

DATE: June 30, 2004

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 03-13942

DECISION OF ADMINISTRATIVE JUDGE

WILFORD H. ROSS

APPEARANCES

FOR GOVERNMENT

Jason Perry, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a more than 30 year history of drinking alcohol to excess. His drinking resulted in arrests and convictions for driving under the influence in 1970, 1989, 1993 and 2000. He also received treatment in 1989 and 2000-2001. The treatment was not successful as the Applicant continues to drink despite its effect on his personal life and health. Insufficient mitigation is shown. Adverse inference is not overcome. Clearance is denied.

STATEMENT OF THE CASE

On January 5, 2004, 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 January 20, 2004, and requested that the Decision be made without a hearing. The Department Counsel submitted the File of Relevant Material (FORM) to the Applicant on May 7, 2004. The Applicant was given 30 days after receipt of the FORM to submit any additional information to the Administrative Judge. The Applicant acknowledged receipt of the FORM on May 10, 2004, and elected not to submit any additional information. The case was received by the undersigned for Decision on June 18, 2004.

FINDINGS OF FACT

The Applicant is 54 and legally separated. He is employed by a defense contractor as a Diver/Assistant Supervisor, and he seeks to retain a DoD security clearance previously granted in connection with his employment in the defense sector.

The Government opposes the Applicant's request for a continued 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 and the exhibits.

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

The Applicant admits that he is an alcoholic. He has been drinking to excess since 1970. This drinking has resulted in four arrests and convictions for driving under the influence of alcohol in 1970, 1989, 1993 and 2000. Each of these convictions resulted in fines and/or drivers' license suspensions.

The Applicant underwent inpatient treatment for alcohol abuse in 1989. He also received alcohol counseling from October 2000 to January 2001. He had a stroke in 2001.

The Applicant continues to drink alcohol two to three times a week, and he intends to continue drinking at the same rate. He states, "I am an alcoholic. I have been struggling with my alcoholism all of my life. I continue to drink but I feel I have it under control." (Government Exhibit 5 at 6.) The Applicant goes on to say, "I know I should quit drinking completely, but I have not." (Government Exhibit 5 at 7.) He also states, "In the past I felt dependent on the drug, but I no longer drink daily. My use has never affected my work. It did though contribute to the end of my marriage." (Government Exhibit 5 at 8.)

Paragraph 2 (Guideline J - Criminal conduct). The Government alleges in this paragraph that the actions set forth in subparagraphs 1.b. through 1.e. of the SOR are also cognizable under this paragraph as criminal conduct. Accordingly, the Applicant's four arrests for driving under the influence, described above, will be evaluated under this Guideline as well.

Paragraph 3 (Guideline E - Personal conduct). The Government alleges in this paragraph that the Applicant is ineligible for clearance because the conduct set forth in SOR subparagraphs 1.a. and 1.f. involves questionable judgment, untrustworthiness and unreliability. The Applicant denied this allegation.

This allegation is difficult to understand. While subparagraph 1.a. refers to the Applicant's drinking history, 1.f. describes his obtaining treatment in 1989. Treatment can certainly be seen as something showing good judgment, not questionable judgment. I cannot determine the Department Counsel's theory of the case under this paragraph. Accordingly, this allegations will be found for the Applicant.

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)

Conditions 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;
- (5) habitual or binge consumption of alcohol to the point of impaired judgment;

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

Guideline J (Criminal conduct)

Condition that could raise a security concern:

(2) A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

Guideline E (Personal conduct)

Conditions that could raise a security concern:

(None of the stated conditions have application in this case.)

Conditions that could mitigate security concerns:

(None of the stated conditions have application in this case.)

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 have an alcohol problem 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 continued holding 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 has had four alcohol-related arrests over thirty years and continues to drink alcohol (Guidelines G and J).

The Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him, except in part. As stated above, Paragraph 3 is found for the Applicant.

The Applicant has a serious and long-standing alcohol problem that he cannot or will not control. His use of alcohol has resulted in four arrests for driving under the influence, the last in 2000. In addition, he has had medical problems that may be related to his drinking and, by his own admission, his alcoholism cost him his marriage. In spite of all of this, the Applicant states that he is an alcoholic but he can continue to drink. His conduct obviously comes under Disqualifying Condition 1 of Guideline G, since he has had four alcohol related arrests. In my opinion, Condition 5 also applies as his drinking is habitual. None of the Mitigating Factors apply to this conduct. Paragraph 1 is found against the Applicant.

Turning to Guideline J, the Applicant has a long history of alcohol related criminal offenses. The Applicant presented little, if any, evidence showing that he has mitigated any of the Government's concerns about the criminal acts that he has repeatedly engaged in. Paragraph 2 is also found against the Applicant.

On balance, it is concluded that the Applicant has failed to overcome the Government's information opposing his request for a security clearance. Accordingly, the evidence supports a finding against the Applicant as to the conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons. Paragraph 3 is found for the Applicant.

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: Against the Applicant.

Subparagraphs 1.a. through 1.h.: Against the Applicant.

Paragraph 2: Against the Applicant.

Subparagraph 2.a.: Against the Applicant.

Paragraph 3: For the Applicant.

Subparagraph 3.a.: For 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 or continue a security clearance for the Applicant.

Wilford H. Ross

Administrative Judge