

January 27, 1997

In Re:

SSN:

Applicant for Security Clearance

ISCR OSD Case No. 96-0716

DECISION OF ADMINISTRATIVE JUDGE

MICHAEL KIRKPATRICK

Appearances

FOR THE GOVERNMENT

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Department Counsel

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

On September 27, 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 submitted an undated written response to the SOR. This case was assigned to the undersigned Administrative Judge on November 19, 1996, and a Notice of Hearing was issued on December 4, 1996.

A hearing was held on January 16, 1997. During that hearing, the Government called the Applicant as its only witness, and pursuant to a written stipulation between the parties presented eight documentary exhibits. The written stipulation was admitted as the Government's ninth exhibit. The Applicant testified on his own behalf, and presented two documentary exhibits.

The transcript was received on January 24, 1997.

FINDINGS OF FACT

In his Answer to the SOR, Applicant admitted the material facts alleged in every subparagraph of the SOR, 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 39 years old. He is married. He has three children. He is a high school graduate, and he earned an

Associates of Science degree from a junior college. 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. The Government opposes the Applicant's request for a continued security clearance, on the basis of allegations set forth in the attached Statement of Reasons (SOR).

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

Applicant began to drink beer on a regular basis in 1973, when he was in high school, drinking approximately 12 beers per week. He continued that pattern of drinking until January of 1978, when he went on a mission for his church. From January of 1978 to January of 1980, while he was on his church mission, he drank no alcohol. He resumed drinking beer in September of 1981. From September of 1981 until approximately June of 1991, he drank alcohol infrequently, and only drank to the point of intoxication approximately five times. (Govt.Ex. 2; Tr., pp. 25.)

In June of 1991, Applicant's alcohol consumption increased to approximately twelve beers per day, three or four days per week. His alcohol consumption further increased to twenty beers per day, three or four days per week, in approximately June of 1993, and was related to a marital problem. (Govt.Ex. 2; Tr., pp. 23-24.)

There were occasions during the early 1990's, when Applicant was deployed overseas while serving in the U.S. Navy, that he reported for work under the influence of alcohol. (Tr., pp. 29-30.)

On June 2, 1994, when he was serving on active duty in the U.S. Navy, Applicant was identified as alcohol dependent and obese, and was referred to a Naval Alcohol Rehabilitation Center (NARC) for residential rehabilitation. Applicant informed the medical provider there that he was drinking 18 beers per day, four days per week, that he was drinking more than he intended, that his compulsive drinking was creating a financial strain, that people were complaining about his drinking, that he drank in the mornings., and that he had drunk to the point of blackout on many occasions. He further informed the medical provider there that his "heaviest year of drinking" had been 1991, during which time he had drunk an average of nine beers per day, seven days per week. His diagnoses included "alcohol dependence." (Govt.Ex. 7.) Applicant was assigned to a rehabilitation unit for participation in a structured program which included comprehensive screening and mental status evaluations, physical conditioning, therapeutic workshops, group therapy, education, and a 12-step program support system. The Applicant's in-patient alcohol dependency treatment ceased on June 28, 1994. (Govt.Exs. 2 and 7; Tr. pp. 19, 26, 30, 59.)

Applicant was then referred by the NARC to a Family Service Center, where he received out-patient counseling for alcohol dependency from August 5, 1994, to September 29, 1994. (Govt.Exs. 2 and 8; Tr., pp. 30, 59.)

After completing the NARC program, Applicant remained sober for approximately 14 months. He attended Alcoholics Anonymous (AA) meetings three times per week, until approximately June of 1995. (Govt.Ex. 2; Tr., pp. 19-21, 31, 56, 60.)

In September of 1995, Applicant began drinking beer again, and his consumption escalated from three or four beers per occasion, twice weekly, to twenty beers per occasion, three or four times per week. (Govt.Ex. 2; Tr., pp. 17-18.)

On March 18, 1996, Applicant drank 14 or 15 beers at a local bar, and was feeling depressed when he reported to work the next morning. He realized that he could not stop drinking on his own. Therefore, he requested assistance from his employer's Employee Assistance Program. (Govt.Exs. 2 and 4; Tr., pp. 33.) Following an interview, Applicant was referred to a ----- (----), where he was interviewed by a substance abuse counselor. Applicant informed the counselor that he was drinking to the point of intoxication three or four times per week, experiencing blackouts, tremors, cravings, increased tolerance, and loss of control. He also informed the counselor that his excessive drinking had caused a separation between he and his fiancée. He further informed the counselor that he "blew \$1,100.00 last night, alcohol and gambling; drank 27 beers." (Govt.Ex. 4.) The assessment and diagnosis of the counselor at ---- was that Applicant was suffering from "alcohol dependence, severe, with physiological dependence, characterized by loss of control, increased tolerance, shakes (tremors) upon cessation of drinking, persistent desire to quit or control, financial/marital problems as a result of alcoholism." (Govt.Ex. 4.) The counselor referred Applicant to a hospital's Detoxification Center. (Govt.Exs. 2 and 4; Tr., pp. 34-35.)

Applicant received in-patient treatment at the hospital Detoxification Center from March 20, 1996, to March 26, 1996. He informed the medical provider there that he had been drinking "a 6-pack to 20 beers" per day. Applicant participated in all individual and group counseling sessions, and he timely finished all of his reading and writing assignments. (Govt.Exs. 2 and 5; Tr., pp. 35-36, 60-62.)

From March 28, 1996, to April 11, 1996, Applicant received in-patient treatment at an alcohol abuse treatment center for a condition diagnosed as alcohol dependence, with physiological dependence. His treatment included individual and group counseling, and AA meetings. He successfully completed that counseling program. (Answer to SOR; Govt.Ex. 2; Tr., pp. 36-37, 62.)

Applicant has come to believe that he is an alcoholic, and his intention is to remain abstinent. He has not consumed any alcohol since March of 1996. He has an AA sponsor. When he submitted his written statement on April 30, 1996, he was attending AA meetings three or four times weekly. However, now he attends AA meetings less frequently, approximately twice per week. He has never had an alcohol-related arrest. (Govt.Ex. 2; Tr., pp. 25, 39-41.)

Mitigation.

Applicant has recently qualified as an Emergency Medical Technician. (Tr., p. 45.) He is attending school, and hopes to become a physician's assistant. (Tr., pp. 39, 45.)

Applicant served his country in the U.S. Navy, and was promoted to the rank of second class petty officer. (Govt.Ex. 1; Tr., p. 54.)

Applicant Exhibit "A" is a letter from Applicant's supervisor, who states that Applicant never seemed to him to be intoxicated or under the influence of alcohol at work. He further states that Applicant does satisfactory work, and that Applicant is hard working, reliable, and trustworthy. (App.Ex. A.)

Applicant Exhibit "B" is a letter from Applicant's human resources administrator and facility security officer, who reports that since Applicant's return from the alcohol treatment program, he has performed his duties "in an above satisfactory manner." She further states that Applicant is stable, works well with others, has a positive attitude, and is involved with a local chapter of AA. (App.Ex. B.)

Applicant testified that his attendance and work performance are good. (Tr., p. 65.)

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:

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.

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 excess. He drank excessively and to the point of intoxication, several days per week, for many years, resulting in 26 days of in-patient treatment and approximately two months of out-patient aftercare counseling for alcohol dependence in 1994, subsequent to which he resumed the excessive consumption of alcohol. Applicant then received one week of in-patient treatment for alcohol detoxification and alcohol awareness counseling in March of 1996, followed by two weeks of in-patient treatment for "alcohol dependence with physiological dependence" in March and April of 1996. His excessive alcohol consumption resulted in blackouts, tremors, increased tolerance, loss of control, cravings, relationship problems, and excessive spending. It must be concluded that Applicant's excessive 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. Clearly, he now recognizes the serious consequences of excessive alcohol consumption, and is making a strong effort to reform his behavior and live an alcohol-free lifestyle. In time he may demonstrate that he possesses the resolve necessary to achieve this goal. However, at this time he has been

sober and abstinent for less than twelve months. Considering the frequency and amount of his excessive alcohol consumption during the past two decades, and considering that he resumed his frequent and excessive alcohol consumption subsequent to the intensive regimen of in-patient treatment and subsequent out-patient aftercare in 1994, it is too early to safely conclude that his excessive drinking now is a thing of the past. There is no evidence that he received a favorable prognosis by a credentialed medical professional.

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.

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