

February 18, 1997

In Re:

SSN:

Applicant for Security Clearance

ISCR Case No. 96-0596

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL KIRKPATRICK

Appearances

FOR THE GOVERNMENT

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Department Counsel

FOR THE APPLICANT

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STATEMENT OF THE CASE

On August 26, 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 September 12, 1996. This case was assigned to the undersigned Administrative Judge on November 12, 1996, and a Notice of Hearing was issued on December 16, 1996.

A hearing was held on February 4, 1997. During that hearing, the Government called the Applicant as its only witness, and presented nine documentary exhibits. The Applicant testified on his own behalf, and he presented twenty documentary exhibits.

The transcript was received on February 14, 1997.

FINDINGS OF FACT

Applicant admitted the material facts alleged in SOR subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f, and 1.j., 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 43 years old, and he is employed by a defense contractor as an ----- . He seeks to retain his Department of Defense secret security clearance in connection with his employment in the defense industry. (Transcript, pp. 74-75.)

Applicant Enlisted in the U.S. Army in 1974, and he was honorably discharged from the U.S. Army in 1994, with the rank of Staff Sergeant, pay grade E-6. He married his first wife in 1974, and divorced in 1987. He married his second wife in approximately 1990, and was divorced in 1995. He is presently married to his third wife. (Tr., pp. 26-31.)

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

Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately February of 1986 to February of 1996. (Response to SOR; Govt.Exs. 1-9; Tr., p. 32.)

In February of 1986, Applicant was arrested on a military installation for the offense of driving under the influence of alcohol. As a result of that arrest, he was referred by his command to the U.S. Army Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) at a military base. He received counseling there for alcohol misuse from February 26, 1986 to May 21, 1986. He completed that program. (Response to SOR; Tr., pp. 32-34, 76.)

In March of 1992, Applicant and his wife were having marital problems. On March 26, 1992, Applicant couldn't locate his wife. He had one shot of whiskey at the Army post's bowling alley. Then he left, and stopped at a few bars, looking for his wife. He drank a few beers at those bars, and he became intoxicated. At about 3:00 A.M. on that date, the military police were notified that county sheriff deputies had observed Applicant driving erratically, failing to stay in his lane, and initiated a traffic stop. They smelled a strong odor of alcohol emanating from Applicant's breath. They administered a field sobriety test, which Applicant failed. A breathalyser test revealed that Applicant had a blood alcohol level of .16 percent. He was charged in the town court of that state with failure to keep to the right, and with driving while under the influence of alcohol. Applicant pled guilty to a reduced charge of reckless driving, and paid a fine. His post driving privileges were suspended for one year. His command referred him to the Army's ADAPCP clinic at that post, and he was counseled there from May 13, 1992 to November 2, 1992, for a condition diagnosed as alcohol dependence, continuous. He attended fourteen group counseling sessions and three individual counseling sessions. He completed the program. (Response to SOR; Govt.Exs. 1, 2, 4, 6, 7, 8, and 9; Tr., pp. 35-40, 75-77.)

On November 1, 1992, Applicant was driving home from an Army hospital. He stopped at a friend's house, to discuss Applicant's back pain and his marital problems, and he consumed approximately five to ten drinks of tequila during a three-hour period of time, becoming intoxicated. He left his friend's house to drive to his home at the Army post. A city's police officers observed Applicant make an improper lane change, and they initiated a traffic stop. They smelled a strong odor of alcohol emanating from Applicant's breath. They administered a field sobriety test, which Applicant failed. A breathalyser test revealed that Applicant had a blood alcohol level of .22 percent. He was charged in the town court of that state with unsafe lane change, and with driving while under the influence of alcohol. Applicant pled guilty to the charge of driving while under the influence of alcohol, and was sentenced to home detention for 60 days, fined \$750.00, placed on probation for three years, and had his driver's license revoked. His command referred him to the Army's ADAPCP clinic at his post, and he was treated there from December 14, 1992 to September 14, 1993, for a condition diagnosed as alcohol dependence, continuous. His treatment consisted of intensive group counseling. He completed the program. (Response to SOR; Govt.Exs. 1, 2, 5, 6, 8, and 9; Tr., pp. 42-46, 61, 76-77.)

During the period from February of 1994 to April of 1995, there was more than one occasion on which a co-worker reported to Applicant's supervisor that she smelled alcohol on his breath, and that he appeared to be drunk or hungover. Applicant's supervisor spoke to him about his erratic behavior and his poor appearance, and she suggested that he seek counseling, which he did. (Govt.Exs. 2 and 3; App.Exs. A and T; Tr., pp. 48-53.) Applicant "was a self-referral" in the Army's ADAPCP clinic. He was first seen at that facility on January 3, 1995, and his file was officially processed for closure on April 14, 1995. He received both individual and group counseling. (Govt.Exs. 2 and 3; App.Exs. A and B; Tr., pp. 48-53.)

Applicant denies that he ever came to work drunk or hungover. His explanation is that during 1994 and 1995 he and his wife were having depressing marital problems, that his counseling was for depression and marital problems rather than

for an alcohol abuse problem, that he was taking prescription medication (pain killer, anti-inflammatory, and muscle relaxant type of medicine) for chronic back pain, and that the medicine made him drowsy, so that others might have incorrectly surmised that he was drunk or hungover. (Response to SOR; Govt.Ex. 2; Tr., pp. 46-53, 62-65, 77-79.) Some of his coworkers have written letters to the effect that they did not observe him to be drunk or hungover during that period of time. (App. Exs. D-G, I-J, L-O, R, and S.) However, Applicant admits that he was drinking during that period of time, and that he was concerned that his alcohol consumption might become excessive. (Response to SOR; Govt.Ex. 2; Tr., pp. 63-65.) Further, his counselor in the ADAPCP program reports that, although Applicant was not in therapy long enough to be given a diagnosis, he "self-referred," at least in part, because of "his increased use of alcohol." (Govt.Ex. 3; App.Ex. A.) After careful consideration of all of the evidence in this case, I find that his counseling at the ADAPCP clinic during this period of time did pertain, at least in part, to an alcohol-related problem.

Applicant has had no alcohol-related arrests since November 1, 1992. (Tr., pp. 61-62, 66.) He has never had any alcohol-related health or financial problems. (Tr., p. 80.) Applicant states that he presently drinks infrequently and moderately, and never to intoxication, consuming only one or two beers per week, and no "hard liquor" at all. (Govt.Ex. 2; Tr., pp. 53-57.) There is no evidence to the contrary.

There is no evidence that Applicant has reported to work drunk or hungover or smelling of alcohol subsequent April of 1995. In fact, several of his coworkers and supervisors who observe him in the workplace state that they have not observed Applicant to be drunk or hungover in the workplace. (App. Exs. D-G, I-J, L-O, R, and S.)

Applicant has recently remarried, and his present wife is a Christian lady who does not approve of the use of alcohol, and who does not allow alcohol in the house. (Tr., pp. 54, 67.) Applicant has now become active in his church, where he has a good support group. (Tr., pp. 65-68.)

Mitigation.

Applicant Exhibits A and B are memoranda, dated March 20, 1996, and September 13, 1996, respectively, from an "alcohol/drug control officer" of the U.S. Army Alcohol and Drug Prevention and Control Program. She reports that on January 3, 1995, Applicant "was a self-referral because of his depression and his increased use of alcohol," that he was treated with both group and individual counseling therapy, that he was last treated there on February 1, 1995, that he was open and honest during his assessment and his treatment, and that he did not exhibit any undesirable characteristics.

Applicant Exhibit D is a memorandum, dated September 13, 1996, from a training center site manager who has known Applicant for two years. He states that he has never seen Applicant abuse alcohol. He opines that Applicant is trustworthy and responsible.

Applicant Exhibit E is a memorandum, dated September 16, 1996, from the chief of Applicant's training center. He states that Applicant's work performance has been exemplary. He opines that Applicant is mature, trustworthy, and responsible.

Applicant Exhibit F is a memorandum, dated September 12, 1996, from a senior instructor at Applicant's work center. He states that he has been one of Applicant's direct supervisors, that he has known Applicant since July of 1995, that he has never observed Applicant to report for work smelling of alcohol or appearing to be hungover or drunk, and that Applicant is punctual and reliable.

Applicant Exhibit G is a memorandum, dated September 9, 1996, from the Noncommissioned Officer in Charge of Applicant's work center. He states that Applicant is gentlemanly and courteous. He states that during the fourteen months that he has known Applicant, he has never observed him drink to excess.

Applicant Exhibit H is a memorandum, dated September 11, 1996, from a coworker who has known Applicant for over ten years. He reports that Applicant cares for his family, and is a punctual, hard worker. He also states that Applicant is cooperative, loyal, and honest.

Applicant Exhibit I is a memorandum, dated September 12, 1996, from the chief director of a family support division. She states that Applicant worked for her from April of 1994 to April of 1995, that his work performance was excellent,

and that she never observed him to report for work under the influence of alcohol.

Applicant Exhibit J is a memorandum, dated September 12, 1996, from the director of a child development center. She states that Applicant worked there as an operations clerk from January to July of 1994, that his work performance was excellent, that he was very dependable, and that she never observed him to report for work under the influence of alcohol.

Applicant Exhibit K is a memorandum, dated September 12, 1996, from a child development center coordinator. He states that Applicant worked there as an administrative assistant from April of 1994 to April of 1995, and that Applicant had no security violations.

Applicant Exhibit L is an undated memorandum from a counselor assistant. He reports that he has known Applicant for approximately two years, and that he has never observed Applicant to be drunk, hungover, or smelling of alcohol.

Applicant Exhibit M is a memorandum, dated September 12, 1996, from the manager of a job assistance center. He states that he has known Applicant for approximately three years, that he has never seen the Applicant under the influence of alcohol, and that Applicant is punctual and responsible.

Applicant Exhibit N is a memorandum, dated September 11, 1996, from the director of a camp recreational center. He states that he has known Applicant for ten years, that he has never seen Applicant intoxicated, that Applicant recently remarried and has a good relationship with his bride and her son, and that he trusts Applicant's abilities and judgment.

Applicant Exhibit O is a memorandum, dated September 12, 1996, from a school transportation program coordinator who has known Applicant for two years. He states that he has never seen Applicant under the influence of alcohol, and that Applicant is punctual and responsible.

Applicant Exhibit P is a memorandum dated September 12, 1996, from an equal employee opportunity specialist who has known Applicant since 1989. He states that Applicant has recently remarried, and he now has family and friends to turn to in times of trouble.

Applicant Exhibit Q is a memorandum, dated September 11, 1996, from a ration control supervisor who has known Applicant for ten years. He states that Applicant works hard. He opines that Applicant has good judgment and is reliable.

Applicant Exhibit R is a letter from the Director of the ----- where Applicant has worked since June of 1995. She states that Applicant is an efficient, punctual, reliable, enthusiastic, and trustworthy employee. She is aware of no alcohol-related incidents by Applicant during the period of his employment there.

Applicant Exhibit S is a memorandum, dated September 16, 1996, from the vehicle coordinator/supply technician of a training center. He has known Applicant since November of 1995. He states that he has never observed Applicant to report to work with the smell of alcohol on his breath, or appearing to be intoxicated or hungover. He opines that Applicant is dedicated and reliable.

Applicant Exhibit T is a message, dated March 26, 1996, summarizing the results of an investigator's interview with a child development center coordinator who supervised Applicant from February of 1994 to April of 1995. She told the investigator that she smelled alcohol on Applicant's breath on at least one occasion, and she suggested that he seek counseling, which he did. The message also indicates that Applicant was cooperative during the investigation.

Applicant served his country as a soldier for twenty years, earning an honorable discharge. (Govt.Ex. 1.)

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 a security concern:

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;
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 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:

3. Positive changes in behavior supportive of sobriety.

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 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, for ten years, resulting in two alcohol-related convictions. He also reported to work in an apparently drunk or hungover condition, smelling of alcohol, on more than one occasion, and he received medical treatment for alcohol dependence on more than one occasion. Applicant's history of excessive alcohol consumption and his alcohol dependence in the past were incompatible with his security responsibilities, due to the obvious potential for unauthorized disclosure of defense secrets resulting from neglect or misadventure or impaired judgement.

However, Applicant has introduced persuasive evidence in rebuttal, explanation or mitigation which is sufficient to overcome the Government's case against him. Clearly, he now recognizes the serious consequences of excessive alcohol consumption, and he is making a strong effort to permanently reform his behavior and live an alcohol-free lifestyle. During the past two years he has demonstrated that he possesses the resolve necessary to achieve his goal. He has had no alcohol-related arrests since 1992. There is no evidence that Applicant has consumed alcohol to excess at all during the past two years. He expresses a credible intention to abstain from excessive consumption of alcohol in the future. He now has a very stable family and work environment. His bride is a Christian lady who does not approve of the use of alcohol. Appellant has become active in his church, where he has a good support group. He is excelling at work, and many of his co-workers and supervisors, who observe him in the workplace on a daily basis, state that they have not observed him to drink, to be intoxicated, to smell of alcohol, or to be hungover during the past two years. The weight of the evidence is that Applicant's recent behavior reflects a responsible lifestyle and positive changes supportive of sobriety.

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

For the reasons stated, I conclude that Applicant is 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: For the Applicant.

Subparagraph 1.a.: For the Applicant.

Subparagraph 1.b.: For the Applicant.

Subparagraph 1.c.: For the Applicant.

Subparagraph 1.d.: For the Applicant.

Subparagraph 1.e.: For the Applicant.

Subparagraph 1.f.: For the Applicant.

Subparagraph 1.g.: For the Applicant.

Subparagraph 1.h.: For the Applicant.

Subparagraph 1.i.: For the Applicant.

Subparagraph 1.j.: For the Applicant.

DETERMINATION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Michael Kirkpatrick

Administrative Judge