J: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3. Guideline H: FOR APPLICANT

Subparagraph 3.a.: For Applicant

Subparagraph 3.b.: For Applicant

Subparagraph 3.c.: For Applicant

Subparagraph 3.d.: For Applicant

Subparagraph 3.e.: 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 a security clearance for the Applicant. Clearance is granted.

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 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.
3. **Conditions that could mitigate security concerns include:** a. The criminal behavior was not recent; b. The crime was an isolated incident; c. The person was pressured or coerced into committing the act and those pressures are no longer present in that person's life; d. The person did not voluntarily commit the act and/or the factors leading to the violation are not likely to recur; e. Acquittal; f. There is clear evidence of successful rehabilitation.
4. **Conditions that could mitigate security concerns include:** 1. The behavior was not recent; 2. It was an isolated incident; 3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation); 4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.