

DATE: February 27, 1998

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0343

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Michael H. Leonard, Esq., Department Counsel

FOR APPLICANT

Pro se

STATEMENT OF THE CASE

On August 25, 1997, 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. Applicant filed his Answer to the SOR on September 12, 1997. Applicant elected to have his case decided on a written record. The Government provided a copy of the File of Relevant Material (FORM) on October 23, 1997. Applicant received the FORM on November 3, 1997. His response was due 30 days later or by December 3, 1997. No response was received. The case was received by the undersigned for decision on February 8, 1998.

RULINGS ON PROCEDURE

Pursuant to Paragraph 17 of Enclosure 3 of the Directive, allegation 1f shall be amended by changing the date of arrest to May 29, 1996, to conform the allegation to the underlying evidence.

FINDINGS OF FACT

The Following Findings of Fact are based on the FORM. The SOR alleges excessive alcohol consumption (Criterion G). Applicant's admissions to all the factual allegations shall be incorporated into the Findings of Fact.

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

Applicant has engaged in excessive alcohol consumption between 1973 and May 1996. Applicant was arrested on May 22, 1973 (SOR-1b.i) for operating a motor vehicle while under the influence of alcohol (DUI) and involuntary manslaughter. Applicant was found guilty. On September 17, 1983 (SOR-1b.ii), Applicant was charged with

(1)

drunkenness and disorderly conduct. He was fined \$150.00.

On December 23, 1987, Applicant was charged with (1) driving while intoxicated (DWI) and (2) failing to drive in the correct lane. Applicant had been drinking at a party but did not think he was intoxicated. Applicant was found guilty of the DWI and was fined and ordered to attend safe driving school. The remaining charge was dismissed. On October 2, 1991, Applicant attended an outpatient program from October 2, 1991 to October 14, 1991. Applicant failed to complete the program and continued to consume alcohol.⁽²⁾

On August 14, 1992, Applicant was charged with DWI and sentenced to ten days of jail that was served on five consecutive weekends.⁽³⁾ Applicant was ordered to attend a safe driving school, obtain an alcohol evaluation and enter an outpatient treatment program. Applicant was arrested on May 2, 1996 for DWI and involvement in an auto accident.⁽⁴⁾ Applicant was convicted of DWI and sentenced to five months in jail. He was also ordered to enroll and complete an alcohol program to be completed by the time he was released from prison.

Applicant has stated repeatedly that he does not have a problem with alcohol. However, the alcohol-related incidents and Applicant's statements demonstrate that over the years Applicant has denied or refused to admit the full extent of his alcohol problem. Applicant's denial of the magnitude of his alcohol problem, placed his security clearance application in jeopardy back in 1988. Applicant's subsequent alcohol-related incidents since 1988 have again placed his security clearance application in jeopardy while having at least some indirect impact on his financial situation. Even though Applicant may have experienced no blackouts or memory loss over the years, he definitely has used poor judgment by trying to operate an auto while under the influence of alcohol. Although Applicant claims he has altered his drinking habits to keep him away from an auto after dark, he continued to drink 20 to 25 days a month and consumes between two and six containers of beer on each occasion. In addition, Applicant has offered no independent evidence of how he has modified his drinking habits.

POLICIES

Enclosure 2 of the Directive sets 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:

Excessive Alcohol Consumption (Criterion G)

Factors Against Clearance:

1. alcohol-related incidents away from work;
4. Habitual or binge consumption of alcohol to the point of impaired judgment.

Factors for Clearance:

None.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, 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 or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) the likelihood of

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 **excessive alcohol consumption** (Criterion G) 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 excessive alcohol consumption under Criterion G. Applicant has a long history of alcohol abuse that dates to 1973. His drinking pattern over many years has been drinking on 20 to 25 occasions every month. Since 1973, Applicant was convicted of six alcohol-related offenses. Five of those offenses involved trying to drive an auto while under the influence of alcohol. The most recent DUI offenses in 1992 and 1996 involved accidents.

The alcohol-related incidents clearly show a pattern of drinking and driving an auto until May 1996. There is no evidence to show that the pattern will not continue in the future. Even though Applicant claims he has made changes supportive of control over his drinking, there is no evidence in the record to corroborate his claim. The record shows that the denial mechanisms that were demonstrated in 1991 during his brief and unsuccessful participation in the treatment program, are still very active.

Given Applicant's long history of alcohol abuse, characterized by six alcohol-related offenses, the ongoing denial and minimization that Applicant is still struggling with, and the absence of any evidence showing positive changes in behavior supportive of sobriety, there is a disqualifying chance that Applicant's alcohol abuse will continue or recur in the future.

After considering all the factors under the whole-person concept, the ultimate decision against clearance remains the same because the nature and extent of Applicant's alcohol problem, the six alcohol-related incidents, together with the absence of behavioral changes, demonstrate that the alcohol problem is likely to continue or recur in the future.

FORMAL FINDINGS

Having weighed and balanced the specific policy factors with the general policy factors (whole-person concept), Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (**excessive alcohol consumption**): AGAINST THE APPLICANT.

- a. Against the Applicant.
- b. Against the Applicant.

c. Against the Applicant.

d. Against the Applicant.

e. Against the Applicant.

f. 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.

Paul J. Mason

Administrative Judge

1. Both the 1973 charge and the 1983 charge were included in an SOR issued to Applicant on January 25, 1988.
2. The attending counselor noted Applicant's repeated resistance to the objectives of the program. Applicant's attendance and commitment to the program was poor. Applicant was told he could continue his treatment in another program offered by another facility, but there is no evidence he resumed additional treatment.
3. Applicant had just left the hospital and decided to have a few beers before continuing his journey home. He became lost and stopped at a gas station to ask for directions. Two police officers approached him in the station and arrested him for DUI. He did not believe he was intoxicated nor could recall being involved in an accident.
4. Police records reflect that on May 29, 1996, Applicant was arrested and charged with DWI and involvement in an auto accident, after failing three field sobriety tests and having an alcohol odor on his breath.