

Date: November 15, 1996

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0218

DECISION OF ADMINISTRATIVE JUDGE

ROBERT R. GALES

APPEARANCES

FOR THE GOVERNMENT FOR THE APPLICANT

Earl C. Hill, Junior, Esquire

Department Counsel

Pro se

STATEMENT OF CASE

On April 16, 1996, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865, "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, "Defense Industrial Personnel Security Clearance Review Program" (Directive), dated January 2, 1992, as amended and modified, 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 a clearance should be granted, continued, denied, or revoked.

A copy of the SOR is attached to this Decision and included herein by reference.

In a sworn written statement, dated April 30, 1996, Applicant responded to the allegations set forth in the SOR, and elected to have his case decided on a written record, in lieu of a hearing. Department Counsel submitted the Government's written case on July 12, 1996. A complete copy of the file of relevant material (FORM) [\(1\)](#) was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted a letter on August 12, 1996, to which Department Counsel offered no objection. The case was initially assigned to Administrative Judge Kathryn oen Braeman on September 17, 1996, but due to caseload considerations, was subsequently reassigned to, and received by, this Administrative Judge on November 13, 1996.

FINDINGS OF FACT

Applicant has admitted all of the factual allegations pertaining to alcohol consumption under Criterion G (subparagraphs 1.a. through 1.h.). Those admissions are hereby incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:⁽²⁾

Applicant is a thirty-eight year old male employed by a defense contractor, and he is seeking to retain a SECRET clearance which was originally granted to him in January 1982.

Applicant has an alcohol problem which has been diagnosed by credentialed medical professionals as alcohol dependency; chemically dependent, alcohol, continuous pattern; and alcohol dependence, early full remission. He commenced consuming alcohol sometime during his late adolescence or early teen years, described variously as twelve, fourteen, and fifteen years of age. While his initial consumption was due to curiosity and peer pressure, his eventual consumption was for seemingly uncontrollable maintenance.⁽³⁾

Applicant's consumption until the age of twenty was rather unremarkable, but thereafter, it took on alarming proportions. He consumed different quantities of a variety of alcohol. At times, over a three to five hour period, he consumed up to five 12 ounce beers per night, about two or three times per week. At other times, he consumed between a pint and more than a quart of whiskey, vodka, or rum, per day, on a daily basis. By April 1995, Applicant was consuming over a quart of vodka or beer, on a daily basis. Applicant contends that he has been abstinent for over one year, and that he will spend the remainder of his life alcohol-free.

His lengthy period of intemperate consumption of alcohol had a significant impact on his health, and resulted in blackouts,⁽⁴⁾ three alcohol-related withdrawal grand mal seizures, in October and December 1994, and April 1995, and an enlarged liver.

Furthermore, on two occasions, in September 1992 and April 1995, his excessive consumption of alcohol resulted in two alcohol-related arrests for driving while intoxicated (DWI). The first such incident occurred shortly after he had been involved in an earlier non-alcohol related motor vehicle accident in which he had totaled his automobile. He subsequently borrowed his mother's automobile and, because he was upset over the accident, consumed a quantity of beer, claimed by Applicant to have been a little over a pint, during a two hour period. A breathalyzer test was administered to Applicant, and it registered 0.25 percent.⁽⁵⁾

His second incident occurred after he had consumed four or five 12 ounce beers over a period of about two hours. Applicant failed a field sobriety test administered by the police at the scene, and then refused to allow a breathalyzer test to be administered.⁽⁶⁾

As a result of the first conviction, Applicant's operator's license was revoked for six months, and he was required to attend an alcohol education program. The second conviction resulted in a revocation for five years, and he was required to enroll in an alcohol evaluation/abuse facility. He should be eligible to resume driving privileges in 2000.

Applicant received inpatient alcohol treatment and rehabilitation,⁽⁷⁾ under the direction of a physician, from April 18, 1995 until May 16, 1995, for a condition, with an initial diagnostic impression, in part, of alcoholism, alcohol withdrawal syndrome, and alcohol related seizures.⁽⁸⁾ The initial diagnosis was chemically dependent to alcohol, continuous pattern,⁽⁹⁾ and the final diagnosis was alcohol dependency.⁽¹⁰⁾ The program consisted of individual counseling, group therapy, didactic lectures, and the first five steps of the Alcoholics Anonymous (AA) twelve step program. At the time of his discharge, his progress was deemed "satisfactory," and his prognosis appeared to be "fair." The aftercare recommendations were: abstinence; attending ninety AA meetings in ninety days; and weekly individual counseling with an outpatient support group, for a period of at least six months. The optimum aftercare plan urged upon Applicant was a half-way house.

Upon his discharge from the inpatient treatment and rehabilitation program, on the following day, Applicant enrolled in the half-way house aftercare program. He received aftercare treatment and rehabilitation from May 17, 1995 until May 24, 1995, for a condition diagnosed as chemically dependent, alcohol, continuous pattern. The program, as presented to Applicant on May 18, 1995, consisted of eleven objectives, including attendance at five AA meetings per week. Within five days of the commencement of treatment, Applicant's ambivalence towards the program, and unhappiness about

remaining in treatment, were noticed. He then packed his belongings and departed the facility without authority, and without notifying the staff or any of his peers.⁽¹¹⁾ He subsequently contended that he had been "coerced" by the staff of his inpatient program, through "peer group intimidation," to enter the aftercare program even though he did not feel it was appropriate for him.⁽¹²⁾ He stated that he "had the problem under control" and complained that the program was very expensive.

Six months later, on November 29, 1995,⁽¹³⁾ apparently to comply with the mandate of the court or his probation officer,⁽¹⁴⁾ Applicant enrolled in another treatment and rehabilitation program. He received outpatient treatment from that date until at least February 1996 for a condition diagnosed as alcohol dependence, early full remission. The program consisted of one hour of individual counseling, one time per week, later reduced to two times per month; three hours of group counseling, one time per week; and two to four AA meetings per week.

Applicant has been employed by his present employer, or subsidiary thereof, since August 1988, with the exception of a lengthy period of unemployment from June 1994 until June 1995. The quality of his performance is not known.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines which must be considered in the evaluation of security suitability. In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into those that may be considered in deciding whether to deny or revoke an individual's eligibility for access to classified information (Disqualifying Factors) and those that may be considered in deciding whether to grant an individual's eligibility for access to classified information (Mitigating Factors).

An Administrative Judge need not view the adjudicative guidelines as inflexible ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines, when applied in conjunction with the factors set forth in the Adjudicative Process provision -- an expansion of the factors set forth in Section F.3. of the Directive, are intended to assist the Administrative Judge in reaching fair and impartial common sense decisions.

Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," all available, reliable information about the person, past and present, favorable and unfavorable, should be considered in making a meaningful decision. The Adjudicative Process factors which an Administrative Judge should consider are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (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 or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Based upon a consideration of the evidence as a whole, I find the following adjudicative guidelines most pertinent to an evaluation of the facts of this case:

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;
- (3) diagnosis by a credentialed medical professional⁽¹⁵⁾ of alcohol abuse or alcohol dependence;
- (4) habitual or binge consumption of alcohol to the point of impaired judgment;
- (5) consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

Conditions that could mitigate security concerns include:

None apply.

Since the protection of the national security is the paramount determinant, the final decision in each case must be arrived at by applying the standard that the issuance of the clearance is "clearly consistent with the interests of national security,"⁽¹⁶⁾ or "clearly consistent with the national interest." For the purposes herein, despite the different language in each, I have concluded that both standards are one and the same. In reaching this Decision, I have endeavored to draw only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have attempted to avoid drawing inferences that are grounded on mere speculation or conjecture.

In the decision-making process, the burden of producing evidence initially falls on the Government to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. If the Government meets its burden, the heavy burden of persuasion then falls upon the applicant to present evidence in refutation, explanation, extenuation or mitigation sufficient to overcome the doubts raised by the Government's case, and to ultimately demonstrate that it is clearly consistent with the national interest to grant or continue the applicant's clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to the potential for, rather than actual risk of, compromise of classified information.

One additional comment is worthy of note. Applicant's loyalty and patriotism are not at issue in these proceedings. Section 7 of Executive Order 10865 specifically provides that industrial security clearance decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than loyalty and patriotism. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied decision as to Applicant's loyalty or patriotism.

CONCLUSIONS

Upon consideration of all the facts in evidence, an assessment of the witness credibility, and after application of all appropriate legal precepts and factors, including those described briefly above, I conclude the following with respect to each allegation set forth in the SOR:

With respect to Criterion G, the Government has established its case. Applicant's alcohol abuse has resulted in behavior that adversely affected his judgment and reliability, and led to periodic and episodic impairment or intoxication during which Applicant abandoned varying degrees of reason, caution, responsibility, and acceptable conduct. On two such occasions, his excessive consumption of alcohol resulted in arrests for DWI. Furthermore, a breathalyzer test administered to Applicant after the first incident revealed very high concentrations of alcohol in his system.

Of significant concern was Applicant's abandonment of the recommended aftercare program in May 1995, after completing the inpatient treatment and rehabilitation program with the understanding that he would transfer into the half-way house and participate in the entire aftercare program. In doing so, he ignored the recommendations of credentialed medical professionals that he should attend ninety AA meetings in ninety days, and undergo weekly individual counseling with an outpatient support group, identified as the half-way house aftercare program, for a period of at least six months. Instead, until ordered to attend another program, for six months, he avoided any program, and failed to comply with the AA recommendations.

Applicant effectively precluded acceptance of mitigating factor (4) because he has failed to comply with several

segments of that mitigating factor. He did not successfully complete the aftercare program, did not frequently participate in AA meetings to the extent recommended, and did not receive a "favorable" prognosis by a credentialed medical professional. Applicant's eventual completion of another outpatient program, one with less intensive requirements than the one at the half-way house, generated a "guarded" prognosis. Furthermore, although Applicant may have some limited AA experience, his reluctance to relate to his "blue collar" peers effectively precluded his complete acceptance of the program.

While it appears that Applicant has abstained since about mid-April 1995, and he is encouraged to continue to do so, I remain concerned regarding the long-term effectiveness of Applicant's rehabilitation, and the level of his acceptance of his condition. When afforded opportunities to be candid regarding his alcohol abuse, he has denied the continuing presence of a problem, and contended that he could handle it without further treatment; he has been less than candid regarding his past motivation for undergoing treatment and rehabilitation; and he has minimized the true extent of the problem. There are simply too many variables, with loose ends, to satisfy my concern regarding my unfavorable impressions of Applicant's motivation, rehabilitation, and candor.

Under the circumstances, I simply do not believe that there is sufficient demonstration of a truly successful completion of a transformation from a long-term alcohol abuser to a motivated abstinent person, and to provide the basis for a conclusion that such conduct will not continue or recur in the future. Under the evidence presented, I possess no confidence that Applicant's alcohol abuse is a thing of the past, or that it will not recur.

I do not take this position lightly, but based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my evaluation of the evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under Enclosure 2 of the Directive, I believe that Applicant has failed to mitigate or overcome the Government's case. The alternative leaves me with grave questions and doubts as to Applicant's continued security eligibility and suitability. Accordingly, allegations 1.a., 1.b., and 1.d. through 1.h. of the SOR are concluded against Applicant.

Applicant's combined use of alcohol and marijuana, which occurred during the period 1973-75, while he was a teenager, [\(17\)](#) has not been repeated thereafter, and I consider it to be stale, with little current security significance. Thus, I conclude that Applicant has, through evidence of extenuation and explanation, successfully mitigated and overcome the Government's case. Accordingly, allegation 1.c. of the SOR is concluded in favor of Applicant.

For the reasons stated, I conclude Applicant is not suitable for access to classified information.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive, are:

Paragraph 1. Criterion G: AGAINST THE APPLICANT

Subparagraph 1.a.: Against the Applicant

Subparagraph 1.b.: Against the Applicant

Subparagraph 1.c.: For the Applicant

Subparagraph 1.d.: Against the Applicant

Subparagraph 1.e.: Against the Applicant

Subparagraph 1.f.: Against the Applicant

Subparagraph 1.g.: Against the Applicant

Subparagraph 1.h Against 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 Applicant.

Robert R. Gales

Chief Administrative Judge

1. The Government submitted nine items in support of its contentions.
2. Applicant has been afforded several opportunities, over a multi-year period, to furnish detailed scenarios of his alcohol abuse history, and in doing so, his stories have been inconsistent. In evaluating the conflicting evidence before me, I have chosen to give greater credibility, and hence, greater weight, to admissions made by him to health care professionals, during treatment, rather than to individuals involved in the investigation or adjudication process. Accordingly, in reconstructing his alcohol abuse history, I have created a mosaic of his various admissions, along with other evidence, and I find this mosaic to represent the actual facts.
3. *See*, Item 8, at 5.
4. Applicant admitted having experienced blackouts. *See*, Item 8, at 1; and Item 8, at 5. He also denied having blackouts. *See*, Item 5, at 4.
5. *See*, Item 8, at 1.
6. *See*, Item 5, at 2.
7. Applicant has offered three explanations for attending the inpatient treatment and rehabilitation program. The initial explanation, found in his response to a question appearing in his National Agency Questionnaire, completed on June 16, 1995 (Item 4, at 4), was that he attended the program on the advice of his attorney. Expanding on that explanation, in his sworn, written statement, dated February 5, 1996, (Item 6, at 1), Applicant stated that he enrolled in the program voluntarily, on the advice of his attorney, to minimize the potential sentence from the then-pending court action. The third, and most recent explanation, appearing in his response to the FORM, dated August 12, 1996, is diametrically opposed to the other two. In that letter, Applicant contends that after his second DWI, he came to the realization that he had a problem with alcohol, and sought medical rehabilitation. In this instance, I believe the first two explanations are more credible than the most recent one, which is entirely self-serving, and I have, accordingly, given much more weight to them.
8. *See*, Item 8, at 2.
9. *See*, Item 8, at 7.
10. *See*, Item 8, at 8.
11. *See*, Item 8, at 9.
12. Applicant explained that his peers were all "blue collar" persons and he felt out of place as a "white collar" person , and could not "relate" to them. *See*, Item 8, at 5.
13. Despite his position *vis-a-vis* AA participants, at the time of his November 1995 intake interview, Applicant claimed to be attending up to two AA meetings per week, without a sponsor.

14. The initial intake/assessment presents the problem as: "Client has been required by Probation to continue in aftercare counseling." *See*, Item 9, at 1. However, his evaluation form states that the aftercare counseling was "required by judge." *See*, Item 9, at 4.

15. "Credentialed medical professional" has been defined as "licensed physician, licensed clinical psychologist, or board certified psychiatrist."

16. *See*, Executive Order 12968, "*Access to Classified Information*;" as implemented by Department of Defense Regulation 5200.2-R, "*Personnel Security Program*," dated January 1987, as amended by Change 3, dated November 8, 1995. However, the Directive uses both "clearly consistent with the national interest" (*see*, Sec. B.3; Sec. C.2.; and Sec. D.2.; Enclosure 3, Sec. 1.; and Sec. 25), and "clearly consistent with the interests of national security" (*see*, Enclosure 2 (Change 3), Adjudicative Guidelines, at 2-2).

17. *See*, Item 7, at 1.