

DATE: January 14, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0588

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

Earl C. Hill, Jr., Esquire

Department Counsel

FOR THE APPLICANT

Katherine A. Brown Holmen, Esquire

STATEMENT OF THE CASE

On 17 September 1996, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding⁽¹⁾ that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 2 October 1996, Applicant answered the SOR and requested a hearing. The case was assigned to me on 23 October 1996; I received the case on 24 October 1996, set it the same day, and issued a Notice of Hearing on 15 November 1996 for a hearing 3 December 1996.

At the hearing, the Government presented eight exhibits--six admitted without objection, two over objection--and no witnesses; Applicant presented seven exhibits--two admitted without objection, five over objection--and one witness, himself. I received the transcript on 12 December 1996.

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

FINDINGS OF FACT

Applicant admitted the factual allegations of the SOR, except for the portion of subparagraphs 1.h. and i. alleging that he received "treatment" for alcohol abuse; accordingly, I incorporate Applicant's admissions as findings of fact. He did, however, deny the conclusory allegations that he presently has an alcohol problem.

Applicant--a 25-year old employee of a defense contractor--seeks a secret clearance.

The allegations of the SOR revolve around Applicant's alcohol abuse. Applicant first drank alcohol in December 1988 (age 17) when he drank with some friends on a ski trip. During the rest of high school, Applicant drank seldom, never

apparently to excess. In August 1989, Applicant entered college, and began to drink more frequently, sometimes to excess. Applicant's alcohol use caused him to become involved with the authorities on five occasions between 1991 and 1994.

On 28 June 1991, Applicant (age 20) and some friends went to a police station to try to extricate a friend who had been arrested for DWI. (2) Based on Applicant's appearance, the police suspected that Applicant was intoxicated and asked him to identify himself; Applicant refused and was arrested for underage drinking and possession of an altered license. (3) He was transported to a detoxification center, where he was found to have a blood alcohol level of .13%; he was released the same day. He later paid a fine on a lesser drinking charge (the license charge was dismissed).

On 9 August 1991, Applicant (age 20) was cited for underage drinking and having a loud party. Officers called to the scene observed that Applicant appeared to have consumed a substantial amount of alcohol, but no blood alcohol content was taken. (4) Applicant later paid small fines on the two citations.

On 19 August 1993, Applicant (age 22) took some beer to a party at a friend's house; one of Applicant's underage friends had a beer, and Applicant was cited for supplying alcohol to a minor. (5) Neither Applicant nor the minor were intoxicated at the time. Imposition of sentence was stayed, although Applicant paid court costs.

On 29 May 1994, Applicant (age 23)--as driver of the car--was cited for having an open bottle of alcohol in his car. Applicant was with some friends on a camping trip, and was not aware that the friends had opened the bottles. Applicant paid a fine by mail.

On 22 September 1994, Applicant (age 23) had been drinking with some friends at Applicant's apartment when they decided to go to the friend's dorm, located on a "dry" campus. (6) They took alcoholic beverages with them, and were spotted by campus police; Applicant and his friends tried to persuade the campus police to just make them leave the campus, but were unsuccessful. The police confiscated the alcohol, and took Applicant to a detoxification center, where his blood alcohol level was found to be .09%. (7)

In August 1995, Applicant went to work for his present employer; his present supervisor considers Applicant to demonstrate the highest work performance and expresses no doubts about his abilities or judgment. Nevertheless, the supervisor does not appear to be aware of Applicant's alcohol abuse history. Since going to work for his employer, Applicant has cut back in his drinking; he estimates that he drinks twice a month, consuming 3-4 beers, and never drinks to the point of intoxication. He acknowledges that in the past, he drove a car after drinking enough that he should not have been driving.

On 26 November 1996, Applicant had a chemical dependency evaluation which did not substantiate a diagnosis of alcoholism. (8)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

ALCOHOL CONSUMPTION (CRITERION G)

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. . .
- (3) diagnosis by a credentialed medical professional of alcohol abuse. . .

Conditions that could mitigate security concerns include:

- (2) the problem occurred a number of years ago and there is no indication of a recent problem;
- (3) positive changes in behavior supportive of sobriety

Burden of Proof

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to Applicant to establish her security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

CONCLUSIONS

The Government has established its case under criterion G; however, I find the Applicant's alcohol abuse mitigated. Without minimizing the abuse demonstrated by Applicant's encounters with authority, I note that these incidents are generally less serious than they appear at first glance and are certainly less serious than the kind of alcohol-related incidents cited in the disqualifying factors.⁽⁹⁾

In June 1991, Applicant was intoxicated, but it seems clear from the police report that he was arrested principally for his refusal to identify himself and not necessarily because of his underage drinking; similarly, in August 1991 Applicant was merely cited, and not arrested, for his underage drinking--although again Applicant was apparently intoxicated. In August 1993, Applicant certainly demonstrated poor judgment by taking beer to a party where he knew minors would be present, but this incident is not indicative of a drinking problem. Neither Applicant nor the minor were intoxicated; furthermore, while not condoning the Applicant's conduct, I find the Government's implication that the conduct was especially heinous because the Applicant was 22 and his friend 20 to be somewhat excessive on the facts of this case.

Applicant's May 1994 citation for having an open bottle in his car does not support a conclusion that Applicant had an alcohol abuse problem. Applicant was not aware that his friends had opened the bottle and there is no indication--or allegation by the Government--that Applicant was intoxicated or had been drinking at the time of the citation.

Applicant was certainly intoxicated--legally or in fact--on 22 September 1994 when he and his friends took beer to a dry campus, and Applicant certainly was an uncooperative patient for the 10 or so hours he was at the detoxification center. But these facts standing alone do not dictate the conclusion that Applicant presently has an alcohol abuse problem or that he was in denial of his alcohol abuse at the time. He demonstrated no symptoms of withdrawal, had a blood alcohol level of zero 10 hours after admission, and appeared well--and pleasant--at discharge. Although he refused to see a counselor for an alcohol abuse video, there is no indication in the records that he was discharged against medical advice or otherwise refused to heed a recommendation for further treatment.

Applicant is a young man who while a still younger man did what many young men do: he drank too young, he drank too often, and he drank too much. Applicant has acknowledged as much in his answer and his testimony. That abuse of alcohol resulted in three incidents (June and August 1991, and September 1994). But there have been no incidents of abuse since September 1994. Applicant got a job with a defense contractor in August 1995 and began the process of growing up. He no longer drinks to excess, and seems unlikely on the record before me to return to the abuse of his college days. Accordingly, I conclude criterion G. in Applicant's favor.

FORMAL FINDINGS

Paragraph 1. Criterion G: FOR THE APPLICANT

Subparagraph a: For the Applicant

Subparagraph b: For the Applicant

Subparagraph c: For the Applicant

Subparagraph d: For the Applicant

Subparagraph e: For the Applicant

Subparagraph f: For the Applicant

Subparagraph g: For the Applicant

Subparagraph h: For the Applicant

Subparagraph i: For the Applicant

DECISION

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 Applicant.

John G. Metz, Jr.

Administrative Judge

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 (Directive).
2. Applicant, his friends, and the driver had been drinking at a party at Applicant's house.
3. Applicant had altered the license to enable him to buy alcohol, but had not used it to buy alcohol because he had done such a bad job altering the license.
4. The officers broke up the party, confiscated the beer, and told Applicant to clean up the garbage the next day.
5. Police had been called about an underage drinking party; only Applicant and the minor were observed to be drinking. Police broke up the party and confiscated the beer.
6. Applicant was a graduate student at this campus, employed as a -----.
7. Applicant was a belligerent patient while under the influence of alcohol, and even when sober refused to watch the offered alcohol-abuse videos or see a counselor. Nevertheless, hospital records reflect that he suffered no signs of withdrawal, appeared well, and had a breathalyser alcohol level of zero at the time of discharge, approximately ten

hours after being brought to the facility.

8. I have given this evaluation little weight, in part because it was prepared in anticipation of this hearing, and in part because of the absence of detail about Applicant's present drinking habits. I do note that the evaluator was aware of the five alcohol incidents cited above, as well as Applicant's acknowledgment that he abused alcohol until at least age 21. I have also given little weight to Applicant's undated character letters which purport to vouch for Applicant's responsible use of alcohol more recently.

9. DWI, fighting, child/spouse