

December 11, 1996

In Re:

SSN:

Applicant for Security Clearance

ISCR OSD Case No. 96-0496

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL KIRKPATRICK

APPEARANCES

FOR THE GOVERNMENT

Matthew E. Malone, Esq.

Attorney-Advisor

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On July 10, 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 the attached 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 the Applicant, and which recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked.

The Applicant responded to the SOR in writing on August 3, 1996, and in his Answer he elected to have the case determined on a written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) to the Applicant on September 17, 1996. The Government submitted seven items in support of its contentions. The Applicant was instructed to submit information in rebuttal, extenuation or mitigation within 30 days of receipt. Applicant received the FORM on September 18, 1996, and his response was due by October 18, 1996. He submitted no additional material.

The case was assigned to the undersigned for resolution on October 29, 1996.

FINDINGS OF FACT

In his Answer to the SOR, Applicant clearly admitted the material facts alleged in SOR subparagraphs 1.a., 1.b., 1.d., 1.e., and 1.i., and those admissions are hereby incorporated herein as findings of fact. In addition, although he began his Answer to SOR subparagraph 1.f. by stating "I deny," he continued with an explanation in which he actually admitted the material facts of the allegation (that is, that he was excluded from a secured area by his employer due to the odor of alcohol on his person), and those admissions are hereby incorporated herein as findings of fact. Further, although

Applicant began his Answer to SOR subparagraph 1.g. by stating "I deny," he continued with an explanation in which he actually admitted the material facts of the allegation (stating that his denial was based solely upon uncertainty as to the time that he was counseled by his employer), and those admissions are hereby incorporated herein as findings of fact. Finally, although Applicant began his Answer to SOR subparagraph 1.h. by stating "I deny conditionally," he provided an explanation in which he actually admitted the material facts of the allegation (that is, that he resumed the consumption of alcohol subsequent to participation in the alcohol treatment program), and those admissions are hereby incorporated herein as findings of fact. The following additional findings of fact are entered as to each paragraph and subparagraph in the SOR:

Applicant is 46 years old, and he is employed by a defense contractor as a ----- . He seeks a DoD security clearance in connection with his employment in the defense industry.

Paragraph 1 (Criterion G - Alcohol consumption). The Government alleges that Applicant is ineligible for clearance because he consumes alcohol to excess.

Applicant first became intoxicated in 1966 when he consumed a number of mixed drinks at a dance. He did not drink alcoholic beverages again until 1970, when he drank approximately three-fourths of a bottle of Seagram's VO whiskey, resulting in intoxication. From 1971 to 1972, he drank a bottle of wine approximately once per week, to "serve as a self-medication" after using marijuana and/or amphetamines, and he also would "generally drink a couple of beers daily, and occasionally would drink a pint of tequila." (Item 6.)

During the time from May of 1972 to January of 1973, Applicant drank approximately two beers after work, and seldom got intoxicated. From January of 1973 to December of 1974, he drank approximately three or four beers daily after work. (Item 6.)

During the period from 1975 to 1976, Applicant "began to drink at a much heavier pace," drinking coke and one-half a pint of Wild Turkey bourbon on a daily basis. Then he began to drink a six pack of beer daily, and this continued for approximately one year. He also drank a mixture of approximately one-half pint of gin, plus grapefruit juice, approximately twice per week. (Item 6.)

Applicant continued this pattern of alcohol consumption through 1980, although he believes that his use of bourbon and coke diminished in frequency to approximately three times per week. (Item 6.)

From 1980 to 1990, Applicant's consumption of alcoholic beverages diminished. During that time, he consumed approximately a six pack of beer, or one-half pint of "hard liquor," per week. (Item 6.)

During the period from 1990 to December of 1993, Applicant's consumption of alcoholic beverages increased, and he drank "from one pint to one fifth of vodka on a daily basis." (Item 6.) In addition, during that time he was "frequently drinking a six pack of beer as well." (Item 6.) By the end of 1993, Applicant "was impaired every evening from using alcohol excessively." (Item 6.) During this time, there were a couple of instances in which he reported to work with a hangover, but he never drank alcohol during working hours. (Item 6.)

In approximately December of 1993, Applicant stopped drinking for a period of 38 days. (Item 6.)

From January of 1994 to approximately October of 1995, Applicant daily drank a couple of mixed drinks containing vodka or gin, or perhaps a glass of wine, "in order to help me sleep at night." (Item 6.)

In approximately 1994, Applicant "decided that he had been drinking too much" (Item 4), and he was concerned that he was abusing alcohol (Item 3), so he voluntarily sought treatment from a medical provider. His treatment included at least three counseling sessions, plus medication prescribed by a physician. (Item 4.)

From September of 1993 to at least March 7, 1996, Applicant received treatment from a physician for a condition diagnosed, in part, as "Alcoholism." (Items 3 and 6.)

In approximately April or May of 1995, one of Applicant's co-workers called the employer's "Ethics Hotline" and

reported that Applicant's breath smelled of alcohol early in the day. (Items 3, 5, and 6.) Applicant was questioned by his Facility Security Officer, and he admitted that he had a hangover when he reported to work that day, but he denied that he had consumed alcoholic beverages during the workday. (Item 6.)

In approximately July of 1995, a woman employed at Applicant's worksite reported to the security chief that Applicant had reported to work with the odor of alcohol about his person. Applicant was then interviewed by a security official, and as a result of that interview he was denied access to the facility's secured area. (Items 3, 5, and 6.) Applicant was counseled by his employer for reporting to work on two occasions with the odor of alcohol about his person. (Items 3, 5, and 6.) During that counseling session, Applicant admitted that he had a "drinking problem." (Item 5.) His employer then reassigned him to another work site, and recommended that he seek treatment. (Item 5.)

Applicant enrolled in a hospital's outpatient alcohol recovery program on December 18, 1995. The diagnosis was "alcohol dependency." He attended sixteen daytime counseling sessions during the period from December 18, 1995 to January of 1996, and then he attended some evening counseling sessions until February 9, 1996. (Items 3, 5, 6 and 7.) He also attended Alcoholics Anonymous (AA) meetings during November and December of 1995. (Item 6.)

Although one of the requirements of the hospital's treatment program was that Applicant abstain from consumption of alcoholic beverages, he did resume consumption of alcohol in January of 1996, prior to his completion of the treatment program. (Items 3 and 6.) During January and February of 1996, Applicant consumed approximately one-half pint of vodka per weekend. (Item 6.)

Applicant continues to consume alcoholic beverages. (Items 3, 4, 5, and 6.)

Mitigation.

Applicant indicates in his Answer to the SOR that he is a good analytical chemist, that he is working on an important project, that he is attentive to security matters, that he is now drinking in moderation, that he benefitted from the alcohol treatment program, that his drinking is merely a "benign indulgement," and that he disagrees with the counselor who "branded" him as being "in denial." (Item 3.)

Applicant belongs to several professional science organizations. (Item 4.)

Applicant acknowledges that he has an alcohol abuse problem, but he feels confident that he can control his drinking. He has completed the hospital's out-patient treatment program, and he attended AA meetings during November and December of 1995. He has taken anti-depressant medications which have "taken away the craving for alcohol." (Item 6.)

Applicant has no alcohol-related arrests, and he has no alcohol-related financial problems. (Item 6.)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines and policies for determining eligibility for access to classified information, and these guidelines must be given consideration in making security clearance determinations. The following adjudicative guidelines and policies are found to be applicable in this case:

Criterion G (Alcohol Consumption)

Conditions that could raise is a security concern:

2. Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;
3. Diagnosis by is a credentialed medical professional of alcohol abuse or 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:

(None of the Directive's Criterion G mitigating concerns apply to the facts of this case.)

In addition, the general adjudication policies expressed at Paragraph F.3. of the Directive and in Enclosure 2 of the Directive have been considered as to each criterion in this case. Enclosure 2 provides, in pertinent part as follows: "The adjudication process is the careful weighing of a number of variables known as the whole person concept. All available information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

"The nature, extent, and seriousness of the conduct.

"The circumstances surrounding the conduct, to include knowledgeable participation.

"The frequency and recency of the conduct.

"The individual's age and maturity at the time of the conduct.

"The voluntariness of participation.

"The presence or absence of rehabilitation and other pertinent behavioral changes.

"The motivation for the conduct.

"The potential for pressure, coercion, exploitation, or duress.

"The likelihood of continuation or recurrence."

In DOHA cases the Government has the initial burden to go forward with persuasive evidence in support of the factual and conclusionary allegations in the SOR. If the Government meets this initial obligation, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficiently persuasive to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her is a security clearance

CONCLUSIONS

In the defense industry, the security of classified industrial secrets is entrusted to civilian workers who must be counted upon to safeguard such sensitive information twenty-four hours a day. The Government is therefore appropriately concerned where available information indicates that an Applicant for a security clearance may be involved in repeated instances of excessive alcohol consumption, for such excessive alcohol consumption may lead to the exercise of questionable judgement, unreliability, or failure to control impulses, and it may increase the risk of unauthorized disclosure of classified information due to carelessness.

In this case the Government has met its initial burden of proving that Applicant has a relevant history of consuming alcohol to serious excess. He drank excessively, often on a daily basis and often to intoxication, for many years. His admitted alcohol abuse resulted in some adverse employment consequences. There were at least three instances in which coworkers questioned his sobriety, and he was barred from access to a classified work area due to doubts about his sobriety. His admitted alcohol abuse led to three separate instances of treatment by medical professionals, with resulting diagnoses which included alcoholism and alcohol dependence. It must be concluded that Applicant's chronic alcohol consumption and his alcohol dependence are incompatible with his security responsibilities, due to the obvious potential for unauthorized disclosure of defense secrets resulting from neglect or misadventure or impaired judgement.

Applicant, on the other hand, has not introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him. He has been drinking excessively for approximately thirty years. Item 6 describes a long history of significant alcohol abuse. Applicant continues to consume alcoholic beverages, despite the fact that he has been counseled and reprimanded by his employer, and despite the fact that he has received alcohol abuse counseling from medical professionals who have advised him to remain abstinent. It has been less than one year since his most recent alcohol abuse treatment. The evidence suggests that Applicant is minimizing and denying and rationalizing the true extent of his alcohol abuse problem, describing it as a mere "benign indulgence" (Item 3), and claiming that it is now "under control" (Item 6), despite significant evidence to the contrary. This is suggestive of poor judgement and unreliability. The evidence does not contain a favorable prognosis from any credentialed medical professionals.

On balance, it is concluded that Applicant has failed to overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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

FORMAL FINDINGS

Formal findings For or Against the Applicant on the allegations 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.: Against 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.

Subparagraph 1.i.: Against the Applicant.

DETERMINATION

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 the Applicant.

Michael Kirkpatrick

Administrative Judge