

DATE: February 14, 1997

In Re:

SSN: -----

Applicant for security clearance

ISCR OSD CASE No. 96-0408

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 June 7, 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 August 5, 1996.

The case was received by the undersigned on September 16, 1996. A notice of hearing was issued on October 22, 1996, and the case was heard on November 8, 1996. The Government submitted documentary evidence. Testimony was taken from Applicant. The transcript was received on November 15, 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 (alcohol consumption). Applicant admitted subparagraphs 1b, 1c, 1d, and 1e. He denied 1a with an explanation he reduced his alcohol consumption after high school and college. He denied subparagraph 1f with the explanation he stopped drinking alcohol.

Applicant is 22 years of age and employed as an ----- by a defense contractor. He seeks a secret clearance.

Applicant periodically consumed alcohol to excess from 1990 to March 1996. According to his sworn statement (GE #2), Applicant was consuming about eight beers a month at age 16 (1990); he was drinking about as 12-pack of beer a

month at age 17 (1991); he was drinking about as fifth of whiskey a month and presumably the same amount of beer every month at age 18 (1991). From the fall of 1992 to the fall of 1995, Applicant was drinking a case a week. From the fall of 1995 to March 14, 1996, he consumed about a case of beer every 2 weeks. (GE #2). According to his testimony, his drinking frequency from August to December 1995 was basically on Saturday, drinking a few beers with the football team after the game. (Tr. 29). After the football season (January to June 1996), Applicant usually drank about ten beers one night a week, unless there was a big event scheduled during the week. Then, he would drink on two nights during the week. (Tr. 30).

Since June 1996, Applicant generally does not drink during the week because of football practice, school and work. (Tr. 31, 35). When he goes out once a month, he drinks about a 12-pack. He has not consumed whiskey since June 1996.

On January 21, 1992 (Applicant was 17 years old), Applicant was charged with (1) operating a car with alcohol in body while a provisional licensee, (2) transporting liquor in the passenger compartment of an auto with the seal broken, (3) driving while impaired, (4) speeding, and (5) civil revocation drivers license. He pled guilty to counts (1), (2), and (4) and was sentenced to 90 days in jail, and required to surrender his license. Applicant also pled guilty to count (3), driving while impaired, and was sentenced to additional incarceration along with an order to receive an alcohol assessment, therapy, and to abstain from alcohol for a year. Applicant has not been assessed or completed the therapy. (Tr. 21).

On August 16, 1993, Applicant was charged with count (1), driving while impaired, and count (2) driving while license revoked. Applicant pled guilty to both counts and received a \$1000 fine and was ordered to obtain another assessment and therapy. He also received 30 days in jail. Applicant has not been assessed and has not started therapy. (Tr. 21).

Applicant did not obtain the assessment or receive therapy because he did not think he consumed any more alcohol than his friends. (Tr. 21).⁽¹⁾ He was also embarrassed about the requirement of having to get treatment. (Tr. 21).

In January 1994, Applicant was charged and plead guilty to urinating in his front yard.⁽²⁾

In January 1995, Applicant was fined for underage possession of liquor. Applicant explained he was four months short of 21 years of age and knew he should not have purchased the alcohol. (GE #2).

In response to subparagraph 1f of the SOR, Applicant indicated he stopped drinking. However, at the hearing, he indicated his drinking has decreased because of his involvement in sports, school and work. (Tr. 35). When asked to reconcile the discrepancy, Applicant stated, "I don't drink enough to think that I do drink, really." (Tr. 38).⁽³⁾

In approximately July 1996, Applicant's sister returned home from rehabilitation. Her successful rehabilitation experience changed his life. He feels that if she can beat her former drug habit, then he can overcome his alcohol problem, if he should ever get to the point where he believes he has an alcohol problem. (Tr. 49). He does not think he drinks as much as he used to. (Tr. 50).

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....
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, 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 Criterion G (excessive alcohol consumption) 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 primary issue in this case is whether Applicant's alcohol-related incidents and frequency of alcohol use disqualify Applicant from security suitability. Although the record contains no diagnosis of alcohol abuse or alcohol dependence, there is a strong basis to conclude Applicant has a problem with alcohol and has taken no convincing steps to prevent the past alcohol-related conduct from recurring in the future.

Even though he was a juvenile at the time, the alcohol-related conviction in January 1992 started a pattern of alcohol-related incidents that are not mitigated by the simple passage of time. First, the severe sentence in January 1992 had little effect on Applicant because he did not comply with all conditions. Second, he did not stop or slow his drinking pattern as is evidenced by his second driving while impaired conviction in August 1993. Third, the fact that he had no license (part of his January 1992 sentence was suspension of his license) did not stop him from driving in August 1993. Fourth, Applicant was again ordered to seek an assessment and therapy as a part of his sentence, and, he again declined to comply with the order for a second time.

Although not as severe, the more recent alcohol-related incidents in 1994 and 1995 reflect additional examples of Applicant's alcohol problem. Urinating on the front lawn in January 1994 raises questions about Applicant's judgment. He would not have had to relieve himself on the front lawn had he not been under the influence of alcohol. Defying the

law as Applicant did in January 1995 when he purchased the alcohol before he was old enough, also represents poor judgment.

Even though the two alcohol-related convictions occurred more than three years ago, Applicant still has not complied with all conditions of either sentence because he has not received an assessment or therapy. Believing he has no problem is not acceptable because the record shows the opposite. Relying on the advice of another does not excuse Applicant from his responsibility to complete the terms of his sentence while taking productive steps to mitigate the concerns of his excessive alcohol consumption.

Given (1) the two alcohol-related incidents in 1992 and 1993, (2) his failure to obtain an assessment and therapy, and, (3) the lack of credible and independent evidence demonstrating measures to responsibly address his alcohol abuse, Applicant's uncorroborated testimony is not sufficient to satisfy his ultimate burden of demonstrating he will not engage in excessive alcohol consumption or alcohol-related incidents in the future.

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. Against the Applicant.
- f. Against the Applicant.

Formal 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. He also talked with a friend who gave him the impression he did not need counseling. (Tr. 21).
2. Applicant explained he was having a party and simply had to relieve himself although he tried to be inconspicuous. (GE #2).
3. The inconsistency between the two positions has a negative impact on Applicant's overall credibility.