

Date: March 25, 1997

In re:

SSN: -----

Applicant for Security Clearance

ISCR OSD Case No. 96-0742

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR THE GOVERNMENT

Matthew E. Malone, Esq.

Attorney-Advisor

FOR THE APPLICANT

Pro Se

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on October 16, 1996. (Copy attached.) The SOR detailed reasons why the Government could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. (u) The SOR consists of allegations based on Criterion H (improper or illegal involvement with drugs) in paragraph 1 and on Criterion G (excessive alcohol consumption) in paragraph 2. Applicant responded to the allegations set forth in the SOR in a general written answer dated November 12 1996, and a second written answer to the specific allegations on December 10, 1996, where she chose not to have a hearing.

On January 7, 1997, Department Counsel prepared a File of Relevant Material (FORM) which was forwarded to Applicant which she received on January 11, 1997; she had 30 days after receipt of the FORM to object to any exhibits or to submit information on her own behalf. She did respond on February 10, 1997, (Applicant's A) which DOHA received on February 18, 1996. Department Counsel filed a Reply to Applicant's Response and did not object to Applicant's letter response.

This matter was assigned to me on February 18, 1997, but I did not receive it until February 24, 1997. It is my role as administrative judge to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

FINDINGS OF FACT

Applicant admitted in her second answer (Item 4) the factual allegations contained in the SOR subparagraphs 1.a, 1.b, 1.c., 2.b., and 2.c. These admissions are incorporated herein as findings of fact. After a complete and thorough review of

the evidence in the record, and upon due consideration of the same, I make the following additional Findings of Fact:

Applicant, a 35-year old employee of a defense contractor, seeks a secret security clearance. She began work there in September 1995. Item 5. She had previously worked for a federal agency from 1991-92 and had been granted a secret clearance on March 1, 1991. Item 5.

Although Applicant did not admit any drug use on her National Agency Questionnaire, she subsequently was interviewed by Defense Investigative Service (DIS) Agent on June 26, 1996, and admitted to using cocaine from summer 1994 to March 1996, initially twice a week and spent \$100 per week. Item 6.

Due to the emotional strain of her separation and divorce, she drank heavily starting in 1994 and at times was drinking six beers and three to four mixed drinks on the weekends. Item 6. After consuming alcohol, Applicant was arrested on April 2, 1995, for (1) driving under the influence, and (2) refusal to submit to blood or breath tests. She pled guilty to a reduced charge of Reckless Driving and was ordered to pay fines and costs of approximately \$389. Count (2) was Nolle Prosequi. Items 8 & 9.

After an incident of paranoia, Applicant went to visit her parents on emergency 30-day leave and voluntarily sought help from a licensed clinical social worker (LCSW) on March 27, 1996. She admitted to this LCSW her daily cocaine use for two years and daily alcohol use for four years. When Applicant did not want to attend an inpatient program, the LCSW advised her to go to Alcoholics Anonymous (AA) on a daily basis and to try a "CA meeting." Item 7.

Instead Applicant sought support from her parents⁽²⁾ and did not attend AA. By April 11, 1996, she still had not attended AA and did not feel she could afford even an out-patient program. After seeing Applicant three times the LCSW assessed Applicant as being addicted to the use of cocaine and alcohol; Applicant was "strongly motivated to maintain sobriety" and was "optimistic about recovery but not totally understanding obstacles she may encounter." Item 7. In arch 1996 Applicant stopped abusing both cocaine and alcohol. Item 6. Applicant says that her career is important to her. She is now working part-time and attending a two-year college program with a computer graphics artist's specialization. Applicant's A.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Criterion H: Drug Involvement

Improper or illegal involvement with drugs, raises questions regarding an individual's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.

Drugs are defined as mood and behavior altering:

(a) drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

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

(1) any drug abuse (see above definition);

Conditions that could mitigate security concerns include:

None

Criterion G - Alcohol Consumption

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:

(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 alcohol 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 include:

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance.

Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may only draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS**Criterion H: Drug Involvement**

The Government established its case with regard to Drug Involvement (Criterion H) as Applicant used cocaine from 1989 through March 1996 even after she began work at a defense contractor. Clearly, she falls within the drug abuse conditions that could raise a security concern and may be disqualifying which include: (1) any drug abuse. Her daily cocaine use, described as addictive, continued to March, 1996, so she does not fall within mitigating condition (1), that drug involvement not be recent. Applicant was a regular user of drugs, and her use was more than "an isolated or infrequent event," so she does not fall within mitigating condition (2). While Applicant now promises that she will not use cocaine again, she merely says so based on her own assertions. She has not sought the support of any program, inpatient or outpatient, that might have addressed the underlying causes, nor has she attend any twelve-step program though she was advised to do so by a LCSW she voluntarily consulted. Indeed she merely saw this LCSW three times while visiting her parents on emergency 30-day leave.

This LCSW assessed Applicant as being addicted to the use of cocaine. While she found Applicant was "strongly motivated to maintain sobriety" and was "optimistic about recovery," she also found that Applicant was "not totally understanding obstacles she may encounter." Consequently, with the recency and history of this drug abuse, it is too soon to find that she falls within mitigating condition (3) a demonstrated intent not to abuse any drugs in the future, as not enough time has passed for Applicant to have manifested this intent to remain drug-free. While this intent not to use

illegal drugs again may be genuine, her resolve needs to be tested by additional time, especially in light of her having never committed to a rehabilitation or 12-step program. While I have also considered the Adjudicative Process factors, I nevertheless find against the Applicant under Paragraph 1 and subparagraphs 1.a., 1.b., and 1.c.

Criterion G: Excessive Alcohol Consumption

Notably, Applicant did not seek help after her April 1995 DUI arrest where she refused to submit to blood or breath tests. While this matter was reduced to a reckless driving charge on July 7, 1995, she still evidently did not seek help until after an incident of paranoia when she then went to visit her parents on emergency 30-day leave and voluntarily sought help from a LCSW on March 27, 1996. Applicant admitted daily alcohol use for four years. After seeing Applicant three times the LCSW assessed Applicant as being addicted to alcohol. When Applicant did not want to attend an inpatient or outpatient treatment program, the LCSW advised her to go to AA on a daily basis, but Applicant did not follow this advice. While the LCSW assessed Applicant as having "a strong intention to maintain sobriety" and being "optimistic about recovery," the LCSW added the cautionary note that Applicant did not totally understand "obstacles she may encounter."

Especially in light of the diagnosis of alcohol addiction by the LCSW, she would need to submit evidence of successfully completing rehabilitation along with aftercare and frequent meetings of AA for at least twelve months. Applicant thus fails to meet the mitigating conditions. [\(3\)](#)

While she only had one alcohol related incident, her problems with excessive drinking are too recent to be certain that indeed she has made positive changes supportive of sobriety. The 1996 LCSW prognosis, while it has favorable elements, does not meet the requirement of being a favorable prognosis by a credential medical professional. Other than her having gone back to school and having her family's support, Applicant submitted no contemporary evidence of her positive changes in behavior supportive of her sobriety nor any evidence that she ever followed the advice of the LCSW that she seek "ongoing therapy and 12 step groups" after this expert had diagnosed her with "addictive use of . . . alcohol." Thus, there is not sufficient evidence in the record to supply a basis for mitigation. After also considering the Adjudicative Process factors, I find against the Applicant under Paragraph 2 and subparagraphs 2.a., 2.b., and 2.c.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Criterion H: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c. Against Applicant

Paragraph 2. Criterion G: AGAINST APPLICANT

Subparagraph 2.a. Against Applicant

Subparagraph 2.b. Against Applicant

Subparagraph 2.c. Against 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 the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), and as amended by Change 3 dated February 16, 1996.
2. I do not find as an acceptable substitute for rehabilitation and/or AA Applicant's claim in her answer that her "12 steps are in my heart and the moral support from family."
3. (1) the alcohol related incidents do not indicate a pattern; (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; (4) following diagnosis of alcohol abuse or alcohol dependence, the individual has successfully completed inpatient or outpatient rehabilitation along with aftercare requirements, participates frequently in meetings of Alcoholics Anonymous or a similar organization, abstained from alcohol for a period of at least 12 months, and received a favorable prognosis by a credentialed medical professional.