

DATE: April 29, 1997

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 96-0703

DECISION OF ADMINISTRATIVE JUDGE

JOHN G. METZ, JR.

APPEARANCES

FOR THE GOVERNMENT

Barry M. Sax, Esquire

Department Counsel

FOR THE APPLICANT

Pro se

STATEMENT OF THE CASE

On 27 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 5 October 1996, Applicant answered the SOR and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 31 October 1996; the record in this case closed 12 December 1996, the day the response was due at DOHA. The case was originally assigned to a different administrative judge, but was reassigned to me because of workload considerations on 23 April 1997. I received the case on 23 April 1997 to determine whether clearance should be granted, continued, denied or revoked.

The SOR is attached to this Decision and incorporated by reference.

FINDINGS OF FACT

Applicant admitted the factual allegations of the SOR, except for subparagraph 1.a. and the conclusory allegation of paragraph 2; accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 50-year old employee of a defense contractor--seeks to retain a secret clearance.

The allegations of the SOR revolve around Applicant's extensive history of alcohol abuse. Applicant first abused alcohol in approximately 1964 (age 18). From 1964 to approximately 1980, Applicant drank 12-15 beers 3-4 times a week. He had some alcohol related incidents during this period: a driving while intoxicated incident (DWI) in February 1974; a

public intoxication (PI) incident in November 1980. From 1980 to July 1996, Applicant reduced his drinking to 6-8 beers 3-4 times a week, usually on weekends. Still, he continued to have alcohol related incidents: a PI/disorderly conduct incident in March 1985; a DWI arrest in March 1996 in which he had a blood alcohol level of .245 percent.⁽²⁾ From 1989 to August 1995, he was noted to have alcohol on his breath on occasion while at work. In August 1995, he was disciplined by his employer for having alcohol under his desk at work. He has been asked to leave a local bar on several occasions when the bartender believed Applicant had become intoxicated. As a result of his DWI conviction for the March 1996 arrest, Applicant is on probation until June 1998.

Since at least 1985, Applicant has engaged in a pattern of abuse of sick leave and leave without pay (LWOP) at his place of employment. A 23 September 1985 employee evaluation (Item 15) notes that while Applicant's work has improved, "he still abuses sick leave." On 16 December 1992, Applicant was formally counseled by his employer for leave abuse over the prior ten months (Item 14). In May 1996, Applicant's employer noted that Applicant was generally absent on a Monday or a Friday (Item 12). In June 1996, Applicant was again formally counseled by his employer for leave abuse (Item 10). Applicant denies that there is any connection between his alcohol consumption and his absence from work; the record evidence does not firmly establish such a connection.⁽³⁾

Applicant's employer records reflect that he is a competent employee when he is available for work. Applicant denies that he has any problem with alcohol.

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. . .
- (4) habitual or binge consumption of alcohol to the point of impaired judgment;

Conditions that could mitigate security concerns include:

None.

PERSONAL CONDUCT (CRITERION E)

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying include:

- (5) a pattern of . . . rule violations;

Conditions that could mitigate security concerns include:

None.

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. The record clearly establishes many years of alcohol abuse by Applicant. He had alcohol-related arrests in 1974, 1980, 1985, and 1996; he violated his employer's alcohol policy in August 1995; he has been asked to leave a local bar on several occasions when he became intoxicated. From approximately 1964 to 1980 Applicant clearly abuse alcohol when he drank 12-15 beers 3-4 nights per week; however, since 1980, even his reduced level of consumption to 6-8 beers 3-4 nights per week remains alcohol abuse. Applicant's claim that he does not have an alcohol problem is clearly belied by the record. His arch 1996 DWI conviction occurred when he had a BAC of .245 percent. He is on probation for that offense until June 1998. Applicant's discussion of his alcohol history demonstrates that he has no intent to further reduce his alcohol consumption and has developed no insight into the problems caused by alcohol consumption. There is no evidence he has ever sought help from AA or an employee assistance program. I conclude that Applicant is likely to continue to abuse alcohol as he has in the past. Accordingly, I find criterion G. against Applicant.

The Government has established its case under criterion E. Although there is no established connection between Applicant's abuse of sick leave/LWOP and his alcohol abuse, the abuse of leave, standing alone, casts considerable doubt on Applicant's judgment and reliability. On two occasions since December 1992, Applicant's employer has had to threaten Applicant with further disciplinary action if he does not conform to accepted norms of attendance. If Applicant cannot be relied upon to comply with the most basic employee obligation of regular work attendance, he cannot be relied upon to comply with the more rigorous requirements for handling classified information. I find criterion E. against Applicant.

FORMAL FINDINGS

Paragraph 1. Criterion G: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Paragraph 2. Criterion E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the applicant

Subparagraph c: 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.

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. I reject Applicant's claim (Item 8) that he had 6-9 nine beers over a 6-8 hour period before the DWI; the BAC of .245 percent suggests that he consumed the beer over a shorter period of time.
3. However, while Applicant asserts that he takes leave to assist other members of his family, employer records reflect that Applicant always claims to have an illness, although the employer has not documented any extended illness.