

DATE: January 24, 1997

In Re:

SSN: -----

Applicant for security clearance

DOHA CASE No. 96-0051

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

Appearances

FOR THE GOVERNMENT

Carla Conover, Esq.

Department Counsel

FOR THE APPLICANT

Warren D. Kozak, Esq.

STATEMENT OF CASE

On January 25, 1996, 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 denied or revoked. The SOR is attached. Applicant filed his Answer to the SOR on February 16, 1996.

The case was received by the undersigned on June 17, 1996. A notice of hearing was issued on July 15, 1996, and the case was heard on August 8, 1996. The Government and Applicant submitted documentary evidence. Testimony was taken from Applicant. The transcript was received on August 19, 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 Criterion G (excessive alcohol consumption) and Criterion H (drug involvement). Applicant admitted all the allegations and stated because (1) he voluntarily reported the adverse information; (2) sought medical assistance; and, (3) made positive behavioral changes, he should receive a security clearance.

Applicant is 27 years old and employed as a ----- for a defense contractor. He seeks a secret level clearance.

Applicant's alcohol use started in high school in 1984 and continued at least until June 1995. [\(1\)](#) Applicant was found

guilty in May 1988 for illegal possession of marijuana under the age of 21. In April 1990, Applicant was found guilty of driving while under the influence of alcohol (dui), fined a total of \$600, required to attend an alcohol safety action program, and had his license suspended for 6 months. From August 1990 to January 1991, Applicant attended outpatient treatment for alcohol abuse.⁽²⁾

Applicant was found guilty of dui in September 1994 and he was fined and his license was suspended for a year. He received outpatient treatment from January to August 1995 at the same center he attended in 1990.

Applicant has used marijuana with varying frequency from 1984 to at least October 1994.⁽³⁾ As a juvenile, he received treatment from June to July 1985 for substance abuse disorder. He was found guilty of marijuana possession in August and October 1989.⁽⁴⁾ Following a possession of marijuana conviction in October 1994,⁽⁵⁾ Applicant received outpatient treatment from January 1995 to August 1995 for Cannabis abuse.

Although his testimony is somewhat ambiguous concerning Alcoholics Anonymous (AA) participation, Applicant began attending in 1991 and 1992 for about 20 months (Tr. 28), but did not have a sponsor. (Tr. 30). Applicant did not try to work the 12 Steps but reached Step 7 of the 12 Steps (Tr. 30), and, at some time in 1993 resumed his normal lifestyle, studying his scholastic courses rather than the principles of AA. (Tr. 31). He returned to AA for a few meetings some time in 1994 because his counselors recommended he attend AA rather than large social events where there would be drinking. (Tr. 37). However, even though he was convicted of dui in September 1994, he did not attend AA at any time between September and December 1994.⁽⁶⁾ Applicant did not return to AA until January 1995 when he was also in outpatient treatment. The treatment lasted six months. Applicant's attendance has reduced from two or three times a week to once every two weeks since June 1996. However, he still does not seriously commit to the Steps. (Tr. 41). He attended the meetings to hear the stories of what would happen to him if he became an abuser. (Tr. 53). Applicant does not believe he is an alcoholic. (Tr. 43).

Character reference A has observed Applicant's trustworthiness on the job since 1992. Documentation verifies Applicant completed the alcohol safety action program on August 9, 1995 and Applicant's urine screen was negative on August 7, 1996. Applicant has been an above average performer at work since March 1992. Applicant's attendance has been consistently good while he has continually become more mature and responsible on the job.

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:

Criterion G (Excessive Alcohol Consumption)

Factors Against Clearance:

1. alcohol-related incidents away from work, such as driving while under the influence....
3. diagnosis by a credentialed medical professional or alcohol abuse or alcohol dependence.
5. consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Factors for Clearance:

None.

Criterion H (Drug Involvement)

Factors Against Clearance:

1. any drug abuse.

Factors for Clearance:

None.

General Policy Factors (Whole Person Concept)

Every security clearance decision involves a careful consideration of several additional factors comprising the whole person concept. The factors include: (1) the nature and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence of absence of rehabilitation; (7) other behavioral changes; (8) the potential for pressure or coercion; and, (9) the likelihood for continuation or recurrence.

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 G (excessive alcohol consumption) and Criterion H (drug involvement) 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

A case of excessive alcohol abuse has been established under Criterion H. Applicant has four alcohol-related incidents between 1984 and June 1995. He was almost 19 years old (May 1988) when he was convicted of possession alcohol under the age of 21. He encountered his first dui in April 1990 and attended the alcohol safety action program for the first time. Even after completion of the safety action program, the outpatient treatment and AA attendance from 1991 to 1993, Applicant resumed drinking on weekends in October 1992 and drank to intoxication about once a month. Applicant was convicted a second time of dui in September 1994 and again was required to complete the alcohol safety action program along with treatment and AA.

Factors against clearance that raise security concerns under Criterion G (excessive alcohol abuse) are alcohol-related incidents. Applicant's dui in April 1990 and September 1994 clearly raise questions about Applicant's judgment and reliability. Even after Applicant's diagnosis in 1990 of alcohol abuse, his completion of outpatient treatment and the safety action program, Applicant resumed drinking in October 1992 and ultimately received the dui a second time in September 1994. Even though he said he stopped drinking after the September 1994 dui, he drank at least three more occasions, one time occurring on October 28, 1994 when he was caught with possession of marijuana and carrying a

concealed weapon.

The usual indicators of successful rehabilitation from alcohol abuse are successful completion or inpatient or outpatient treatment and aftercare, together with attendance in AA or some similar support organization. The positive fact Applicant successfully completed outpatient treatment in January 1991 must be weighed against the negative fact Applicant resumed regular alcohol consumption in October 1992 by drinking twice a month on the weekends, and ultimately receiving the dui in September 1994. The positive fact Applicant attended AA on a regular basis from some time in 1991 to 1993 must be weighed against the negative fact Applicant did not actively work the 12 Steps or other cornerstones of the AA program.

The most successful track records to recovery are usually those built around a strong inpatient or outpatient treatment program followed by an after care program that is woven into the Applicant's lifestyle. The measure of success of any kind of rehabilitation program depends upon a number of factors including the age of the enrollee. Although Applicant completed the first program in January 1991, the record contains abundant evidence demonstrating Applicant was not committed to recovery from his alcohol problem. First, though he had knowledge of the Steps, he declined to work the Steps, a definite sign of denial of an alcohol problem. Second, he had no sponsor or any other indicia of an external support system. Third, he resumed drinking on a regular basis in October 1992. Even though Applicant resumed drinking in October 1992, the first unsuccessful recovery effort is extenuated by Applicant's youthful age.

However, the record shows Applicant learned apparently little from his first confrontation with alcohol-related incidents and treatment the second time around. First, although he has been in AA since January 1995, his attendance has reduced dramatically. Second, it is difficult to gauge the effectiveness of AA and the member's recovery efforts when the member does not try to incorporate the 12 Steps or other methodology into his personal life. Third, even though Applicant was diagnosed as alcohol dependent during his outpatient treatment in 1995, he still does not believe he is an alcoholic. Fourth, other than his sport interests, there is little evidence of any external support system, an essential element of successful recovery.

Applicant's drug involvement between 1984 and October 1994 establishes a case under Criterion H. Even though Applicant was 15 years of age in 1985, he received treatment for substance abuse. At the age of 20 in June 1989, he was found guilty of possession of marijuana. Two months later he had some marijuana in his possession. On October 28, 1994, he was found guilty of marijuana possession and a carrying a concealed weapon charge was dismissed. He received treatment for cannabis abuse from January to August 1995. Finally, he used drugs while holding a clearance and probably would have continued to use marijuana had he not been caught by law enforcement.

Applicant's favorable character evidence weighs in his favor but cannot supplant the lack of rehabilitative evidence to justify with complete confidence that Applicant's past drug and alcohol abuse will not recur in the future. Considering the seven alcohol and drug-related offenses between 1985 and September 1994, the lack of a strong commitment to AA and a strong network of support in recovery, Applicant's character evidence falls short of carrying his ultimate burden of persuasion in demonstrating he warrants access to classified information.

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. For the Applicant.
- e. Against the Applicant.

f. Against the Applicant.

g. For the Applicant.

Paragraph 2: AGAINST THE APPLICANT.

a. Against the Applicant.

b. Against the Applicant.

c. For the Applicant.

d. For the Applicant.

e. Against the Applicant.

f. Against the Applicant.

g. Against the Applicant.

h. For the Applicant.

i. Against the Applicant.

Factual support 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. There is no reference in the record describing Applicant's alcohol abuse before 1991 but it is fair to find he was abusing alcohol as evidenced by his possession of alcohol conviction in 1988 and his dui conviction in April 1990. Although he could not recall when he resumed drinking after treatment (Tr. 33), he stated in Government Exhibit #4 he drank on weekends twice a month (drinking to intoxication about once a month) between October 1992 and September 1994. Even though he testified he consumed no alcohol after September 1994 (Tr. 38), he stated in Government Exhibit #4 he drank on 2 occasions between September and December 1994, drinking to intoxication on the last day of 1994. In Exhibit #4, Applicant stated he had not used alcohol from January 1995 to November 1995. But he modified his position on November 9, 1995 (Government Exhibit #3) and recalled drinking in June 1995. While Applicant testified he presently drinks at the most 3 beers a year (Tr. 24), he explained his future intentions for alcohol use by indicating, "I may do some toasts at weddings, or you know, possibly drink a beer at a ball game or something, if that, you know? I don't have a desire to get totaled, or you know, drunk per se." His language strongly infers alcohol use more than 3 times a year.

2. In his response to the being arrested in the Fall of 1990 for drunk in public, Applicant explained the charges were dismissed because no proof was offered to show intoxication. However, it is found based on the language he used to explain why the charges were dismissed that he had consumed alcohol but not enough to be considered intoxicated.

3. Government Exhibit #4 indicates marijuana use about 3 times between October 1992 and October 28, 1994. However, the medical records (Government Exhibit #5) reflect marijuana used once a week as a teenager and twice a week until October 28, 1994.

4. Applicant admitted a small amount was found in October 1989.
5. The carrying a concealed weapon charge was dropped.
6. Applicant also denied drinking any alcohol after September 1994, yet, Government Exhibit #5 reflects he was drinking alcohol when he was arrested for possession of marijuana on October 28, 1994.