

DATE: January 27, 1997

In Re:

SSN: -----

Applicant for security clearance

ISCR CASE No. 95-0884

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Carla Conover, Esq.

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF CASE

On December 5, 1995, 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 under Criterion m (alcohol abuse) and Criterion i (acts of omission or commission indicating poor judgment) 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. The SOR is attached. Applicant filed his Answer to the SOR on December 14, 1995.

The case was received by the undersigned on June 17, 1996. A notice of hearing was issued on September 10, 1996, and the case was heard on September 18, 1996. The Government and Applicant submitted documentary evidence. Testimony was taken from Applicant and one witness. The transcript was received on September 26, 1996.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the documents and the live testimony. The SOR alleges alcohol abuse (Criterion m) and acts of poor judgment (Criterion i).

Applicant is 50 years old and employed as a ----- by a defense contractor. He seeks a top secret level clearance.

Applicant began drinking alcohol when he joined the service in 1964. He drank alcohol daily and to excess on the weekends. (Tr. 20). He was drinking hard liquor by the time he went into rehabilitation in 1985 and followed with a year of abstinence. (Government Exhibit #5). He described himself as a binge drinker with short periods of abstinence.

(Tr. 23). Since July 1990, Applicant was drinking about 10 beers a day for two or three days and then would abstain for up to two or three weeks without alcohol. (Government Exhibit #4). He quit drinking on July 17, 1995 because he realized he was powerless over alcohol. He began attending Alcoholics Anonymous (AA) on the same day. (Government Exhibit #4).

The driving while under the influence of alcohol (dui) charge (alleged under subparagraph 1b) resulted from drinking at a squadron party. (Tr. 24). The non-judicial punishment and rehabilitation was alcohol-related as Applicant was going through a divorce at the time when he used abusive language. (Tr. 24). In April 1979, Applicant was found guilty of dui and realized he could not stop drinking. (Tr. 26). On September 3, 1985, Applicant was diagnosed as alcohol dependent. (Tr. 26). The non-judicial punishment was imposed in October 1985 as Applicant continued to have difficulty staying out of trouble. (Tr. 27). From November to December 1985, Applicant recalled a second round of treatment for alcohol problems.

Applicant admitted the written reprimand in January 1993 for reporting to work in March and October 1992 with the odor of alcohol about his person. (Tr. 28). In October 1994, Applicant was found in his car under the influence of alcohol. (Tr. 28). Applicant quit drinking alcohol on July 17, 1995. (Tr. 29).

Applicant's AA experience started right away on July 17, 1995. He began attending AA during lunch hour and 7 days a week until August 1995 when he was deployed to a duty location. (Tr. 33). During deployment, he read books about AA. When he returned in December 1995, he resumed attendance of five meetings a week until January 1996. Between January and June 1996, Applicant attended two meetings a week on the ship and approximately four meetings a week at port. (Tr. 35). Since June 1996, Applicant has attended 3 or four meetings a week. (Tr. 36). Applicant plans to attend the same number of AA meetings in the future but he realizes he cannot plan too far in the future as one of the most important principles of AA is to take each day one day at a time. Applicant is currently working through the fourth Step of the 12 Step program because he has had to reconcile many events in his life. (Tr. 37).

Character reference A has tracked Applicant closely in 1995 and was informed Applicant has been attending AA five times a week and has been abstinent. Applicant is the top performer. Reference A also testified he has been Applicant's supervisor for 7 years. (Tr. 47). Applicant was scheduled to be promoted in June 1996 but decided to transfer to a shore position instead. (Tr. 56-57).

Character reference B supervised Applicant from August through November 1995. He recommended Applicant for a supervisory position based on skill and caliber. Applicant's alcohol problem is definitely in the past.

Character reference C has known Applicant since 1991, and they have sailed on six missions together. Applicant has served as assistant supervisor on many occasions, and reference C has never seen Applicant use alcohol at sea.

POLICIES

Enclosure 2 of the Directive set forth policy factors which must be given binding consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors 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 factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

Alcohol Abuse

Factors Against Clearance:

1. Habitual or episodic consumption of alcohol to the point of intoxication or impairment.
2. Alcohol-related incidents....

4. Drinking on the job, reporting to work in an intoxicated or hungover condition...intoxication occurring during, and immediately following, luncheon breaks.

Factors for Clearance:

None.

Poor Judgment

There are no supplemental factors under Criterion i; however, a person's conduct under one of the criteria may also constitute poor judgment or unreliability.

General Policy Factors

Every security clearance decision must include a consideration of the following general policy factors to assess the chances of recurrence in the future. Those factors include: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation for the conduct; (5) the absence or presence of rehabilitation; and, (7) the probability the circumstances will continue or recur in the future.

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 all the factual allegations under Criterion m (alcohol abuse) and Criterion i (acts of omission or commission indicative of poor judgment, unreliability and untrustworthiness) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to the sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

The Government has established a case of alcohol abuse under Criterion m and a case of poor judgment under Criterion i. Except for one year of abstinence in 1985, Applicant has lived with a serious alcohol problem approaching 30 years. Overall, Applicant engaged in habitual abuse of alcohol although he may have engaged in episodic abuse on occasion. In the 1960s, he drank everyday and to excess on the weekends. By 1985 he was drinking hard liquor, and after 1986, he was drinking to become intoxicated.

Applicant's alcohol-related incidents began in 1971 when Applicant was caught driving while under the influence of alcohol. [\(U\)](#) The alcohol-related incidents continued when Applicant was punished for using abusive language in 1978. Another dui in April 1979 was followed by more military punishment in 1985 for drunk and disorderly conduct. While working for his present employer, Applicant received a reprimand in January 1993 for smelling of alcohol in March and October 1992. In October 1994, he was reprimanded for being intoxicated in his car at his place of employment.

Applicant's treatment occurred in 1978 when he was ordered to seek counseling after the abusive language incident. In April 1979, Applicant was ordered to attend the safety action program. In September 1985, Applicant was diagnosed alcohol dependent and referred for more treatment and received treatment in November 1985 for a relapse of alcohol dependence. The 1985 treatment had a positive effect on Applicant as he refrained from alcohol for approximately a year. However, returned to alcohol abuse in 1986.

Applicant's repeated unsuccessful rehabilitation efforts of 1978, 1979 and 1985 call for the application of mitigating factor number four under alcohol abuse. Because Applicant continued to drink after his treatment in 1985 and was involved in additional alcohol-related incidents in 1992 and 1994, the mitigating factor recommends completion of a rehabilitation program, and abstinence from alcohol use for three years, together with regular participation in AA or similar organization.⁽²⁾ Applicant does not meet any of the mitigating factors. First, Applicant has not completed a rehabilitation program. Second, Applicant's praiseworthy participation in AA and abstinence has only been 15 months, or less than half the time called for by the mitigating factor.

Applicant's positive character evidence, including his top performance evaluations from his coworkers and supervisors, and his 15 months of abstinence with strong ties to AA, has been carefully considered but is insufficient to meet his ultimate burden of persuasion, given his long history of alcohol abuse and alcohol-related incidents.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.
- c. Against the Applicant.
- d. Against the Applicant.
- e. For the Applicant.
- f. Against the Applicant.
- g. For the Applicant.
- h. Against the Applicant.
- i. Against the Applicant.
- j. For the Applicant.

Paragraph 2: AGAINST THE APPLICANT.

Factual support and reasons for the foregoing findings are set forth in FINDINGS OF FACT and CONCLUSIONS above.

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 Applicant.

Paul J. Mason

Administrative Judge

1. Driving an automobile also represents seriously poor judgment under Criterion i.
2. Applicant's evidence in mitigation and extenuation would be insufficient under mitigating factor #2 of alcohol abuse because the diagnosis of alcohol dependence also requires completion of a rehabilitation program and abstinence from alcohol for two years.